2024:DHC:4979

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 06 March 2024**
Judgment pronounced on: 08 July 2024

\+ EL. PET. 1/2022

RAJAN TEWARI ..... Appellant

Through: Mr. Apoorv Kurup, Mr. Shoumendu Mukherji, Mr. Akhil Hasija, Ms. Akannksha Gupta, Mr. Gurjas Narula, Mr. Himanshu Pathak & Ms. Megha Sharma, Advs.

Versus

DURGESH KUMAR PATHAK & ANR.. ... Respondents

Through: Mr. Gautam Narayan, Mr. Karan Sharma, Ms. Asmita Singh, Mr. Rishabh Sharma & Mr. Rishikesh Kumar, Advs. for R-1.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

J U D G M E N T

YASHWANT VARMA, J.

I.A. 1982/2023 [under Order VII Rule 11(a) CPC]

1. The first respondent, and who is the returned candidate, has moved the present application for rejection of the election petition on principles akin and analogous to Order VII Rule 11 of the **Code of Civil Procedure, 1908**[1]**.** As would be evident from a reading of the petition itself, the challenge to the election of the first respondent was based primarily on the following grounds:

a. Non-disclosure of criminal antecedents;

[1] Code

b. The respondent holding an office of profit on the date of scrutiny of nomination;

c. A suppression of **Income Tax Returns**[2] of **Financial Year**[3] 2019-20; and

d. Disclosure of an incorrect valuation of shares in **Prastav Communications Pvt. Ltd**.[4] by the returned candidate as forming part of the section pertaining to 'movable assets' in the nomination form.

2. The election petition itself has been instituted by the petitioner, who claims to be a voter in the concerned constituency, namely, AC-39, Rajinder Nagar. The challenge pertains to the bye-election which was notified on 30 May 2022 by the **Election Commission of India**[5]. As per the timeframe specified in the election notification, the last date for filing of nominations was indicated to be 06 June 2022. The applicant filed his nomination in Form 26 prescribed in terms of Rule 4A of the **Conduct of Election Rules, 1961**[6] on 06 June 2022. As per the aforementioned notification, the last date for scrutiny of nominations was stipulated to be 07 June 2022 and the date for withdrawal of candidature as 09 June 2022. Polling was conducted on 23 June 2022 and the results thereafter notified on 26 June 2022. In the results so notified, the first respondent emerged as the successful candidate defeating his nearest rival by a margin of 11,468 votes. It is

[2] ITR
[3] FY
[4] Prastav Communications
[5] ECI
[6] Rules

thereafter that the present election petition came to be filed on 26 August 2022.

3. In the plaint the challenge to the election of the first respondent is set out principally in paragraph 9 which is extracted hereinbelow:

> "9. The facts and circumstances setting out the mode and manner of corrupt practices indulged into by the Respondent No.3 himself, his election agent and other persons with the consent of Respondent No.3, his election agent, essential for the just adjudication are set out herein below:-
>
> a. That the Respondent no.3 had filed nomination before the returning officer i.e. Respondent No.2. Respondent No.2 accepted the Nomination Form without appreciating the fact that the concerned candidate had willfully and intentionally concealed facts which is tantamount to undue influence under Section 123(2) of the Representation of the People Act, 1951 ***(S. Subramaniam Balaji v. Government of Tamil Nadu, 2011 (9) sec 659)***
>
> b. Respondent No.3 had given statements on oath which are false to his knowledge. It is further submitted that he had willfully and intentionally disclosed false information in the 'Pending Criminal Cases' section of the Nomination form with the Affidavit, where he had to disclose information related to "Pending Criminal Cases against him". The Respondent No.2 accepted nomination of the Respondent No.3.
>
> c. The Respondent No.3 deliberately committed actions contrary to the Hon'ble Supreme Court's guidelines in *Public Interest Foundation &Ors. Vs. Union of India & Anr., WP. (C) No. 536 of 2011* and the Representation of the People Act, 1951, the Rules.
>
> d. The Respondent No.3 has also circumvented the directions stated by the Hon'ble Apex Court in *Rambabu Singh Thakur Vs. Sunil Arora & Ors. Contempt petition(C) no. 2192 of 2018 in WP(C) no. 536 of 2011*.
>
> e. Respondent No.3 willfully and intentionally refused to fulfill compliance of format C7 which pertain to publication of criminal antecedents on social media handles within 48 hours of declaration of candidature.
>
> f. Respondent No.3 thus filed declaration in his Form 26 for Nomination for the Assembly Constituency elections to the

Legislative Assembly for the year 2022 on 06.06.2022, furnishing false and wrong information.

g. Respondent No.3 conspicuously has also left out mentioning the ITR returns for the financial year 2019-20 in his nomination affidavit although he has mentioned for fiscal years 2020-21 and 2018-19.

h. Respondent No.3 has, quite inexplicably left out mentioning the FIR No. 0050/2020 **PS** North Avenue in which he is named as one of the accused U/s. 428, 468, 469 & 471 of IPC, 1860 and S. 66C of the Information Technology (Amendment) Act, 2008 from the section of 'Criminal Antecedents' within his nomination affidavit.

i. It is relevant to mention here that the above mentioned FIR had been widely reported in leading media websites.

