

HON'BLE SRI JUSTICE K. LAKSHMAN

ELECTION PETITION No.3 OF 2024

ORDER:

Heard Mr. Ramesh Kuthumbaka, learned counsel for Election Petitioner, Mr. G. Vidya Sagar, learned Senior Counsel representing Mr. Sai Prasen Gundavaram, learned counsel for respondent No.1, Mr. K. Durga Prasad, learned counsel representing Mr. Ramesh Katikineni, learned counsel for respondent Nos.2 & 16, Mr. Ravi Chandra Sekhar, learned counsel for respondent No.4. None appears for respondent No.15.

2. The Election Petitioner filed the present Election Petition under Section - 81 read with 100, 101 and 125A of the Representation of Peoples Act, 1951 and Rule - 3 of the Rules to Regulate the trial of Election Petitions under the Representation of Peoples Act, 1951, seeking the following reliefs:

- i. to declare the election of Respondent No.1 as Returned Candidate for 117- Kothagudem Assembly Constituency, Telangana State as null and void under Section - 100(1)(d)(iv) of Representation of Peoples Act, 1951 as respondent No.1 failed to comply Form-26 Affidavit prescribed by Rule - 4A of the Conduct of Election Rules 1961.

- ii. to declare respondent No.2 as Returned Candidate for 117 - Kothagudem Assembly Constituency, Bhadhradri - Kothagudem District, Telangana State, under Section - 101 read with 98 (c) and 84 of R.P. Act, 1951 with effect from 04.12.2023.
- iii. to impose imprisonment and penalty under Section - 125 A (iii) of the RP Act, 1951 against respondent No.1 under Section - 99 of RP Act, 1951 for his failure to furnish the required information, concealing the material information and for giving false Form-26 affidavit dated 08.11.2023, which is prescribed by Rule - 4A of the Conduct of Election Rules 1961.
- iv. to communicate the decision of this Court in this matter to the Election Commission of India and the Speaker of the Telangana Legislative Assembly in terms of Section - 103 of the RP Act, 1951.
- v. to Grant costs of the petition.

3. The election petitioner has filed this election petition contending as follows:

i) He is the resident of Kothagudem Town which comes under 117-Kothagudem Assembly Constituency. His Aadhar Card Number is 7175 6675 8671 and Voter ID Number is KYT 1505502.

ii) *Vide* Memo No.4004/Elecs.D/A1/2023-1, dated 09.10.2023 and Gazette Notification No.37, dated 03.11.2023 issued by the Election Commission of India (for short 'ECI'), the following schedule of elections was declared to elect the Members to the Telangana State

Legislative Assembly-2023 for total 119 Assembly Constituencies in Single Phase including 117-Kothagudem Assembly Constituency.

- a) Date to file the nominations : 03.11.2023 to 10.11.2023
- b) Scrutiny of nomination papers : 13.11.2023
- c) Polling Date : 30.11.2023
- d) Counting and declaration of result : 03.12.2023

iii) Respondent No.1 contested in the said election as a candidate set up by the Communist Party of India (CPI), while respondent No.2 contested as a candidate set up by the All India Forward Bloc Party'. Apart from them, 28 other candidates also contested in the said election for the Post of MLA to 117-Kothagudem Assembly Constituency (hereinafter referred to as 'Subject Constituency').

iv) The petitioner cast his vote in the said election conducted on 03.12.2023 for the subject constituency. Results were declared and respondent No.1 was declared as 'Returned Candidate' for the subject constituency, and Gazette Notification No.44, dated 04.12.2023 was also issued to that effect.

v) Respondent No.1 stood in the first place while respondent No.2 stood in the second place among others by securing the following votes:

Candidate	Votes secured
Respondent No.1	80,336
Respondent No.2	53,789

vi) As per Rule - 4A of the Conduct of Election Rules, 1961 (for short 'Rules, 1961'), contesting candidate must file Form-26 in the form of an affidavit along with nomination papers before the Returning Officer.

vii) Firstly, Form-26 affidavit dated 08.11.2023 submitted by respondent No.1 was notarized by Mr. Mendu Rajamallu, B.A., B.L., Advocate of Kothagudem with Notary Registration No.820. The said notary is not a competent person to practice as a Notary in terms of Section - 9 of the Notaries Act, 1952 as he did not possess a valid certificate of practice as on the date of Notary. In view of the same, the affidavit of respondent No.1 does not amount to be a sworn affidavit and thereby he has not complied with Rule - 4A of the Rules, 1961, to contest the election. Thus, the declaration of respondent No.1 as Returned Candidate is liable to be set aside.

viii) Secondly, respondent No.1 intentionally suppressed by not disclosing the name of his wife in Form-26 affidavit which not only amounts to an offence punishable under Section - 125A of the Representation of Peoples Act, 1951 (for short 'RP Act'), but also amounts to non-compliance of Rule - 4A of the Rules, 1961.

4. Respondent No.1 filed counter denying the averments made in the election petition contending as follows:

i) The prayer sought by the election petitioner is in contravention to the provisions of Sections - 81 and 84 of the RP Act.

ii) The certificate of practice of Mr. Mendu Rajamallu was renewed by the competent authority *vide* proceedings No.C&IG (R&S) Endt.No.NR/653/2024/KMM-9, dated 22.01.2024 for a period w.e.f. 07.07.2021 up to 06.07.2026. In view of the same, the result of the election of respondent No.1 would not materially be affected, nor would it attract non-compliance of Rules, 1961.

iii) The election petition was filed beyond the prescribed period of limitation of 45 days from the date of election of the returned candidate. The result of subject constituency was declared on 03.12.2023. The election petition ought to have been filed on or before 17.01.2024, whereas the present election petition was filed on 20.01.2024 with a delay of three (03) days. Since the RP Act being a Special Enactment and the election petition being a statutory remedy, there cannot be condonation of any delay.

iv) With regard to non-disclosure of name of wife of respondent No.1 in Form-26 affidavit, Form-26 under Rule - 4(a) of the Rules, 1961

does not prescribe the name of the spouse. In the absence of any column seeking the name of spouse, the contention of election petitioner that non-mentioning the name of wife of respondent No.1 would amount to non-compliance of Rule - 4 (a) of the Rules, 1961 is untenable.

5. Respondent No.2 filed written statement admitting the legal position and law as stated in the election petition. He further contended that he also contested for the post of MLA to the subject constituency.

6. On perusal of pleadings and hearing on both sides, this Court framed the following issues for trial:

- i. Whether the petitioner being a voter is entitled to file an Election Petition without filing the objections during the scrutiny of nominations before the Returning Officer?
- ii. Whether the election petition is filed within the limitation period?
- iii. Whether the election petitioner has complied with the statutory requirements under Representation of Peoples Act, 1951 for maintaining the election petition?
- iv. Whether the declaration of the Respondent No.1 as returned candidate is valid without valid nomination / Form 26 affidavit?
- v. Whether non mentioning of the name of the wife of Respondent No.1 in his Form-26 Affidavit dated 08.11.2023 amounts to suppression of material information or non-disclosure of the material particulars in Form- 26 Affidavit submitted by the Respondent No.1, before the Returning Officer?

- vi. Whether the nomination filed by the Respondent No.1 is substantially defective in terms of the Section - 36 of R.P. Act, 1951?
- vii. Whether the Returning Officer has conducted the scrutiny of nominations in terms of the Section - 36 of the R.P. Act 1951?
- viii. Whether there is any cause of action for the Election Petitioner to file the present Election Petition?
- ix. Whether the election of respondent No.1, from 117-Kothagudem Assembly Constituency, is liable to be set aside as null and void?
- x. Whether respondent No.2 is entitled to be declared as duly elected Returned Candidate from 117-Kothagudem Assembly Constituency, Telangana State, as he secured next highest votes in the Election?
- xi. Whether respondent No.1 is liable for punishment under Section - 125A (iii) read with 99 of R.P. Act 1951 for his failure to furnish the required information, concealing the material information and for giving false Form-26, affidavit dated 08.11.2023.
- xii. To What relief?

7. *Vide* order dated 26.12.2024, this Court appointed Mr. K. Sudharshan, retired District Judge as Commissioner to record the evidence of parties.

8. Before the Commissioner, PWs.1 to 4 were examined and Exs.P1 to 14 and Exs.X1 and X2 (a) to X5 (b) were marked on behalf of

election petitioner, whereas RW.1 was examined on behalf of respondent No.1 and Exs.R1 to R9 were marked. However, respondent No.2 reported no evidence.

9. Mr. Ramesh Kuthumbaka, learned counsel for Election Petitioner, contended as follows:

- i. Respondent No.1 - Returned Candidate did not disclose his wife's name in Form 26. Therefore, there is deliberate suppression of his wife's name by respondent No.1. The same is in violation of the principle laid down by the Apex Court and this Court.
- ii. Knowing information about the candidate is part and parcel of Article - 19 (1) of the Constitution of India.
- iii. Thus, respondent No.1 failed to disclose his wife's name and, therefore, it amounts to undue influence in terms of the provisions of the RP Act.
- iv. Despite raising an objection by respondent No.2 on 13.11.2023 with regard to the same, the Returning Officer did not consider the said aspect.
- v. The Returning Officer rejected the objections raised by respondent No.2 with regard to non-disclosure of respondent No.1's wife name by respondent No.1. Therefore, the election is materially

affected. The Returning Officer ought to have rejected the nomination of respondent No.1.