J. Respondent No.3 filed declaration in his Form 26 for Nomination for the Assembly Constituency elections to the Legislative Assembly for the year 2022 on 06.06.2022, furnishing false and wrong information.

k. In the Affidavit filed by Respondent No.3 to Respondent No.2, there is no mention about presently holding or for that matter, Respondent No.3 held the post of a Member of the Delhi Commission for Protection of Child Rights i.e. Respondent No.17. It is further respectfully submitted that the post of "Member of Delhi Commission for Protection of Child Rights" is an Office of Profit – which brings to the office-holder financial gain, or advantage, or monetary benefit. Under Article 102 (1) and Article 191 (1) of the Constitution of India, an elected representative is prohibited from holding any office of profit under the Government of India or Government of any State, other than an office declared by Parliament by law not to disqualify its holder.

1. Till 08.06.2022 (i.e. after the filing of the nomination), even on the website it was displayed that Respondent No.3 is a Member of Respondent No.17.

m. The Respondent No-.3, in his income affidavit also, has not revealed that what was his source of income, even though he is getting a payment of Rs. 1,00,000/- (Rupees One Lakh Only). The fact that his one of the sources of income was from the Respondent No.17 is deliberately, intentionally and *malafidely* not mentioned. These acts of Respondent No.3 tantamount to filing false affidavit and non-disclosure of necessary information.

n. The photographs taken of the registered office of "Prastav Communications Pvt. Ltd", reveals that an Aam Aadmi Party Office is operating out of there. Perusal of the audited balance sheet also shows office rent of Rs. 50,000/-.

o. Further, despite clear violation by Respondent No. 3 of the Model Code of Conduct and various directions of the Respondent No .1, by using children as a tool in the election campaigning and as a cheap substitute for paid laborer, action is still awaited against him. It is submitted that children were being exploited by paying them Rs.100/- per day and they were left to wander with the pamphlets of Aam admi Party and its candidate Sh. Durgesh Pathak (Respondent No.3) in Rajinder Nagar Constituency.

p. Respondent No.3 was declared a returned candidate and won the election; However, his candidature was not qualified on the day of nomination and was unlawfully accepted by the returning officer.

q. The Scrutiny of nomination papers is an important quasijudicial function. During scrutiny on 07.06.2022 for AC-39 Rajinder Nagar, authorized representatives of one of the candidates duly carrying authorization letters, were not allowed to enter the scrutiny hall and register objections to the nomination of Respondent No.3."

4. In terms of the averments made in para 10 of the petition, the petitioner alleges that the conduct of the first respondent was in violation of Section 123(2) read with Section 125A of the **Representation of People Act, 1951**[7] and the election consequently liable to be declared as void under Section 100(1) of the said Act. The petitioner further alleges that respondent no.1 had not only acted contrary to the provisions of the Act, his conduct and declarations were also in violation of the mandate of the Constitution as well as the Model Code of Conduct read along with the various Directives, Rules and Regulations which govern.

[7] Act

5. The petitioner further alleges that respondent no.1 had apart from indulging in corrupt practices as envisaged under Section 123, willfully and intentionally concealed facts which would amount to undue influence under Section 123(2) of the Act. The petitioner alleges that a willful and intentional disclosure of false information in the 'pending criminal cases' section of the nomination form was clearly and manifestly contrary to the intent of the directions framed by the Supreme Court in **Public Interest Foundation & Ors. vs. Union of India & Anr.**[8]. It was in this regard also alleged that the first respondent had failed to comply with the requirement of making appropriate public declarations in accordance with Format C-7 pertaining to the publication of criminal antecedents on social media handles within 48 hours of declaration of candidature.

6. Insofar as the aspect of criminal antecedents is concerned, it was alleged that although respondent no.1 had been named as one of the accused in **First Information Report**[9] No. 0050/2020, Police Station North Avenue under Sections 428, 468, 469 & 471 of the **Indian Penal Code**, **1860**[10] read with Section 66C of the Information Technology (Amendment) Act, 2008, details thereof were not set out in the section pertaining to criminal antecedents in the nomination affidavit.

7. Insofar as the disclosure with respect to ITR is concerned, the petitioner alleges that the first respondent had failed to mention or provide any particulars with regard to the same for FY 2019-20 even

[8] (2019) 3 SCC 224
[9] FIR
[10] IPC

though details in respect of FYs 2018-19 and 2020-21 had been duly disclosed.

8. It was further averred that the said respondent had also failed to disclose the details about *"presently holding"* or for that matter having held the post of Member of the **Delhi Commission for Protection of Child Rights**[11], which was an office of profit.

9. The last of the allegations pertained to the valuation ascribed to shares held by the petitioner in Prastav Communications and which was pegged at INR 2,50,000/-. According to the petitioner, the details as gathered from the Company Master Data Portal maintained by the Ministry of Corporate Affairs, would establish that the paid-up capital of that company was only INR 1,00,000/- and that its Reserves and Surplus stood at (-) 1,81,500/-. It was further alleged that since the net worth of the company is in the negative, there was no basis for the shares held by respondent no.1 being valued at INR 2,50,000/-.

10. Upon notice being issued, the respondent no.1 filed the instant application asserting that the petition fails to disclose a cause of action and was liable to be rejected on that score. Addressing submissions on the application Mr. Gautam Narayan, learned counsel, submitted that the allegation of non-disclosure of criminal antecedents is premised on the fact that the returned candidate had failed to mention details pertaining to the FIR noticed hereinabove. It was in this regard submitted that the name of the respondent no.1 does not find mention in the list of accused as would be evident from a perusal of the FIR itself.

[11] DCPCR

11. According to Mr. Narayan a conjoint reading of Section 33A of the Act and Rule 4A of the Rules as well as Form 26 would establish that a candidate is under an obligation to disclose details of only such criminal cases in which either charges may have been framed by a court or where cognizance may have been taken. Our attention was drawn to the following passages from **Satish Ukey vs DG Fadnavis & Anr.**[12] and which according to learned counsel takes notice of the latest version of Form 26. The relevant passages from *Satish Ukey* are reproduced hereinbelow:

> "**8.** Further, this Court issued the following directions to the Election Commission (Assn. for Democratic Reforms case [Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294] , SCC p. 322, para 48):
>
> > "48. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:
> >
> > > (1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past—if any, whether he is punished with imprisonment or fine?
> > >
> > > (2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof." (emphasis supplied)
>
> **9.** Consequent to the above and the directions issued in Assn. for Democratic Reforms [Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294] , Section 33-A was inserted into the 1951 Act vide the "Representation of the People (Third Amendment) Act, 2002" (Section 2 of Act 72 of 2002).

[12] (2019) 9 SCC 1

10. The new Section 33-A, which is the bone of contention in the present case, deals with the "Right to Information" and reads as under:

> "33-A. 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." (emphasis supplied)

11. It is pertinent to note here that Section 33-A(1), as worded and drafted, required furnishing of the information of cases where (i) the person filing the nomination has been convicted; and (ii) where charges have been framed against the person filing the nomination but excluded cases where cognizance had been taken. This was despite the order of this Court, noticed above, to the effect that details of case(s) of which cognizance has been taken should also be furnished.

12. The aforesaid discrepancy was addressed by this Court, in *People's Union for Civil Liberties (PUCL)* v. *Union of India* [*People's Union for Civil Liberties (PUCL)* v. *Union of India*, (2003) 4 SCC 399] . In the said case, this Court had examined the import of Sections 33-A and 33-B [Section 33-B was also added through the 2002 Amendment. It stated that "notwithstanding anything contained in any judgment of any court, or any instruction

issued by the Election Commission, no candidate shall be liable to disclose information not required by the Act or Rules made thereunder".Section 33-B was declared unconstitutional in *People's Union for Civil Liberties (PUCL)* v. *Union of India*, (2003) 4 SCC 399 as violating the fundamental right of citizens to know the antecedents of candidates contesting in the elections, which right was held to be an essential facet of freedom of speech and expression enshrined in Article 19(1)(*a*) of the Constitution which could only be validly limited through the restrictions conforming with Article 19(2) of the Constitution of India.] of the 1951 Act [as inserted in the 1951 Act through the amendment in 2002 (supra)] vis-à-vis the directions issued by this Court in *Assn. for Democratic Reforms* [*Union of India* v. *Assn. for Democratic Reforms*, (2002) 5 SCC 294] and held as under (opinion of M.B. Shah, J. is quoted. The opinion of P. Venkatarama Reddi and D.M. Dharmadhikari, JJ. on the point is one of concurrence): [*People's Union for Civil Liberties (PUCL) case* [*People's Union for Civil Liberties (PUCL)* v. *Union of India*, (2003) 4 SCC 399] , SCC pp. 469-70, paras 114-15]

> "**IV.** ***Right to information with reference to specific aspects***
>
> *114.* I shall now discuss the specifics of the problem. With a view to promote the right to information, this Court gave certain directives to the Election Commission which, as I have already clarified, were ad hoc in nature. The Election Commission was directed to call for details from the contesting candidates broadly on three points, namely, (*i*) criminal record, (*ii*) assets and liabilities, and (*iii*) educational qualification. The Third Amendment to the RP Act which was preceded by an ordinance provided for disclosure of information. How far the Third Amendment to the Representation of the People Act, 2002 safeguards the right of information which is a part of the guaranteed right under Article 19(1)(*a*), is the question to be considered now with specific reference to each of the three points spelt out in the judgment of this Court in *Assn. for Democratic Reforms case* [*Union of India* v. *Assn. for Democratic Reforms*, (2002) 5 SCC 294] .
>
> **IV.** ***(1) Criminal background and pending criminal cases against candidates — Section 33-A of the RP (Third Amendment) Act***
>
> *115.* As regards the first aspect, namely, criminal record, the directives in *Assn. for Democratic Reforms case* [*Union of India* v. *Assn. for Democratic Reforms*, (2002) 5 SCC 294] are twofold: (SCC p. 322, para 48)

> '(1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past — if any, whether he is punished with imprisonment or fine.
>
> (2) Prior to six months of filing of nomination, whether the candidate is an accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law.'

As regards the second directive, Parliament has substantially proceeded on the same lines and made it obligatory for the candidate to furnish information as to whether 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 competent court. *However, the case in which cognizance has been taken but charge has not been framed is not covered by clause (i) of Section 33-A(1).* Parliament having taken the right step of compelling disclosure of the pendency of cases relating to major offences, there is no good reason why it failed to provide for the disclosure of the cases of the same nature of which cognizance has been taken by the Court. It is common knowledge that on account of a variety of reasons such as the delaying tactics of one or the other accused and inadequacies of the prosecuting machinery, framing of formal charges gets delayed considerably, especially in serious cases where committal procedure has to be gone through. On that account, the voter/citizen shall not be denied information regarding cognizance taken by the Court of an offence punishable with imprisonment for two years or more. The citizen's right to information, when once it is recognised to be part of the fundamental right under Article 19(1)(*a*), cannot be truncated in the manner in which it has been done. Clause (*i*) of Section 33-A(1) therefore falls short of the avowed goal to effectuate the right of information on a vital aspect. *Cases in which cognizance has been taken should therefore be comprehended within the area of information accessible to the voters/citizens, in addition to what is provided for in clause (i) of Section 33-A.*"