- vi. Disclosure of names of wife and dependants, if any, by any candidate contesting in election is mandatory. In the present case, respondent No.1 failed to disclose his wife's name in the affidavit filed in Form 26 filed by the Returned Candidate along with nomination in terms of Rule - 4A of the Rules, 1961. Therefore, the election of respondent No.1 is materially affected.
- vii. Thus, the nomination filed by respondent No.1 is substantially defective in terms of Section - 36 of the RP Act.
- viii. The Returning Officer did not conduct scrutiny of nomination of respondent No.1 in terms of Section - 36 of the RP Act.
- ix. Mr. Mendu Rajamallu, Advocate, who notarized the affidavit of respondent No.1 in Form 26 filed along with nomination, is not competent to notarize the affidavit as on the said date i.e., 08.11.2023. Therefore, the affidavit filed by respondent No.1 in Form 26 along with the nomination does not amount to sworn affidavit. Thus, there is violation of Rule - 4A of the Rules, 1961.
- x. He has placed reliance on the principle laid down in the following decisions:

- a) **Chandra Singh Gour v. Shri Rahul Singh Lodhi**¹
- b) **Hari Shanker Tripathi v. Shiv Harsh**²
- c) **Kisan Shankar Kathore v. Arun Dattatray Sawant**³
- d) **M/s. Surana and Company v. State of Chhattisgarh**⁴
- e) **National Insurance Co.Ltd. v. Seema Malhotra**⁵
- f) **New India Assurance Co.Ltd. v. Mandar Madhav Tambe**⁶
- g) **Oriental Insurance Co.Ltd. v. Felix Correa**⁷
- h) **Public Interest Foundation v. Union of India**⁸
- i) **Resurgence India v. Election Commission**⁹
- j) **Simhadri Satya Narayana Rao v. M. Budda Prasad**¹⁰
- k) **Sureshchandra Bhandari v. Neena Vikram Verma**¹¹
- l) **Durga Shanka Mehata v. Raghuraj**¹²
- m) **Houlim Shokhopao Mate v. Lorho S. Pfoze**¹³
- n) **Krishnamoorthy v. Sivakumar**¹⁴
- o) **Lok Prahari v. Union of India**¹⁵
- p) **Mairembam Prithviraj v. Pukhrem Sharatchandra Singh**¹⁶
- q) **Mopuragundu Thippeswamy v. K. Eranna**¹⁷

¹. E.P. No.5 of 2019, decided on 09.11.2022 by Madhya Pradesh High Court

². (1976) 1 SCC 897

³. AIR 2024 SC 2069

⁴. WPC No.3621 of 2019, decided on 04.10.2019 by Chhattisgarh High Court at Bilaspur

⁵. AIR 2001 SC 1197

⁶. (1996) 2 SCC 328

⁷. (2003) 10 SCC 289

⁸. 2018 INSC 862

⁹. AIR 2014 SC 344

¹⁰. (1994) Suppl. (1) SCC 449

¹¹. E.P. No.31/2014, decided on 20.11.2017 by High Court of M.P. at Indore Bench

¹². AIR 1954 SC 520

¹³. E.P. No.1 of 2019, decided on 23.09.2022 by High Court of Manipur at Imphal

¹⁴. AIR 2015 SC 1921

¹⁵. (2018) 4 SCC 699

¹⁶. (2017) 2 SCC 487

¹⁷. 2019 (2) ALD 504

- r) Mayanglambam Rameshwar Singh v. Yengkhom Surchandra¹⁸**
- s) S. Rukmini Madegowda v. State Election Commission¹⁹**
- t) Yumkham Erabot Singh v. Okram Henry Singh²⁰**
- u) Vemireddy Pattabhirami Reddy v. Yendapalli Srinivasulu Reddy²¹**
- v) Abhiram Singh v. C.D. Commanchen (dead) by LRs.²²**
- w) Central Board of Dawoodi Bohra Community v. State of Maharashtra²³**
- x) Commissioner of Income Tax v. Vatika Township Private Limited²⁴**
- y) District Collector, Vellore District v. K. Govindaraj²⁵**
- z) Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 and Stamp Act, 1899, IN RE²⁶**
- aa) Mannalal Jain v. State of Assam²⁷**
- bb) Kumar Gorakhnath Shinde v. The State of Maharashtra²⁸**
- cc) Mary Pushpam v. Telvi Curusumary²⁹**
- dd) National Insurance Company Limited v. Pranay Sethi³⁰**
- ee) Pradip Chandra Parija v. Pramod Chandra Patnaik³¹**

¹⁸. 2020 LawSuit (Manipur) 67

¹⁹. AIR 2022 SC 4347

²⁰. 2021 LawSuit (Manipur) 43

²¹. E.P. No.1 of 2017, decided on 14.07.2023 by A.P. High Court.

²². (2017) 2 SCC 629

²³. (2005) 2 SCC 673

²⁴. (2015) 1 SCC 1

²⁵. (2016) 4 SCC 763

²⁶. (2024) 6 SCC 1

²⁷. AIR 1962 SC 386

²⁸. W.P. No.11434 of 2016, decided on 16.07.2024 by Bombay High Court

²⁹. 2024 INSC 8

³⁰. (2017) 16 SCC 680

ff) State of Maharashtra v. Jagannath³²

gg) State through CBI v. Hemendhra Reddy³³

xi) With the aforesaid submissions, learned counsel for the election petitioner sought to set aside the election of respondent No.1 for the subject constituency and to declare respondent No.2, who secured second highest votes in the subject election as returned candidate.

10. Whereas, Mr. G. Vidya Sagar, learned Senior Counsel representing Mr. Sai Prasen Gundavaram, learned counsel for respondent No.1, contended as follows:

- i) As per the provisions of the RP Act, the Rules, 1961 and the Handbook of the Election Commission of India, respondent No.1 has to fill all the blanks. There is no need of disclosing his wife's name.
- ii) Respondent No.1 has no dependants.
- iii) Respondent No.1 has disclosed his wife's PAN Number, details of assets and liabilities. There is no error in it.
- iv) On consideration of the said aspects only, the Returning Officer accepted the nomination of respondent No.1 -

³¹. (2002) 1 SCC 1

³². AIR 1989 SC 1133

³³. (2023) 7 SCR 134

returned candidate. Even then, the election petitioner filed the present election petition.

- v) The Election Petitioner is not the Voter of subject constituency and he has not filed any proof to substantiate his contention that he is a voter of subject constituency and, therefore, on the said ground itself, the present election petition is liable to be dismissed.
- vi) As per the contents of the election petition, the subject election is not materially affected.
- vii) The election petitioner failed to plead and prove that the alleged non-disclosure of wife's name by respondent No.1, the subject election is materially affected.
- viii) On consideration of the said aspects only, more particularly, the procedure laid down in the Hand Book of the Election Commission of India, the Returning Officer has returned the objections submitted by respondent No.2.
- ix) Mr. Mendu Rajamallu, Advocate, who notarized the affidavit of respondent No.1 in Form 26 filed along with nomination, submitted an application seeking renewal of his notary certificate well within the time as per the Notaries

Act, 1952 and the Rules made thereunder and the same was pending before the competent authority. Thereafter, the Commissioner and Inspector General of Registration and Stamps (C & IGRS) has issued renewal certificate which is came into force from the date of expiration of earlier notary certificate. Therefore, there is no error in it.

x) Respondent No.1 being the returned candidate got 80336 votes, whereas respondent No.2 got 53789 votes and, thus, respondent No.1 gained confidence of the people. Thus, the subject election cannot be set aside on vague allegations.

xi) He placed reliance on the following decisions:

- a) **General Electric Co. v. Renusagar Power Co.**³⁴
- b) **Padma Sundara Rao v. State of Tamil Nadu**³⁵
- c) **Director of Settlements, A.P. v. M.R. Apparao**³⁶
- d) **Career Institute Educational Society v. Om Shree Thakurji Educational Society**³⁷
- e) **People's Union for Civil Liberties (PUCL) v. Union of India**³⁸
- f) **K.S. Puttaswamy v. Union of India**³⁹
- g) **Lok Prahari**¹⁵

³⁴. (1987) 4 SCC 137

³⁵. (2002) 3 SCC 533

³⁶. (2002) 4 SCC 638

³⁷. (2023) 16 SCC 458

³⁸. (2003) 4 SC 399

³⁹. (2017) 10 SCC 1

h) Islamic Academy of Education v. State of Karnataka⁴⁰

i) P.A. Inamdar v. State of Maharashtra⁴¹.

xii) With the aforesaid submissions, learned Senior Counsel sought to dismiss the election petition.

11. Mr. K. Durga Prasad, learned counsel representing Mr. Ramesh Katikineni, learned counsel for respondent Nos.2 & 16, contended that respondent No.1 did not disclose his wife's name and he has kept columns blank in the affidavit filed in Form 26 along with nomination of respondent No.1. Therefore, respondent No.2 has submitted objections on 13.11.2023 to the Returning Officer with regard to the same. Respondent No.2 also cited the provisions of the RP Act, Rules, 1961 and the principle laid down by the Apex Court. The Returning Officer did not consider the same. Thus, the election of respondent No.1 has to be declared as void and respondent No.2 has to be declared as returned candidate for the subject constituency. Therefore, he sought to set aside the election of respondent No.1 and declare respondent No.2 as returned candidate.