(emphasis supplied)

13. Further, the Court held: [*People's Union for Civil Liberties (PUCL) case* [*People's Union for Civil Liberties (PUCL)* v. *Union of India*, (2003) 4 SCC 399] , SCC pp. 474-75, para 123]

> "123. Finally, the summary of my conclusions:
>
> (1) - (2)***

> (3) The directives given by this Court in *Union of India* v. *Assn. for Democratic Reforms* [*Union of India* v. *Assn. for Democratic Reforms*, (2002) 5 SCC 294] were intended to operate only till the law was made by the legislature and in that sense "pro tempore" in nature. Once legislation is made, the Court has to make an independent assessment in order to evaluate whether the items of information statutorily ordained are reasonably adequate to secure the right of information available to the voter/citizen. In embarking on this exercise, the points of disclosure indicated by this Court, even if they be tentative or ad hoc in nature, should be given due weight and substantial departure therefrom cannot be countenanced.
>
> ***
>
> (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*."
>
> (emphasis supplied)

14. Eventually, the following direction was issued by the Court to the Election Commission of India: [*People's Union for Civil Liberties (PUCL) case* [*People's Union for Civil Liberties (PUCL)* v. *Union of India*, (2003) 4 SCC 399] , SCC p. 475, para 123]

> "*123. ... (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."

15. Section 125-A of the 1951 Act [inserted by Section 5 of the Representation of the People (Third Amendment) Act, 2002 (Act 72 of 2002)] reads as under:

> "**125-A.** ***Penalty for filing false affidavit, etc***.—A candidate who himself or through his proposer, with intent to be elected in an election,—
>
> (*i*) fails to furnish information relating to sub-section (1) of Section 33-A; or
>
> (*ii*) gives false information which he knows or has reason to believe to be false; or
>
> (*iii*) conceals any information,

in his nomination paper delivered under sub-section (1) of Section 33 or in his affidavit which is required to be delivered under sub-section (2) of Section 33-A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both."

16. Whether the provisions of Section 125-A of the 1951 Act would be applicable in the present case, as claimed by the appellant complainant, to make the first respondent liable in law, would require the Court to decide on the true meaning and purport of the following phrases found in Section 125-A of the 1951 Act:

(*a*) fails to furnish information *relating* to sub-section (1) of Section 33-A;

(*b*) conceals any information;

(*c*) in his nomination paper delivered under sub-section (1) of Section 33 or in his affidavit which is required to be delivered under sub-section (2) of Section 33-A.

17. To find out the true meaning and purport of the aforesaid phrases, the crucial question that has to be answered is whether the word "information" as mentioned in Section 33-A of the 1951 Act means only such information as mentioned in clauses (*i*) and (*ii*) of Section 33-A(1) or whether along with the said information a candidate is also required to furnish such other information as required under the Act or the Rules made thereunder. The consequential question that would arise is whether in the affidavit required to be filed under sub-section (2) of Section 33-A information is to be given as required in terms of the affidavit which is prescribed by Form 26 of the 1961 Rules or such information is confined to what is required to be submitted under Sections 33-A(1)(*i*) and (*ii*). It is at this stage that Rule 4-A of the 1961 Rules would require to be noticed. Rule 4-A which was inserted by S.O. 935(E), dated 3-9-2002 with effect from 3-9-2002 is in the following terms:

"**4-A.** ***Form of affidavit to be filed at the time of delivering nomination paper***.—The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of Section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26."

18. Form 26 is the prescribed form of affidavit to be filed by a candidate along with his nomination papers as required under

Section 33-A(2) of the 1951 Act. The said affidavit in the prescribed form reads as hereunder:

"**Form 26**

[*See* Rule 4-A]

Please affix your recent passport size photograph here

***Affidavit to be filed by the candidate along with nomination paper before the returning officer for election to ……(name of the House*) from……constituency (Name of the constituency)**

PART A

I, ……,*son/daughter/wife

of…… Aged……..years, resident of …… (mention full postal address), a candidate at the above election, do hereby solemnly affirm and state on oath as under:-

(1) I am a candidate set up by…….

(**name of the political party)/**am contesting as an Independent candidate.

(**Strike out whichever is not applicable)

(2) My name is enrolled in ……(Name of the constituency and the State), at Serial No. ……in Part No. …….

(3) My contact telephone number(s) is/are…… and my E-mail ID (if any) is ……..

(4) Details of Permanent Account Number (pan) and status of filing of income tax return:

Sl. No.	*Names*	*pan*	*The financial year for which the last income-tax return has been filed.*	*Total income shown in income tax return (in Rupees)*
1.	Self			
2.	Spouse			
3.	Dependant 1			
4.	Dependant 2			
5.	Dependant 3			

5. I am/am not accused of any offence(s) punishable with imprisonment for two years or more in a pending case(s) in which a charge(s) has/have been framed by the court(s) of competent jurisdiction.

If the deponent is accused of any such offence(s), he shall furnish the following information—

(*i*) The following case(s) is/are pending against me in which charges have been framed by the court for an offence punishable with imprisonment for two years or more—

(*a*)	Case/First Information Report No./Nos. together with complete details of Police Station/District/State concerned	
(*b*)	Section(s) of the Act(s) concerned and short description of the offence(s) for which charged	
(*c*)	Name of the court, Case No. and date of order taking cognizance:	
(*d*)	Court(s) which framed the charge(s)	
(*e*)	Date(s) on which the charge(s) was/were framed	
(*f*)	Whether all or any of the proceeding(s) have been stayed by any court(s) of competent jurisdiction	

(*ii*) The following case(s) is/are pending against me in which cognizance has been taken by the Court (other than the cases mentioned in Item (*i*) above.

(*a*)	Name of the court, Case No. and date of order taking cognizance:	
(*b*)	The details of cases where the court has taken cognizance, section(s) of the Act(s) and description of the offence(s) for which cognizance taken	
(*c*)	Details of appeal(s)/application(s) for revision (if any) filed against the above order(s)	

(6) I have been/have not been convicted of an offences(s) other than any offence(s) referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of Section 8 of the Representation of the People Act, 1951 (43 of 1951) and sentenced to imprisonment for one year or more.

If the deponent is convicted and punished as aforesaid, he shall furnish the following information:

In the following cases, I have been convicted and sentenced to imprisonment by a court of law:

(*a*)	The details of cases, section(s) of the concerned Act(s) and description of the offence(s) for which convicted.	
(*b*)	Name of the court(s), Case No. and date(s) of order(s).	
(*c*)	Punishment imposed.	

(*d*)	Whether any appeal was/has been filed against the conviction order. If so, details and the present status of the appeal.	

(7) That I give hereinbelow the details of the assets (movable and immovable, etc.) of myself, my spouse and all dependents:

A. Details of movable assets:

Note 1.—Assets in joint name indicating the extent of joint ownership will also have to be given.

Note 2.—In case of deposit/investment, the details including serial number, amount, date of deposit, the scheme, name of the bank/institution and branch are to be given.

Note 3.—Value of bonds/shares/debentures as per current market value in stock exchange in respect of listed companies and as per books in case of non-listed companies should be given.

Note 4.—Dependant here has the same meaning as assigned in Explanation (*v*) under Section 75-A of the Representation of the People Act, 1951.

Note 5.—Details including amount is to be given separately in respect of each investment.

Sl. No.	*Description*	*Self*	*Spouse*	*Dependant 1*	*Dependant 2*	*Dependant 3*
(*i*)	Cash in hand					
(*ii*)	Details of deposit in bank accounts (FDRs, term deposits and all other types of deposits including saving accounts), deposits with financial institutions, non-banking financial companies and cooperative societies and the amount in each such deposit					
(*iii*)	Details of investment in					

	bonds, debentures/shares and units in companies/mutual funds and others and the amount					

(*iv*)	Details of investment in NSS, postal saving, insurance policies and investment in any financial instruments in post office or insurance company and the amount					
(*v*)	Personal loans/advance given to any person or entity including firm, company, Trust, etc., and other receivables from debtors and the amount					
(*vi*)	Motor vehicles/Aircrafts/Yachts/Ships (details of make, registration number, etc. year of purchase and amount)					
(*vii*)	Jewellery, bullion and valuable thing(s) (give details of weight and value)					
(*viii*)	Any other assets such as value of claims/interest					
(*ix*)	Gross total value					

B. Details of Immovable Assets:

Note 1.—Properties in joint ownership indicating the extent of joint ownership will also have to be indicated.

Note 2.—Each land or building or apartment should be mentioned separately in this format.

Sl. No.	*Description*	*Self*	*Spouse*	*Dependant 1*	*Dependant 2*	*Dependant 3*
(*i*)	Agricultural land Location(s) Survey number(s)					
	Area (total measurement in acres)					
	Whether inherited property (Yes or No)					
	Date of purchase in case of self-acquired property					
	Cost of land (in case					

	of purchase) at the time of purchase					
	Any investment on the land by way of development, construction, etc.					
	Approximate current market value					
(*ii*)	Non-agricultural land: Location(s) Survey number(s)					
	Area (total measurement in sq ft)					
	Whether inherited property (Yes or No)					
	Date of purchase in case of self-acquired property					
	Cost of land (in case of purchase) at the time of purchase					

	Any investment on the land by way of development, construction, etc.					
	Approximate current market value					
(*iii*)	Commercial buildings (including apartments) —Location(s) —Survey number(s)					
	Area (total measurement in sq ft)					
	Built-up area (total measurement in sq ft)					
	Whether inherited property (Yes or No)					
	Date of purchase in case of self-acquired property					
	Cost of property (in case of purchase) at the time of purchase					
	Any investment on the property by way of development, construction, etc.					
	Approximate current market value					

(*iv*)	Residential buildings (including apartments): —Location(s) —Survey number(s)					
	Area (total measurement in sq ft)					
	Built-up area (total measurement in sq ft)					
	Whether inherited property (Yes or No)					
	Date of purchase in case of self-acquired property					
	Cost of property (in case of purchase) at the time of purchase					
	Any investment on the land by way of development, construction, etc.					
	Appropriate current market value					
(*v*)	Others (such as interest in property)					
(*vi*)	Total of current market value of (*i*) to (*v*) above					

(8) I give hereinbelow the details of liabilities/dues to public financial institutions and Government—

(*Note*.—Please give separate details of name of bank, institutions, entity or individual and amount before each item.)