⁴⁰. (2003) 6 SCC 697

⁴¹. (2005) 6 SCC 537

12. As discussed above, both Mr. Ramesh Kuthumbaka, learned counsel for Election Petitioner, Mr. G. Vidya Sagar, learned Senior Counsel representing Mr. Sai Prasen Gundavaram, learned counsel for respondent No.1, Mr. K. Durga Prasad, learned counsel representing Mr. Ramesh Katikineni, learned counsel for respondent Nos.2 & 16, Mr. Ravi Chandra Sekhar, learned counsel for respondent No.4, made their submissions extensively by placing reliance on the aforesaid judgments. Though respondent No.2 filed written statement did not choose to cross-examine the witnesses of both side. Respondent No.4 neither filed written statement nor cross-examined the witnesses on both sides.

13. **ISSUE No.1:** Whether the petitioner being a voter is entitled to file an Election Petition without filing the objections during the scrutiny of nominations before the Returning Officer?

i) It is the specific contention of the election petitioner that he is the resident of Kothagudem and he is staying in the address mentioned in the election petition. He has exercised his franchise in the elections held to the subject constituency during the year 2023 and also earlier. He has filed Ex.P11 - his voter identity card, which is also marked as Ex.P6. During cross-examination, he has admitted the said facts.

ii) According to Mr. G. Vidya Sagar, learned senior counsel appearing on behalf of respondent No.1, the petitioner has filed Ex.P11 - voter ID card dated 25.09.2013. He has not filed final voters list of subject constituency for the year 2023. Voters list will be displayed before election on calling objections etc. The election petitioner failed to file the said voters list and also voter ID of the year 2023. Therefore, the present election petition filed by the election petitioner has to be dismissed on the said ground alone.

iii) In the light of the aforesaid discussion, it is relevant to note that the election petitioner has filed the present election petition under Sections - 81 read with 100, 101 and 125A of the RP Act and Rule - 3 of the Rules to Regulate the Trial of Election Petitions under RP Act. Section - 81 of the RP Act deals with 'presentation of petitions, the same is relevant and it is extracted 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.

[***] Omitted by Act 47 of 1966

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.”

iv) Section - 2 (e) of the RP Act defines ‘elector’, and the same is extracted as under:

“2 (e) “**elector**” in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950.”

v) Explanation to Section - 81 of the RP Act says that 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.

vi) Thus, any elector can file election petition. In the present case, the election petitioner is the voter of the subject constituency and in proof of the same, he has filed voter I.D. Card - Ex.P11. Respondent No.1 failed to disprove the same during cross-examination of PW.1, or by producing any evidence. Therefore, the contention of respondent No.1 that the election petitioner is not the voter of the subject constituency and that the present election petition filed by him is not maintainable is unsustainable. This issue is answered accordingly.

14. **ISSUE No.2:** Whether the election petition is filed within the limitation period?

i) As stated above, Section - 81 of the RP Act deals with 'presentation of petitions', and it has to be filed 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. In the light of the same, it is relevant to note that in the present case, the elections were held on 30.11.2023 and results were declared on 03.12.2023. The election petitioner filed the present election petition on 20.01.2024. Therefore, forty-five days period from 03.12.2023 is expired by 16.01.2024.

ii) It is relevant to note that there was *Pongal* Vacation for the Court from 17th January, 2024 to 19th January, 2024. 13th January and 14th January being Second Saturday and Sunday respectively, and 15th and 16th January were declared as holidays on account of *Sankranti/Pongal* and *Kanumu* respectively. Therefore, the election petitioner filed the present election petition on the re-opening day i.e., 20.01.2024. Thus, the election petitioner filed the present election petition within limitation in terms of Section - 81 of the RP Act. Therefore, the contention of learned Senior Counsel appearing on behalf of respondent No.1 that the election petition is time barred is unsustainable. This issue is answered accordingly.

15. **ISSUE No.3:** Whether the election petitioner has complied with the statutory requirements under Representation of Peoples Act, 1951 for maintaining the election petition?

i) The election petitioner has filed the present election petition in terms of the provisions of the RP Act, Rules to Regulate the Trial of Election Petitions under RP Act. It is apt to note that though respondent No.1 contended that the election petitioner has not complied with the statutory requirements under the provisions of the RP Act, to maintain the present election petition, he failed to make out any case to prove the

same. Therefore, the said contention of respondent No.1 is also unsustainable. This issue is answered accordingly.

16. **ISSUE Nos.4 & 7:** Whether the declaration of the Respondent No.1 as returned candidate is valid without valid nomination / Form 26 affidavit? and Whether the Returning Officer has conducted the scrutiny of nominations in terms of the Section - 36 of the R.P. Act 1951?

i) Section - 33 of the RP Act deals with ‘presentation of nomination paper and requirements for a valid nomination. Section – 33A refers to ‘Right to information’ and 33B refers to candidate to furnish information only under the Act and the Rules. They are relevant and the same are extracted as under:

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

- (i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;
- (ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section

(2), or covered in sub-section (3), of section 8 and sentenced to imprisonment for one year or more.

(2) 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, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.”

“33B. Candidate to furnish information only under the Act and the rules.—Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election which is not required to be disclosed or furnished under this Act or the rules made thereunder.”

ii) In the present case, respondent No.1 has filed nomination along with notarized affidavit in Form 26 (Ex.P5). The same was

received and accepted by the Returning Officer. It is relevant to note that during scrutiny, respondent No.2 has submitted objections (Ex.P9) stating that respondent No.1 did not disclose his wife's name in the affidavit in Form 26 and, therefore, the nomination filed by respondent No.1 is liable for rejection. In Ex.P10 - original order, the Returning Officer stated that he cannot conduct a roving enquiry while conducting scrutiny and he would only see as to whether the candidate filled all the columns and the affidavit is attested properly or not. On consideration of the said aspects only, the Returning Officer has accepted the nomination of respondent No.1. The objections filed by respondent No.2 *vide* Ex.P9 were returned by the Returning Officer *vide* Ex.P10 order dated 13.11.2023.

iii) In the light of the above, it is relevant to note that Section - 36 of the RP Act deals with 'scrutiny of nomination'. The same is relevant and extracted hereunder:

“36. Scrutiny of nominations.—(1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorised in writing by each candidate, but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable

facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.

(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:—

(a) that on the date fixed for the scrutiny of nominations the candidate] either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:—

Articles 84, 102, 173 and 191,

Part II of this Act and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963)]; or

(b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or

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

(3) Nothing contained in clause (b) or clause (c) of subsection (2) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:

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

(6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

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

(8) Immediately after all the nomination papers have been scrutinised and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say,

candidates whose nominations have been found valid, and affix it to his notice board.”

iv) As per the aforesaid provision, the Returning Officer cannot conduct a roving enquiry and he cannot go into the genuineness and correctness of the information furnished by the candidate while conducting scrutiny. The said principle was also laid down by the Apex Court in **Resurgence India**⁹, **Kisan Shankar Kathore**³ and **Karikho Kri v. Nuney Tayang**⁴².

v) In the light of the above discussion, on consideration of the said aspects only, the Returning Officer accepted the nomination of respondent No.1. There is no error in it. It is apt to note that the election petitioner did not file any objections to the Returning Officer stating that respondent No.1 failed to fill all the columns and failed to disclose his wife's name. It is respondent No.2, who has filed objections *vide* Ex.P9 on the said ground. The said aspect was considered by the Returning Officer and rejected the objections submitted by respondent No.2 *vide* Ex.P10. Therefore, the election petitioner cannot contend that the nomination filed by respondent No.1 is not valid and that the Returning

⁴². 2024 SCC OnLine SC 519

Officer accepted the said invalid nomination. Issue Nos.4 and 7 are accordingly answered.

17. **ISSUE Nos.5, 6 & 8:** Whether non mentioning of the name of the wife of Respondent No.1 in his Form-26 Affidavit dated 08.11.2023 amounts to suppression of material information or non-disclosure of the material particulars in Form - 26 Affidavit submitted by the Respondent No.1, before the Returning Officer?; Whether the nomination filed by the Respondent No.1 is substantially defective in terms of the Section - 36 of R.P. Act, 1951?; and Whether there is any cause of action for the Election Petitioner to file the present Election Petition?

i) As discussed above, the election petitioner filed the present election petition to declare the election of respondent No.1 - returned candidate as invalid on the following two (02) grounds:

- (a) Respondent No.1 did not disclose his wife's name in Ex.P5 affidavit in Form 26 filed under Rule - 4A of the Rules, 1961; and
- (b) Mr. Mendu Rajamallu, who notarized Ex.P5 affidavit, did not possess a valid certificate as on the date of notary i.e., 08.11.2023.

Thus, according to the election petitioner, respondent No.1 did not file Form 26 in accordance with the Rules, 1961.

ii) Ex.P5 is the affidavit filed by respondent No.1 in Form 26 in terms of Rule - 4A of the Rules, 1961 along with nomination. Column at Serial No.4 is with regard to details of permanent account and status of filing of income tax return which are to be mentioned in a tabular form and the same is as under:

(4) Details of Permanent Account-Number (PAN) and status of filing of Income Tax return.