Sl. No.	*Description*	*Self*	*Spouse*	*Dependant 1*	*Dependant 2*	*Dependant 3*
(*i*)	Loan or dues to bank/financial institution(s) Name of the bank or financial institution, Amount outstanding, Nature of loan					
	Loan or dues to any other individuals/entity other than mentioned above name(s), Amount outstanding, nature of loan					
	Any other liability					

	Grand total of liabilities					
(*ii*)	Government dues Dues to departments dealing with government accommodation					
	Dues to department dealing with supply of water					
	Dues to department dealing with supply of electricity					
	Dues to department dealing with supply of telephones/mobiles					
	Dues to department dealing with government transport (including aircrafts and helicopters)					
	Income tax dues					
	Wealth tax dues					
	Service tax dues					
	Municipal/Property tax dues					
	Sales tax dues					
	Any other dues					

(*iii*)	Grand total of all government dues					
(*iv*)	Whether any other liabilities are in dispute, if so, mention the amount involved and the authority before which it is pending					

(9) Details of profession or occupation:

(*a*) Self …….

(*b*) Spouse ……..

(10) My educational qualification is as under—

……
…..

(Give details of highest school/university education mentioning the full form of the certificate/diploma/degree course, name of the school/college/university and the year in which the course was completed.)

Part b

(11) Abstract of the details given in (1) to (10) of Part A:

1.	Name of the candidate			Shri/Smt/Kum
2.	Full postal address			
3.	Number and name of the constituency and State			
4.	Name of the political party which set up the candidate (otherwise write "Independent")			
5.	(*i*) Total number of pending cases where charges have been framed by the court for offences punishable with imprisonment for two years or more (*ii*) Total number of pending cases where the court(s) have taken cognizance [other than the cases mentioned in Item (*i*) above]			
6.	Total number of cases in which convicted and sentenced to imprisonment for one year or more except for offences referred to in sub-sections (1), (2) or (3) of Section 8 of the Representation of the People Act, 1951.			
7.		pan of	Year for which last income tax return filed	Total income shown
	(*a*) Candidate			
	(*b*) Spouse			
	(*c*) Dependents			
8.	Details of assets and liabilities in rupees			

	Description		*Self*	*Spouse*	*Dependant I*	*Dependant II*	*Dependant III*
A.	Movable assets (Total value)						
B.	Immovable asset						
	I.	Purchase price of self-acquired immovable property					
	II.	Development/Cons					

		truction cost of immovable property after purchase (if applicable)					
	III.	Approximate current market price of—					
		(*a*) self-acquired assets (Total value)					
		(*b*) inherited assets (Total value)					
9.		Liabilities					
	(*i*)	Government dues (Total)					
	(*ii*)	Loans from bank, financial institutions and others (Total)					
10.		Liabilities that are under dispute					
	(*i*)	Government dues (Total)					
	(*ii*)	Loans from bank, financial institutions and others (Total)					

11.	Highest educational qualification: (Give details of highest school/university education mentioning the full form of the certificate/diploma/degree course, name of the school/college/university and the year in which the course was completed.)

verification

I, the deponent, abovenamed, do hereby verify and declare that the contents of this affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed therefrom. I further declare that—

(*a*) there is no case of conviction or pending case against me other than those mentioned in Items 5 and 6 of Parts A and B above;

(*b*) I, my spouse, or my dependents do not have any asset or liability, other than those mentioned in Items 7 and 8 of Part A and Items 8, 9 and 10 of Part B above.

Verified at……this the……day of……

deponent

Note 1.—Affidavit should be filed latest by 3.00 p.m. on the last day of filing nominations.

Note 2.—Affidavit should be sworn before an Oath Commissioner or Magistrate of the First Class or before a Notary Public.

Note 3.—All column should be filled up and no column to be left blank. If there is no information to furnish in respect of any item, either "Nil" or "Not applicable", as the case may be, should be mentioned.

Note 4.—The affidavit should be either typed or written legibly and neatly."

xxxx xxxx xxxx

20. A bare perusal of Form 26 makes it abundantly clear that, for offences punishable with imprisonment for two years or more, while Entry (5)(*i*) mandates disclosure of information by the contesting candidate regarding the case(s) that is/are pending against him in which charges have been framed by the Court; Entry (5)(*ii*) mandates disclosure of information by the contesting candidate regarding cases that are pending against him in which cognizance has been taken by the Court.

21. Entry 5(*ii*) specifically mentions that the candidate is required to provide information of the case(s) pending in which cognizance has been taken. This is in addition to the information he is required to provide against the column in Entry 5(*i*) as the words "Other than the cases mentioned in Item (*i*) above" are specifically used in Entry 5(*ii*)."

12. According to Mr. Narayan a bare perusal of Form 26, and more particularly the section pertaining to criminal antecedents, would establish that a candidate vying for election is liable to make declarations only in respect of such criminal cases in which he/she

stands named as an accused of an offence punishable with imprisonment for two years or more in which charges may have been framed. According to Mr. Narayan, a reading of para 5(i)(b), (c) and (d) would indicate that the declarations stand restricted to those cases in which a chargesheet may have been submitted, instances where cognizance thereof may have been taken as well as contingencies where charges may have been framed by the competent court. Mr. Narayan pointed out further that in terms of para 5(ii)(a) and (b) it becomes apparent that disclosures are liable to be made only in instances where cognizance may have been taken by the competent Court. It was highlighted by Mr. Narayan that the petitioner neither avers that a chargesheet has been submitted or that charges have been framed in connection with FIR No. 0050/2020. According to learned counsel, there was thus a manifest failure to set out material facts and which is an essential requirement of Section 83(1)(a) of the Act.

13. Mr. Narayan submitted that Courts have consistently underscored the seminal importance of material facts being duly disclosed and pleaded and a failure clearly warranting the petition being liable to be summarily rejected on that score. Mr. Narayan in this respect drew our attention to the decision of the Supreme Court in **Kanimozhi Karunanidhi vs. A. Santhana Kumar & Ors.**[13], where the Court had an occasion to notice the entire body of precedent which had evolved in this regard. We deem it apposite to extract the following passages from that decision:

> "**24.** A Three-Judge Bench in *Hari Shanker Jain* v. *Sonia Gandhi*(supra) had an occasion to deal with Section 83(1)(a) of the

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RP Act and the Court dismissed the Election petition holding that the bald and vague averments made in the election petitions do not satisfy the requirements of pleading "material facts" within the meaning of Section 83(1)(a) of the RP Act read with the requirements of Order VII Rule 11 CPC. It was observed in para 23 and 24 as under:—

> **"**23. Section 83(1)(*a*) of RPA, 1951 mandates that an election petition *shall* contain a concise statement of the *material facts* on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford *a basis* for the allegations made in the petition and would constitute the cause of action as understood in the Civil Procedure Code, 1908. The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See *Samant N. Balkrishna* v. *George Fernandez*[(1969) 3 SCC 238 : (1969) 3 SCR 603], *Jitendra Bahadur Singh* v. *Krishna Behari* [(1969) 2 SCC 433].) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In *V.S. Achuthanandan* v. *P.J. Francis* [(1999) 3 SCC 737] this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.
>
> 24. It is the duty of the court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings

which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings."

25. In case of *Mahadeorao Sukaji Shivankar* v. *Ramaratan Bapu*[10], a Three-Judge Bench of this Court again had an occasion to deal with the issues as to what would constitute "material facts" and what would be the consequences of not stating the "material facts" in the Election petition, as contemplated in Section 83(1)(a) of the RP Act, and the Court observed as under:

> **"**6. Now, it is no doubt true that all material facts have to be set out in an election petition. If material facts are not stated in a plaint or a petition, the same is liable to be dismissed on that ground alone as the case would be covered by clause (*a*) of Rule 11 of Order 7 of the Code. The question, however, is as to whether the petitioner had set out material facts in the election petition. The expression "material facts" has neither been defined in the Act nor in the Code. It may be stated that the material facts are those facts upon which a party relies for his claim or defence. In other words, material facts are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish existence of cause of action or defence are material facts and must be stated in the pleading of the party.
>
> 7. But, it is equally well settled that there is distinction between "material facts" and "particulars". Material facts are primary or basic facts which must be pleaded by the petitioner in support of the case set up by him either to prove his cause of action or defence. Particulars, on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving finishing touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Particulars ensure conduct of fair trial and would not take the opposite party by surprise."

26. In *Anil Vasudev Salgaonkar* v. *Naresh Kushali Shigaonkar*[11], this Court has discussed number of earlier decisions on the issue as to when the Election petition could be dismissed summarily if it does not furnish the cause of action in exercise of powers under the Code of Civil Procedure read with Section 83 of the R.P. Act.

"50. The position is well settled that an election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with.

51. This Court in *Samant N. Balkrishna case* [(1969) 3 SCC 238] has expressed itself in no uncertain terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. In *Udhav Singh* v. *Madhav Rao Scindia* [(1977) 1 SCC 511] the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(*a*). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.

52. In *V. Narayanaswamy vs. C.P. Thirunavukkarasu* [(2000) 2 SCC 294] this Court reiterated the legal position that an election petition is liable to be dismissed if it lacks in material facts. In *L.R. Shivaramagowda* v. *T.M. Chandrashekar* [(1999) 1 SCC 666] this Court again considered the importance of pleadings in an election petition alleging corrupt practice falling within the scope of Section 123 of the Act and observed as under : (SCC p. 677, para 11)

> "*11*. This Court has repeatedly stressed the importance of pleadings in an election petition and pointed out the difference between 'material facts' and 'material particulars'. While the failure to plead material facts is fatal to the election petition and no amendment of the pleading could be allowed to

> introduce such material facts after the time-limit prescribed for filing the election petition, the absence of material particulars can be cured at a later stage by an appropriate amendment."

53. In *Udhav Singh case* [(1977) 1 SCC 511] this Court observed as under : (SCC pp. 522-23, para 41)

> "*41*. Like the Code of Civil Procedure, this section also envisages a distinction between 'material *facts*' and 'material *particulars*'. Clause (*a*) of sub-section (1) corresponds to Order 6 Rule 2, while clause (*b*) is analogous to Order 6 Rules 4 and 6 of the Code. The distinction between 'material facts' and 'material particulars' is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single *material fact* leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6 Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of *material facts*, the petition is liable to be summarily rejected for want of a cause of action. In the case of a petition suffering from a deficiency of *material particulars*, the court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation."

54. In *H.D. Revanna case* [(1999) 2 SCC 217] the appeal was filed by the candidate who had succeeded in the election and whose application for dismissal of the election petition in limine was rejected by the High Court. This Court noticed that it has been laid down by this Court that non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure. In *Harmohinder Singh Pradhan* v. *Ranjeet Singh Talwandi* [(2005) 5 SCC 46] this Court observed thus : (SCC p. 51, para 14)

> "*14*. Necessary averment of facts constituting an appeal on the ground of 'his religion' to vote or to refrain from voting would be material facts within the meaning of clause (*a*) of sub-section (1) of Section 83 of the Act. If such material facts are missing, they cannot be supplied later on, after the expiry of period of limitation for filing the election petition and the plea being deficient, can be directed to be struck down under Order 6 Rule 16 of the Civil Procedure Code,

> 1908 and if such plea be the sole ground of filing an election petition, the petition itself can be rejected as not disclosing a cause of action under clause (*a*) of Rule 11, Order 7 of the Code."