S.No.	Names	PAN	The financial year for which the last Income-Tax returns has been filed	Total Income shown in Income-Tax return (in Rupees)
1	Self	DNLPK4073E	2023-24	Rs. 4,58,910/-
			2022-23	Rs. 4,68,400/-
			2021-22	Rs. 4,68,260/-
			2020-21	Rs. 5,04,000/-
			2019-20	Rs. 4,07,628/-
2	Spouse	DNMPK4487B	i) 2023-24	Rs. 9,25,640/-
			ii) 2022-23	Rs.10,61,180/-
			iii) 2021-22	Rs. 98,130/-
			iv) 2020-21	Rs. 4,29,280/-
			v) 2019-2020	Rs. 4,73,959/-
3	HUF (if candidate is Karta/Coparcener)	No Pan allotted	i) Not applicable ii) Not applicable iii) Not applicable iv) Not applicable v) Not applicable	i) Not applicable ii) Not applicable iii) Not applicable iv) Not applicable v) Not applicable
4	Dependant-1	No Pan allotted	i) Not applicable ii) Not applicable iii) Not applicable iv) Not applicable v) Not applicable	i) Not applicable ii) Not applicable iii) Not applicable iv) Not applicable v) Not applicable
5	Dependant-2	No Pan allotted	i) Not applicable ii) Not applicable iii) Not applicable iv) Not applicable v) Not applicable	i) Not applicable ii) Not applicable iii) Not applicable iv) Not applicable v) Not applicable
6	Dependant-3	No Pan allotted	i) Not applicable ii) Not applicable iii) Not applicable iv) Not applicable v) Not applicable	i) Not applicable ii) Not applicable iii) Not applicable iv) Not applicable v) Not applicable

iii) In Ex.P5, respondent No.1 disclosed his PAN Number, Income Tax Returns for five (05) years. He has also mentioned the PAN Number of his wife, her income details. With regard to dependants, he has stated as “Not Applicable”.

iv) It is also relevant to note that column at Serial No.(6A) consists of **‘A’ Details of movable assets’** and **‘B’ Details of Immovable Assets’**. The same should be mentioned in tabular forms containing columns i.e., ‘serial number’, ‘description’, ‘self’, ‘spouse’, ‘HUF’, ‘Dependant-1’, ‘Dependant-2’ and ‘Dependant-3’. With regard to the movable properties, candidate has to disclose cash in hand, deposits in bank accounts, investment in Bonds debentures/shares and units in companies/mutual funds and others, investment in NSS, Postal saving, Insurance Policies and in any Financial Instruments in Post Office or Insurance Company, Personal loans/advance given to any person or entity including firm, company, trust etc., and other receivables from debtors, Motor vehicles/Aircrafts/Yachts/Ships, Jewellery, bullion and valuable things and any other assets, such as value of claims/interest etc. Therefore, the candidate has to disclose all the details of movables and dues of himself, spouse, HUF and dependants etc. He has to disclose income tax dues and other dues of himself,

spouse, HUF and dependants. Column No.8 deals with 'profession or occupation'. It says self and spouse.

v) Serial No.10 refers to Part-B of the said affidavit relates to 'abstract of the details given in (1) to (10) of Part-A, which is in tabular form. In the said tabular form at serial No.7, the petitioner has to disclose PAN Number of himself, his spouse and HUF and income tax returns. Serial No.8 is with regard to the details of assets and liabilities of the candidate, spouse, HUF and dependants. The same is relevant and it is extracted as under:

PART-B
(10) ABSTRACT OF THE DETAILS GIVEN IN (1) TO (10) OF PART-1

1	Name of the Candidate		KUNAMNENI SAMBASIVA RAO			
2	Full Postal address		No.3-2-172, Vidyanagar Colony, Chunchupalli Village and mandal, Bhadradri Kothagudem District			
3	Number and name of the constituency and State		117-Kothagudem Constituency, Telangana State			
4	Name of the Political party which set up the candidate		COMMUNIST PARTY OF INDIA			
5	Total number of pending criminal cases		4 (Four)			
6	Total number of cases in which convicted		Not Applicable			
7	PAN of		Year for which last income Tax return filed	Total income shown		
	a) Candidate	DNLPK4073E	2023-24	Rs.4,58,910/-		
	b) Spouse	DNMPK4487B	2023-24	Rs.9,25,640/-		
	c) HUF	Not applicable	Not applicable	Not applicable		
		Not applicable	Not applicable	Not applicable		
8	Details of Assets and Liabilities in Rupees					
	Description	Self	Spouse	HUF	Depen-	Depen- Depen-

					dant-I	dant-II	dant-III
1	2	3	4	5	6	7	8
A	Movable Assets (total value)	47,70,236.07/-	Rs.59,69,140/-	Nil	Nil	Nil	Nil
B	Immovable Assets	Rs.40,00,000/-	Rs.86,00,000/-	Nil	Nil	Nil	Nil
I	Purchase price of self-acquired immovable property	Rs.40,00,000/-	Nil	Nil	Nil	Nil	Nil
II	Development/construction cost of immovable property after purchase (if applicable)	Nil	Nil	Nil	Nil	Nil	Nil
III	Approximate current market price a) Self-acquired assets (total value) b) inherited assets (Total value)	a) Rs.40,00,000/- b) No	a) Rs.86,00,000/- b) No	Nil	Nil	Nil	Nil
9	Liabilities						
I	Government dues (Total)	Nil	Nil	Nil	Nil	Nil	Nil
II	Loans from Bank/Financial Institutions and others (Total)	Nil	Nil	Nil	Nil	Nil	Nil
10	Liabilities that are under dispute						
I	Government dues (Total)	Nil	Nil	Nil	Nil	Nil	Nil
II	Loans from Bank/Financial Institutions and others (Total)	Innova Crysta vehicle loan Rs.4,32,246 due to Union Bank of India, KGM	Nil	Nil	Nil	Nil	Nil
11	Highest educational qualifications: I have completed Bachelor of Arts, Andhra University in the year 1974-77						

vi) It is also apt to note that after Column at Serial No.6A of the affidavit at Note No.5, it is mentioned that 'candidate is responsible for supplying all information in compliance of the Hon'ble Supreme Court Judgment in W.P. (C) No.536 of 2011.

vii) According to the election petitioner, all the candidates including respondent No.1 - returned candidate shall necessarily fill the details therein in all columns of the affidavit including his name, spouse name and dependants. However, respondent No.1 has disclosed his name at the relevant column of the affidavit, but he has not disclosed his wife's name anywhere in the entire Ex.P5 affidavit. Therefore, it is nothing but non-disclosure and it amounts to 'undue influence' in terms of the provisions of RP Act and, therefore, the election of respondent No.1 shall be declared as void.

viii) Whereas, according to respondent No.1, he has filled all the blanks and there is no need of disclosing his wife's name. Disclosure of PAN, income tax returns, assets and liabilities etc., of his wife is mandatory. He has not kept any column blank. Therefore, it is proper compliance.

ix) Mr. G. Vidya Sagar, learned Senior Counsel, would contend that there is modification to the affidavit in Form 26 pursuant to the judgments of the Apex Court. As per the modified form, the candidate has to fill all the blanks and there is no need of mentioning his spouse name and dependants' name. Thus, respondent No.1 has filled all the columns and mentioned all the details, like PAN, income tax returns,

assets and liabilities, antecedents and educational qualifications of the candidate and his spouse. According to respondent No.1, he has no dependants and, therefore, he has not mentioned. The election petitioner is also not disputing that respondent No.1 has dependants. His two children are not dependants on respondent No.1.

x) **LEGAL POSITION:**

a) The Constitution Bench of the Apex Court in **Union of India (UOI) v. Association for Democratic Reforms⁴³** and **People's Union of Civil Liberties³⁸** categorically held with regard to filing of affidavits and giving detailed particulars in affidavit in Form 26. The said direction is being given just to ensure that false declarations are not being given by returned candidate, nor nomination forms are being submitted making false declarations. The Apex Court also held that right to know about the candidate standing for election has been brought within the sweep of Article - 19 (1) (a). There can be no doubt that by doing so, a new dimension has been given to the right embodied in Article - 19 (1) (a) of the Constitution of India through a creative approach dictated by the need to improve and refine the political process of election. In carving out this right, the Court had not traversed a

⁴³. (2002) 5 SCC 294

beaten track but took a fresh path. It must be noted that the right to information evolved by the Apex Court in the said case is qualitatively different from the right to get information about public affairs or the right to receive information through press and electronic media, though to a certain extent, there may be overlapping. The right to information of a voter/citizen is sought to be enforced against an individual who intends to become a public figure and the information relates to his personal matters. A decision-making process of a voter would include his right to know about public functionaries who are required to be elected by him. Till a candidate gets elected and enters the House, it would not be appropriate to refer to him as a public functionary. Therefore, the right to know about a public act done by a public functionary is not the same thing as the right to know about the antecedents of the candidate contesting the election. Nevertheless, the conclusion reached by the Court that the voter has such a right and that the right falls within the realm of freedom of speech and expression guaranteed by Article - 19 (1) (a) can be justified on good and substantial grounds.

b) In **People's Union of Civil Liberties**³⁸, the Apex Court referring to the provisions of the RP Act etc., laid down certain conclusions, which are relevant and the same are extracted hereunder:

“V. Conclusions

123. Finally, the summary of my conclusions:

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

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

(3) The directives given by this Court in *Union of India v. Assn. for Democratic Reforms* [Ed.: See full text at 2003 Current Central Legislation, Pt. II, at p. 3] were intended to operate only till the law was made by the legislature and in that sense “pro tempore” in nature. Once legislation is made, the Court has to make an independent assessment in order to evaluate whether the items of information

statutorily ordained are reasonably adequate to secure the right of information available to the voter/citizen. In embarking on this exercise, the points of disclosure indicated by this Court, even if they be tentative or ad hoc in nature, should be given due weight and substantial departure therefrom cannot be countenanced.

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

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

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

cases in which cognizance has been taken by the Court from the ambit of disclosure.

(7) The provision made in Section 75-A regarding declaration of assets and liabilities of the elected candidates to the Speaker or the Chairman of the House has failed to effectuate the right to information and the freedom of expression of the voters/citizens. Having accepted the need to insist on disclosure of assets and liabilities of the elected candidate together with those of the spouse or dependent children, Parliament ought to have made a provision for furnishing this information at the time of filing the nomination. Failure to do so has resulted in the violation of guarantee under Article 19(1)(a).

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

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

information or suppressing material information should not be enforced.”

c) The Apex Court in **Karikho Kri**⁴² placing reliance on the said judgments further held that the direction given by the Apex Court to file affidavits by giving detailed particulars in Form 26 does not mean that if the complete information is being given in the affidavit annexing an Annexure to it, the same cannot be said to be the non-compliance. The allegation against Sri Karikho Kri, a returned candidate was that he has suppressed the fact of owning three (03) vehicles and non-submission of no due certificate in the context of electricity and water charges in respect of Government accommodation occupied by him, the Apex Court held the contention of the election petitioner that such non-disclosure is a defect of substantial character cannot be accepted since in that circumstance it is not a case of improperly accepted nomination, it certainly has not materially affected the result of the election as contemplated in Section - 100 (1) (d) (i) (iv) of the RP Act. Even if the object with which the Apex Court in **Association for Democratic Reforms**⁴³ has required the disclosure of assets is kept in view, the facts involved therein would indicate that the allegation therein cannot be taken as non-disclosure though it could have been open for the appellant

therein to indicate such aspect in the affidavit, but in any event, it is not a substantial defect so as to materially affect the result of the election in the facts and circumstances of the said case.

d) In **Association for Democratic Reforms**⁴³ and **Lok Prahari**¹⁵, the Apex Court held that for effective exercise of his fundamental right under Article - 19 (1) (a), the voter is entitled to have all the relevant information about candidates at an election which would include criminal antecedents, if any, of the candidate, his/her spouse and dependants assets and liabilities, their educational qualifications etc.

e) Thus, the voter has the right to know about the candidate standing for election has been brought within the ambit of Article - 19 (1) (a) of the Constitution of India. The right to information of the voter is sought to be enforced against an individual who intends to become a public figure and the information relates to his personal matters including the details of spouse and dependants.

f) As discussed above, in **Karikho Kri**⁴², a returned candidate, suppressed about owning of three (03) vehicles and that he has not furnished no due certificate in the context of electricity and water charges since he has occupied Government accommodation in MLA Cottage No.1. Considering the same, the Apex Court held that such non-

disclosure cannot, by any stretch of imagination, be treated as an attempt on his part to unduly influence the voters, thereby inviting the wrath of Section - 123(2) of the RP Act. The said Karikho Kri had declared the value of the movable assets of his dependent family members and himself as Rs.8,41,87,815/-. The value of the three vehicles in question, by comparison, would be a mere miniscule of this figure. In any event, suppression of the value of these three vehicles would have no impact on the declaration of wealth by Karikho Kri and such non-disclosure could not be said to amount to 'undue influence'.

g) In **Resurgence India**⁹, a 3-Judge Bench of the Apex Court observed that if the Election Commission accepts nomination papers in spite of blank particulars therein, it would directly violate the fundamental right of the citizen to know the criminal antecedents, assets, liabilities and educational qualifications of the candidate. It was observed that accepting an affidavit with such blanks would rescind the verdict in **Association for Democratic Reforms**⁴³. An affidavit with blank particulars would render the affidavit nugatory.

h) In **Kisan Shankar Kathore**³, the Apex Court considered the issue of non-disclosure of certain government dues in the nomination and whether it amounts to a material lapse impacting the election of the

returned candidate. The Apex Court held that non-disclosure of electricity and municipal dues was not a serious lapse as there was a dispute raised in the context thereof. The Apex Court clarified that it would depend upon the facts and circumstances of each case as to whether such non-disclosure would amount to a material lapse or not. Material lapses by the returned candidate, inasmuch as he had failed to disclose the bungalow standing in the name of his wife and also a vehicle owned by her. He had also failed to disclose his interest/share in a partnership firm which amounted to a very serious and major lapse.

i) Paragraph No.43 of the said judgment is relevant and the same is extracted as under:

“43. When the information is given by a candidate in the affidavit filed along with the nomination paper and objections are raised thereto questioning the correctness of the information or alleging that there is non-disclosure of certain important information, it may not be possible for the Returning Officer at that time to conduct a detailed examination. Summary enquiry may not suffice. The present case is itself an example which loudly demonstrates this. At the same time, it would not be possible for the Returning Officer to reject the nomination for want of verification about the allegations made by the objector. In such a case, when ultimately it is proved

that it was a case of non-disclosure and either the affidavit was false or it did not contain complete information leading to suppression, it can be held at that stage that the nomination was improperly accepted. Ms. Meenakshi Arora, learned Senior Counsel appearing for the Election Commission, rightly argued that such an enquiry can be only at a later stage and the appropriate stage would be in an election petition as in the instant case, when the election is challenged. The grounds stated in Section 36 (2) are those which can be examined there and then and on that basis the Returning Officer would be in a position to reject the nomination. Likewise, where the blanks are left in an affidavit, nomination can be rejected there and then. In other cases where detailed enquiry is needed, it would depend upon the outcome thereof, in an election petition, as to whether the nomination was properly accepted or it was a case of improper acceptance. Once it is found that it was a case of improper acceptance, as there was misinformation or suppression of material information, one can state that question of rejection in such a case was only deferred to a later date. When the Court gives such a finding, which would have resulted in rejection, the effect would be same, namely, such a candidate was not entitled to contest and the election is void. Otherwise, it would be an anomalous situation that even when criminal proceedings under Section 125-A of the Act can be

initiated and the selected candidate is criminally prosecuted and convicted, but the result of his election cannot be questioned. This cannot be countenanced.”

j) In **Lok Prahari**¹⁵, the Apex Court held that non-disclosure of assets and sources of income of candidates and their associates would constitute a ‘corrupt practice’ falling under the heading ‘undue influence’ as defined under Section - 123 (2) of the RP Act.

k) In **Rukmini Medagowda**¹⁹, a 3-Judge Bench of Apex Court held that a false declaration with regard to the assets of a candidate, his/her spouse or dependents, would constitute a corrupt practice irrespective of its impact on the election of the candidate as it may be presumed that a false declaration would impact the election.

l) In **Mairembam Prithviraj**¹⁶, the Apex Court had an occasion to consider the difference between improper acceptance of the nomination of a returned candidate as opposed to improper acceptance of the nomination of any other candidate. It was held that a mere finding that there has been an improper acceptance of a nomination would not be sufficient for a declaration that the election is void under Section - 100 (1) (d) (i) of the RP Act and there has to be further pleading and proof

that the result of the election of the returned candidate was materially affected, but there would be no necessity of any such proof in the event of the nomination of the returned candidate being declared as having been improperly accepted, especially in a case where there are only two candidates in the fray.

m) In **Kisan Shankar Kathore**³, the Apex Court considered two facets that are required consideration i.e., (i) whether there is substantial compliance in disclosing requisite information in the affidavits filed along with the nomination and (ii) whether non-disclosure of information on identified aspects materially affected the result of the election. On examination of the facts, the Apex Court held 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 *bona fide* dispute about the same. Similar observation was made in relation to non-disclosure of municipal dues, where there was a genuine dispute as to revaluation and re-assessment for the purpose of tax assessment.

n) In **Sambhu Prasad Sharma v. Charandas Mahant**⁴⁴, the Apex Court held that nomination paper is not considered sacrosanct and what is to be seen is whether there is substantial compliance with the

⁴⁴. (2012) 11 SCC 390

requirement as to form and every departure from the prescribed format cannot, therefore, be made a ground for the rejection of the nomination paper.

o) On consideration of the aforesaid judgments, in **Karikho Kri**⁴² at paragraph No.44 the Apex Court held as follows:

“44. Though it has been strenuously contended before us that the voter’s ‘right to know’ is absolute and a candidate contesting the election must be forthright about all his particulars, we are not inclined to accept the blanket proposition that a candidate is required to lay his life out threadbare for examination by the electorate. His ‘right to privacy’ would still survive as regards matters which are of no concern to the voter or are irrelevant to his candidature for public office. In that respect, non-disclosure of each and every asset owned by a candidate would not amount to a defect, much less, a defect of a substantial character. It is not necessary that a candidate declare every item of movable property that he or his dependent family members owns, such as, clothing, shoes, crockery, stationery and furniture, etc., unless the same is of such value as to constitute a sizeable asset in itself or reflect upon his candidature, in terms of his lifestyle, and require to be disclosed. Every case would have to turn on its own peculiarities and there can be no hard and fast or

straitjacketed rule as to when the non-disclosure of a particular movable asset by a candidate would amount to a defect of a substantial character. For example, a candidate and his family who own several high-priced watches, which would aggregate to a huge figure in terms of monetary value, would obviously have to disclose the same as they constitute an asset of high value and also reflect upon his lavish lifestyle. Suppression of the same would constitute 'undue influence' upon the voter as that relevant information about the candidate is being kept away from the voter. However, if a candidate and his family members each own a simple watch, which is not highly priced, suppression of the value of such watches may not amount to a defect at all. Each case would, therefore, have to be judged on its own facts."

p) In **Mangani Lal Mandal v. Bishnu Deo Bhandari**⁴⁵, wherein a returned candidate is alleged to be guilty of non-compliance with the provisions of the Constitution or the RP Act or any Rules or Orders made thereunder and his election sought to be declared as void on that ground, the Apex Court held that it is essential for the election petitioner to aver, by pleading material facts, that the result of the election insofar as it concerned the returned candidate has been materially affected by such breach or non-observance. It is only on the basis of such pleading

⁴⁵. (2012) 3 SCC 314

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. Mere non-compliance or breach of the Constitution or the statutory provisions, as stated above, would not result in invalidating the election of the returned candidate under Section - 100 (1) (d) (iv) as the *sine qua non* for declaring the election of a returned candidate to be void on that ground under Clause - (iv) of Section - 100 (1) (d) is further proof of the fact that such breach or non-observance has resulted in materially affecting the election of the returned candidate. For the election petitioner to succeed on such ground, viz., Section - 100 (1) (d) (iv), there is heavy onus to not only 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.

xi) As discussed above, at the cost of repetition, in **Karikho Kri**⁴², the allegation against the returned candidate is that he did not disclose three (03) vehicles and no due certificate in the context of electricity and water charges in respect of the Government accommodation occupied by him, the Apex Court held that non-

disclosure of the same will not affect the election materially and the said non-disclosure is not of a substantial character in nature.

xii) In **Ajmera Shyam v. Mrs. Kova Laxmi**⁴⁶, the allegation levelled against the returned candidate by the election petitioner is that she has not submitted five (05) years Income Tax Returns in the relevant column and, therefore, it amounts to ‘suppression of fact’. It also amounts to ‘corrupt practice’. On examination of the facts therein and also placing reliance on the principle laid down by the Apex Court in **Karikho Kri**⁴², this Court held that the returned candidate has mentioned all the details, disclosed her income tax returns, assets and liabilities including movable and immovable etc., it is not suppression and the subject election of returned candidate is not affected materially. With the said findings, this Court dismissed the election petition. However, it is brought to the notice of this Court that the election petitioner has filed appeal *vide* Civil Appeal No.13015 of 2024 and the same is reserved for judgment.

xiii) In the light of the aforesaid principle, coming to the facts of the present case, as discussed above, the allegation against respondent No.1 - returned candidate is that he did not disclose his wife’s name.

⁴⁶. E.P. No.10 of 2024, decided on 25.10.2024

Therefore, it is suppression and it amounts to 'undue influence' and the same is in violation of Article - 19 (1) (a) of the Constitution of India.

xiv) As discussed above, respondent No.1 has disclosed his wife's PAN, income tax returns for the last five (05) years, her assets and liabilities. By mentioning the same, respondent No.1 - returned candidate disclosed that he got married and he has a wife. Therefore, the only question this Court has to consider is, as to whether non-disclosure of respondent No.1's wife name in Ex.P5 - affidavit will affect the election materially and the said non-disclosure is substantial character in nature.

xv) As discussed supra, respondent No.1 - returned candidate has filled all the columns in Ex.P5 - affidavit and there are no blanks. On consideration of the same only, Returning Officer has accepted his nomination and he has rejected the objections submitted by respondent No.2 *vide* Ex.P10.

xvi) As discussed above, respondent No.1 - returned candidate has to mention the said facts including his name, PAN Number, Income Tax details, educational qualifications, assets and liabilities of himself. He has to disclose the said details of his wife's name and his dependants

in Ex.P5 affidavit as per the directives of the Apex Court in **Association for Democratic Reforms**⁴³. Non-mentioning/non-disclosure of respondent No.1's wife name is not a ground to declare his election as void in terms of Section - 100 of the RP Act.

xvii) It is apt to note that respondent No.1 has to disclose all the details of his marital status, antecedents, educational qualifications and details of dependants. He has to disclose the said details of his spouse and his dependants. The same are mandatory. Respondent No.1 has disclosed the aforesaid details. He has not mentioned his wife's name at the spouse column in Ex.P5 affidavit. It is also not in dispute that voter should know the details of candidate and it is part of Article - 19 (1) (a) of the Constitution of India. Thus, respondent No.1 has disclosed that he got married, he has spouse and he has disclosed her PAN, income details and assets and liabilities. Therefore, this Court is of the considered view that non-mentioning of his spouse name by respondent No.1 - returned candidate will not affect the subject election materially and it is not substantial in character.

xviii) As discussed above, the election petitioner failed to establish that non-mentioning of his wife's name by respondent No.1 - returned candidate affected the election materially and it is substantial in nature.

As discussed above, at the cost of repetition, respondent No.1 - returned candidate has disclosed that he got married, he has mentioned his spouse PAN, income tax details, assets and liabilities. Therefore, there is no material suppression by respondent No.1 - returned candidate in Ex.P5 affidavit to set aside his election.

xix) There is no dispute that there should be purity of election at every stage. Election process is sacrosanct. Free and fair election is the sacrosanct thread that weaves our Country's democratic structure. In the election petition, the verdict and mandate of electorate in a democratic party is a sacrosanct one and cannot be lightly set at naught, unless grounds upon which the same is sought to be challenged and established convincingly and clinchingly. In the light of the same, in the present case, there is no non-disclosure/material suppression and there is no defect in Ex.P5 affidavit filed by respondent No.1 - returned candidate.

xx) With regard to the details of notary, it is the specific contention of respondent No.1 herein that Mr. Mendu Rajamallu, who notarized Ex.P5 affidavit of respondent No.1 has appointed as notary *vide* G.O.Ms.No.820, dated 07.07.2011. It is for a period of five (05) years. He has renewed the same on 06.07.2016. The same is effective till 05.07.2021. He has submitted application for renewal on 11.06.2021

by paying fee of Rs.1000/- towards renewal fee and the same is pending with competent authority. The said notary was expired on 06.07.2021 i.e., during pendency of his application dated 11.06.2021 seeking renewal. The District Registrar, Khammam sent recommendations to the Commissioner and Inspector General of Registration and Stamps for renewal certificate of practice of Mr. Mendu Rajamallu on 12.01.2023. Therefore, according to respondent No.1, there is no fault on the part of Mr. Mendu Rajamallu and he has submitted the application on 11.06.2021 seeking renewal of notary and the same is pending with competent authority.

xxi) In view of the same, it is relevant to note that Section - 5 of the Notaries Act, 1952 deals with 'entry of names in the Register and issue or renewal of certificates of practice'. Section - 5 (2) envisages that the Government appointing the notary, may, on receipt of an application and the prescribed fee, renew the certificates of practice of any notary for a period of five years at a time. In the said section, the word 'may' was substituted in place of 'shall' vide Act 36 of 1999 w.e.f. 17.12.1999.

xxii) Rule - 8B of the Notaries Rules, 1952 deals with 'renewal of Certificate of Practice' and the same is extracted hereunder:

“8B. Renewal of Certificate of Practice.- The certificate of practice issued under sub-rule (4) of rule 8 may be renewed for a further period of five years on payment of prescribed fee. An application for renewal of Certificate of Practice shall be submitted to the appropriate Government before six months from the date of expiry of its period of validity:

Provided that the appropriate Government may, after considering the reasons stated in the application, relax the condition of submission of application for renewal of certificate of practice before the said period of six months:

Provided further that where an application for renewal of Certificate of Practice is received within one year after the date of expiry of its period of validity, the appropriate Government may, after considering the reasons stated in the application, renew the Certificate of Practice with effect from the date of expiry of its period of validity.”

xxiii) In the present case, Mr. Mendu Rajamallu has submitted the application on 11.06.2021 by paying renewal fee of Rs.1,000/- on 10.06.2021. His certificate was expired on 06.07.2021. The competent authority i.e., the District Registrar, Khammam, kept the said renewal application pending. However, the District Registrar, Khammam has sent recommendation on 12.01.2023 to the Commissioner and Inspector General of Registration and Stamps for renewal of certificate of practice of Mr. Mendu Rajamallu. Basing on the said recommendation, the Commissioner and Inspector General of Registration and Stamps has issued Ex.X1 proceedings, dated 22.01.2024 renewing the notary of Mr. Mendu Rajamallu w.e.f. 07.07.2021 for a period of five (05) years. Thus, respondent No.1 cannot be found fault with the same.

xxiv) As discussed above, the said Mendu Rajamallu has submitted renewal application on 11.06.2021 before expiry of his

certificate i.e., 06.07.2021. As per provision to Rule - 8B of the Notary Rules, the appropriate Government has power to relax the condition of submission of application for renewal of certificate of practice before the said period of six (06) months. In the present case, Mr. Mendu Rajamallu has submitted application seeking renewal on 11.06.2021. The said fact was considered by the appropriate Government and renewed his certificate *vide* Ex.X1 proceedings.

xxv) When the notary has applied for renewal in accordance with the Rules before expiry of last certificate, he would be entitled for renewal under Section - 5 (2) of the Notaries Act, 1952. The said principle was also held by the Patna High Court in **Sushil Kumar Gupta v. State of Bihar**⁴⁷.

xxvi) There is no challenge to Ex.X1. It is relevant to note that respondent No.1 - returned candidate has believed the version of the said Mr. Mendu Rajamallu that he has already submitted application seeking renewal of his certificate and the same is pending with the competent authority. As on the date of notary of Ex.P5 affidavit i.e., 08.11.2023, the application submitted by the said Notary is pending with the competent authority and the District Registrar, Khammam, has already

⁴⁷. AIR 1995 Pat. 127

submitted report on 12.11.2023 recommendation for renewal of notary and the same was pending with the Commissioner and Inspector General of Registration and Stamps, Hyderabad. Therefore, as on the date of notary of Ex.P5 i.e., 08.11.2023, the District Registrar, Khammam has already forwarded his recommendations for renewal of certificate of the aforesaid Notary and the same was pending with the competent authority. Thereafter he has issued Ex.X1 proceedings dated 22.01.2024 renewing notary of Mr. Rajamallu w.e.f. 07.07.2021. Thus, respondent No.1 cannot expect to conduct an enquiry to ascertain validity of the said certificate while obtaining notary on Ex.P5. Therefore, on the said ground, it cannot be held that the election of respondent No.1 is materially affected.

xxvii) As far as issue No.8 is concerned, in the election petition, the election petitioner has specifically mentioned the cause of action including dates etc. It is also apt to note that respondent No.1 has filed an application under Order - VII, Rule - 11 of CPC to reject the election petition on the ground that the election petitioner herein has not stated cause of action in the election petition. The same was dismissed by this Court. Challenging the said order, respondent No.1 has filed SLP before the Apex Court and the same was also dismissed by the Apex Court.

Thus, respondent No.1 cannot contend that there is no cause of action in the election petition and, therefore, the said contention is unsustainable. These issues are answered accordingly.

19. **ISSUE No.9**: Whether the election of respondent No.1, from 117-Kothagudem Assembly Constituency, is liable to be set aside as null and void?

i) As discussed above, in view of the findings of this Court on issue Nos.4 and 6, the election of respondent No.1 cannot be set aside by declaring it as null and void. Hence, this issue is decided accordingly.

20. **ISSUE No.10**: Whether respondent No.2 is entitled to be declared as duly elected Returned Candidate from 117-Kothagudem Assembly Constituency, Telangana State, as he secured next highest votes in the Election?

i) In view of the aforesaid findings on other issues that there is no material suppression of fact by respondent No.1- returned candidate and non-mentioning of his wife's name in Ex.P5 affidavit is not material suppression, it is not substantial in character. Therefore, on the said ground, election of respondent No.1 - returned candidate cannot be set aside by declaring it as void. Thus, this issue is held against the election petitioner.

21. **ISSUE No.11:** Whether respondent No.1 is liable for punishment under Section - 125A (iii) read with 99 of R.P. Act 1951 for his failure to furnish the required information, concealing the material information and for giving false Form-26, affidavit dated 08.11.2023

i) As discussed above and in view of findings on issue Nos.1 to 10, there is no misrepresentation or concealment of any material information by respondent No.1 - returned candidate in Ex.P5 Form 26 affidavit dated 08.11.2023. Thus, he is not liable for punishment.

ii) However, it is relevant to note that Section - 125A of the RP Act deals with 'penalty for filing false affidavit etc.' and sub-Section (iii) deals with 'concealment of any information. As discussed above, respondent No.1 - returned candidate did not conceal any information in Ex.P5 Form 26. Therefore, he is not liable for any penalty. This issue is answered accordingly.

22. As discussed above, the election petitioner has filed the present election petition under Section - 81 read with 100, 101 and 125A of RP Act. The election petitioner failed to establish that respondent No.1 - returned candidate did not furnish information, concealed material information and submitted Ex.P5 Form 26 affidavit dated 08.11.2023 falsely.

23. Section - 100 of the RP Act deals with ‘grounds for declaring election to be void and the same is extracted hereunder:

“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 or the Government of Union Territories Act, 1963 (20 of 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, in so far as it concerns a returned candidate, has been materially affected—

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

(ii) by any corrupt practice committed in the interests of the returned candidate 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.

XXXXX
XXXXX”

24. In **Santosh Yadav v. Narender Singh**⁴⁸, the Apex Court held that the success of a winning candidate at an election should not be lightly interfered with. This is all the more so, when the election of a successful candidate is sought to be set aside for no fault of his but of someone else. The Apex Court also summed up the law and the grounds as regards the result of the election petition having been materially affected in case of improper acceptance of nomination. In **Harsh Kumar v. Bhagwan Sahai Rawat**⁴⁹, the Apex Court reiterated the said principle.

25. In **Jyoti Priya Mallick v. State of West Bengal**⁵⁰, the Division Bench of the Calcutta High Court also held that the election is very sacrosanct in democracy and if the election process is being polluted by persons who are entrusted to conduct the election impartially, then the same will affect the sustenance of Indian Democracy.

⁴⁸. (2002) 1 SCC 160

⁴⁹. (2003) 7 SCC 709

⁵⁰. (2001) SCC OnLine Cal. 144 (DB)

26. In the light of the aforesaid principle, in the present case, respondent No.1 - returned candidate got 80,336 votes, while respondent No.2 got 53,789 votes. Thus, respondent No.1 - returned candidate stood with a margin of 26,547 votes. Therefore, voters of the subject constituency reposed confidence on respondent No.1. The said election of respondent No.1 cannot lightly be interfered with unless there are grounds to set aside his election in terms of Section - 100 of the RP Act. There should be non-disclosure of material facts in the affidavit in Form 26 which should be substantial in nature. The object of filing of the said affidavit in Form 26 by disclosing all the details including antecedents, assets and liabilities of the candidate, spouse and dependents etc., is that the voter should know such particulars of a contesting candidate before taking a decision to vote in favour of a particular candidate. It became part and parcel of Article - 19 (1) (a) of the Constitution of India. In the present case, the allegation against respondent No.1 is that he has not disclosed his wife's name in Ex.P5 - affidavit. As stated above, he has disclosed his wife's PAN, income tax particulars for five (05) years and assets and liabilities etc. Thus, he has disclosed that he got married and his marital status. Therefore, non-disclosure of his wife's name in Ex.P5 affidavit is not material suppression and is not substantial character in

nature. On the said ground, this Court cannot set aside the election of respondent No.1 - returned candidate by declaring the same as void.

27. As stated above, in **Krishnamoorthy**¹⁴, the Apex Court held that non-disclosure of assets and source of income of the candidates and their associates would constitute a corrupt practice falling under heading “undue influence” as defined under Section - 123 (2) of the RP Act. In the present case, respondent No.1 - returned candidate has disclosed his assets and liabilities, movable and immovable properties and also his spouse. Therefore, it does not amount to undue influence as contended by the Election Petitioner.

28. Section - 36 of the RP Act deals with ‘scrutiny of nomination’. During the said scrutiny and while accepting nomination, Returning Officer will only see as to whether the candidate filled all the columns or not and he will ensure that there would not be any column kept blank. During scrutiny, he cannot conduct roving enquiry. The said principle was also laid down by the Apex Court in **Resurgence India**⁹, **Kisan Shankar Kathore**³ and **Karikho Kri**⁴².

29. In this regard, it is relevant to note that in **Vashist Narain Sharma v. Dev Chandra**⁵¹, a 3-Judge Bench of the Apex Court held

⁵¹. (1954) 2 SCC 32

that the burden of proving that the improper acceptance of a nomination has materially affected the result of an election would arise in one of three ways: (i) where the candidate whose nomination was improperly accepted had secured less votes than the difference between the returned candidate and the candidate securing the next highest number of votes, (ii) where the person referred to above secured more votes, or (iii) where the person whose nomination has been improperly accepted is the returned candidate himself. It was further held that in the first case the result of the election would not be materially affected because if all the wasted votes were added to the votes of the candidate securing the next highest votes, it would make no difference to the result and the returned candidate would retain the seat. However, in the other two cases, the result may be materially affected and insofar as the third case is concerned, it may be readily conceded that such would be the conclusion.

30. In **Hari Vishnu Kamath v. Syed Ahmad Ishaque**⁵², a 7-Judge Bench considered the scope of enquiry under Section - 100 (1) (d) of the RP Act. It was held that the said provision required before an order setting aside an election could be made, that two conditions be

⁵². (1954) 2 SCC 881

satisfied. It must, firstly, be shown that there has been improper reception or refusal of a vote or reception of any vote which is void, or non-compliance with the provisions of the Constitution or the RP Act, or any Rules or Orders made thereunder, relating to the election or any mistake in the use of the prescribed form and it must further be shown that, as a consequence thereof, the result of the election has been materially affected. The Bench observed that the two conditions are cumulative and must both be established. The burden of establishing them is on the person who seeks to have the election set aside.

31. The said principle was followed by a 3-Judge Bench of the Apex Court in **Kamta Prasad Upadhyaya v. Sarjoo Prasad Tiwari**⁵³.

32. In **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal**⁵⁴, a 3-Judge Bench of the Apex Court has taken a similar view as that of view taken in **Vashist Narain Sharma**⁵¹ held that where a person whose nomination has been improperly accepted is the returned candidate himself, it may be readily conceded that the conclusion has to be that the result of the election was 'materially affected' without there being any necessity to plead and prove the same.

⁵³. (1969) 3 SCC 622

⁵⁴. (2020) 7 SCC 1

33. In **Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy**⁵⁵, a 3-Judge Bench of the Apex Court reiterated that if there are more than two candidates and if the nomination of one of the defeated candidates has been improperly accepted, a question might arise as to whether the result of the election of the returned candidate has been materially affected by such improper reception but that would not be so in the case of challenge to the election of the returned candidate himself on the ground of improper acceptance of his nomination.

34. Considering the said principle, in **Karikho Kri**⁴² the Apex Court held that if acceptance of the nomination of returned candidate is shown to be improper, it would automatically mean that the same materially affected the result of the election and nothing more needs to be pleaded or proved.

35. In the light of the aforesaid principle, as discussed above, in the present case, nomination of respondent No.1 - returned candidate was accepted and there is no improper acceptance. As stated above, at the time of receiving the nomination, Returning Officer will only verify as to whether candidate filled all the columns or not. He cannot conduct a roving enquiry at the stage of scrutiny of nomination in terms of

⁵⁵. (2018) 14 SCC 1

Section - 36 of the RP Act. Moreover, in the present case, the election petitioner did not raise any objection with regard to non-disclosure of his wife's name by respondent No.1. Therefore, this Court is of the considered opinion that the contention of the election petitioner that the nomination of respondent No.1 - returned candidate was accepted improperly is untenable.

36. In **Kanimozhi Karunanidhi v. A. Santhana Kumar**⁵⁶, the returned candidate has not disclosed the payment of income tax of her spouse in the affidavit in Form 26 and, thus, she has intentionally suppressed and not disclosed the same to the electors. Considering the same, the Apex Court held that such non-disclosure is not substantial character in nature and it will not render election of returned candidate as invalid.

37. In **Karim Uddin Barbhuiya v. Aminul Haque Laskar**⁵⁷, the Apex Court on examination of the facts of the said case where election petitioner 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, and that none of the allegations with regard to the false statements, suppression and

⁵⁶. 2023 SCC OnLine SC 573

⁵⁷. 2024 SCC OnLine SC 509

misrepresentation of facts allegedly made by election petitioner 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" or "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) of the RP Act. The election petitioner did not raise any objection in writing against the nomination filed by the returned candidate. Thus, the facts of the said case are different to the facts of the present case.

38. In **Lok Prahari**¹⁵, there was non-disclosure of assets and source of income of candidate and his associate, the Apex Court held that it amounts to 'corrupt practice' and 'undue influence'. Since it is an attempt to suppress, effort to misguide and keep the voter in dark. Whereas in the present case, there is no suppression of fact including assets and liabilities of the respondent No.1 and her spouse. Therefore, the facts of the said case are different to the facts of the present case.

39. In **Rukmini Medagowda**¹⁹, returned candidate, who contested for the post of Mayor, Council of Mysore Municipal

Corporation, failed to disclose his assets, and it amounts to undue influence in terms of Section - 123 of the RP Act. But, in the present case, there is no suppression of any fact including assets, both movable and immovable and liabilities, antecedents, educational qualifications etc., of respondent No.1 and his spouse.

40. It is also relevant to note that in **Azhar Hussain v. Rajiv Gandhi**⁵⁸, the Apex Court observed that the sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Litigation has to be end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. So long as the sword of Damocles of the election petition remains hanging an elected member of the Legislature would not feel sufficiently free to devote his whole-hearted attention to matters of public importance which clamour for his attention in his capacity as an elected representative of the concerned constituency. The time and attention demanded by his elected office will have to be diverted to matters pertaining to the contest of the election petition. Instead of being engaged in a campaign to relieve the distress of people in general and of the residents of his constituency who

⁵⁸. 1986 SCC (Supp.) 315

voted him into office, and instead of resolving their problems, he would be engaged in a campaign to establish that he has in fact been duly elected. Instead of discharging his functions as the elected representative of the people, he will be engaged in a struggle to establish that he is indeed such a representative, notwithstanding the fact that he has in fact won the verdict and confidence of the electorate at polls. He will not only have to win the vote of the people and mandate but also win the vote of the Court in a long drawn-out litigation before he can wholeheartedly engage himself in discharging the trust reposed in him by the electorate. Pendency of election petition would also act as a hindrance if he were entrusted with some public office in his elected capacity. He may even have occasions to deal with the representatives of foreign powers who may wonder whether he will eventually succeed and hesitate to deal with him. The fact that an election petition calling into question his election is pending may, in a given case, act as a psychological fetter and may not permit him to act with full freedom. Even if he is made of stern metal, the constraint introduced by the pendency of an election petition may have some impact on his subconscious mind without his ever being or becoming aware of it. Under the circumstances, there is greater reason why in a democratic set-up, in

regard to a matter pertaining to an elected representative of the people which is likely to inhibit him in the discharge of his duties towards the Nation, the controversy is set at rest at the earliest, if the facts of the case and the law so warrant.

41. In **Jagan Nath v. Jaswant Singh**⁵⁹, the Apex Court held that it is a sound principle of natural justice that success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. It is always to be borne in mind that though the election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices.

42. May be with the aforesaid intention, the Legislature was conscious in mentioning the timelines to dispose of election petition within six (06) months in Section - 86 (7) of the RP Act.

43. In view of the aforesaid discussion, the election petitioner failed to make out any ground to set aside the election of respondent

⁵⁹. AIR 1954 SC 210

No.1 - returned candidate. Therefore, all these issues are decided against the election petitioner.

44. **ISSUE No.12:** (To what relief?)

i) In view of the aforesaid discussion, the election petitioner failed to make out any case to declare the election of respondent No.1 - returned candidate as void. Thus, the election petition fails and the same is liable to be dismissed.

ii) The present Election Petition is accordingly dismissed. In the circumstances of the case, there shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in this Election Petition, stands closed.

K. LAKSHMAN, J

9th June, 2025
Mgr

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Election Petitioner:

PW.1: Mr. Nandu Lal Agarwal
PW.2: Mr. D. Madhu
PW.3: Mr. D. Pullaiah
PW.4: Mr. M. Santhosh

For Respondents:

RW.1: Mr. Kunamneni Sambasiva Rao

DOCUMENTS MARKED ON BEHALF OF**ELECTION PETITIONER**

Exhibit	Date	Description of document
Ex.P1	09.10.2023	Copy of Memo No.4004/Elecs.D/A1/2023-1 issued by the ECI
Ex.P2	03.11.2023	Gazette Notification No.37 issued by the ECI
Ex.P3	04.12.2023	Gazette Notification No.44 issued by the ECI
Ex.P4	--	Form-20 showing details of votes obtained by the candidates of subject constituency
Ex.P5	08.11.2023	Form-26, Affidavit filed by respondent No.1
Ex.P6	--	Copy of Voter ID Card of the petitioner
Ex.P7	--	Copy of the Aadhar of the petitioner
Ex.P8	28.12.2023	Copy of Letter No.RTI/NR/12530, 12531/23 issued by the PIO
Ex.P9	13.11.2023	Objection filed by respondent No.2 before the Returning Officer
Ex.P10	13.11.2023	Original Order passed by the Returning Officer
Ex.P11	25.09.2013	Voter Identity Card of PW.1
Ex.P12	--	C.C. of Vakalathnama filed on behalf of RW.1 Before the Hon'ble Supreme Court
Ex.P13	--	C.C. of papers from 34 to 48 including affidavit Signed by RW.1
Ex.P14	--	Copy of papers from page Nos.99 to 110 Purported counter of R-1 filed as Annexure P/9 Before the Hon'ble Supreme Court in SLP

RESPONDENT No.1

Exhibit	Date	Description of document
Ex.R1	07.03.2025	Original letter No.Notaries/720-1/2025 along with Original verification issued by Dist. Registrar to R-1, attested Photostat copy of proceedings of the Commissioner & IGRS.

Ex.R2	22.01.2024	Attested Photostat copy of renewal of certificate of practice of Notaries issued by the C&IGRS
Ex.R3	22.01.2024	-do-
Ex.R4	22.01.2024	Attested Photostat copy of proceedings issued by C&IGRS
Ex.R5	--	Attested Photostat copy of Notary Registrar of Mr. Mendu Rajamallu, Advocate for the year 2023
Ex.R6	--	-do- for the year 2024
Ex.R7	--	Attested Photostat copy of affidavit of R-2
Ex.R8	08.04.2014	-do-
Ex.R9	14.11.2018	-do-

X-SERIES:

Exhibit	Date	Description of document
Ex.X1	22.01.2024	Proceedings issued by the office of Commissioner and Inspector General, Registration and Stamps Department, Hyderabad, renewing the Notary of Mr. Mendu Rajamallu, Advocate w.e.f. 07.07.2021 for a further period of five years.
Ex.X2(a)	--	Photostat copy of Form-26 affidavit of R-1
Ex.X2(b)	--	Photostat copy of Form-26 affidavit of R-2
Ex.X3	13.11.2023	Photostat copy of objection filed by R-2
Ex.X4	13.11.2023	Photostat copy of order passed by the Returning Officer
Ex.X5(a)	--	Photostat copy of declaration of election result
Ex.X5(b)	--	Photostat copy of final result sheet of votes polled in the election

K. LAKSHMAN, J**9th June, 2025**

Mgr