55. In *Harkirat Singh* v. *Amrinder Singh* [(2005) 13 SCC 511] this Court again reiterated the distinction between "material facts" and "material particulars" and observed as under : (SCC p. 527, paras 51-52)

> "*51*. A distinction between 'material facts' and 'particulars', however, must not be overlooked. 'Material facts' are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. 'Particulars', on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. 'Particulars' thus ensure conduct of fair trial and would not take the opposite party by surprise.
>
> *52*. All 'material facts' must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial."

56. In *Sudarsha Avasthi* v. *Shiv Pal Singh* [(2008) 7 SCC 604] this Court observed as under : (SCC p. 612, para 20) "*20*. The election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses this as a handle for vexatious purpose."

57. It is settled legal position that all "material facts" must be pleaded by the party in support of the case set up by him within the period of limitation. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact will entail dismissal of the election petition. The election petition must contain a concise statement of "material facts" on which the petitioner relies.

58. There is no definition of "material facts" either in the Representation of the People Act, 1951 nor in the Code of Civil Procedure. In a series of judgments, this Court has laid down that all facts necessary to formulate a complete cause of action should be termed as "material facts". All basic and primary facts which must be proved by a party to establish the existence of cause of action or defence are material facts. "Material facts" in other words mean the entire bundle of facts which would constitute a complete cause of action. This Court in *Harkirat Singh case* [(2005) 13 SCC 511] tried to give various meanings of "material facts". The relevant para 48 of the said judgment is reproduced as under : (SCC pp. 526-27)

> "*48*. The expression 'material facts' has neither been defined in the Act nor in the Code. According to the dictionary meaning, 'material' means 'fundamental', 'vital', 'basic', 'cardinal', 'central', 'crucial', 'decisive', 'essential', 'pivotal', 'indispensable', 'elementary' or 'primary'. [*Burton's Legal Thesaurus* (3rd Edn.), p. 349.] The phrase 'material facts', therefore, may be said to be those facts upon which a party relies for its claim or defence. In other words, 'material facts' are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be 'material facts' would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party."

27. In *Ram Sukh* v. *Dinesh Aggarwal* (supra), this Court again while examining the maintainability of Election petition filed under Section 100(1)(d)(iv) of the RP Act, elaborately considered the earlier decisions and observed that it was necessary for the election petitioner to aver specifically in what manner the result of the election in so far as it concerned the returned candidate was materially affected due to omission on the part of the Returning Officer. The Court in the said case having found that such averments being missing in the Election petition, upheld the judgment of the High Court/Election Tribunal rejecting the Election petition at the threshold. The Court observed in para 14 to 21 as under:—

> **"**14. The requirement in an election petition as to the statement of material facts and the consequences of

lack of such disclosure with reference to Sections 81, 83 and 86 of the Act came up for consideration before a three-Judge Bench of this Court in *Samant N. Balkrishna* v. *George Fernandez* [(1969) 3 SCC 238]. Speaking for the three-Judge Bench, M. Hidayatullah, C.J., inter alia, laid down that:

> (*i*) Section 83 of the Act is mandatory and requires first a concise statement of material facts and then the fullest possible particulars;
>
> (*ii*) omission of even a single material fact leads to an incomplete cause of action and statement of claim becomes bad;
>
> (*iii*) the function of particulars is to present in full a picture of the cause of action and to make the opposite party understand the case he will have to meet;
>
> (*iv*) material facts and particulars are distinct matters— material facts will mention statements of fact and particulars will set out the names of persons with date, time and place; and
>
> (*v.*) in stating the material facts it will not do merely to quote the words of the section because then the efficacy of the material facts will be lost.

15. At this juncture, in order to appreciate the real object and purport of the *phrase* "material facts", particularly with reference to election law, it would be appropriate to notice the distinction between the phrases "material facts" as appearing in clause (*a*) and "particulars" as appearing in clause (*b*) of sub-section (1) of Section 83. As stated above, "material facts" are primary or basic facts which have to be pleaded by the petitioner to prove his cause of action and by the defendant to prove his defence. "Particulars", on the other hand, are details in support of the material facts, pleaded by the parties. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Unlike "material facts" which provide the basic foundation on which the entire edifice of the election petition is built, "particulars" are to be stated to ensure that the opposite party is not taken by surprise.

16. The distinction between "material facts" and "particulars" and their requirement in an election

petition was succinctly brought out by this Court in *Virender Nath Gautam* v. *Satpal Singh*[(2007) 3 SCC 617] wherein C.K. Thakker, J., stated thus : (SCC pp. 631-32, para 50)

> "*50*. There is distinction between *facta probanda* (the facts required to be proved i.e. material facts) and *facta probantia*(the facts by means of which they are proved i.e. particulars or evidence). It is settled law that pleadings must contain only *facta probanda* and not *facta probantia*. The material facts on which the party relies for his claim are called *facta probanda*and they must be stated in the pleadings. But the facts or facts by means of which *facta probanda* (material facts) are proved and which are in the nature of *facta probantia* (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue."

17. Now, before examining the rival submissions in the light of the aforestated legal position, it would be expedient to deal with another submission of the learned counsel for the appellant that the High Court should not have exercised its power either under Order 6 Rule 16 or Order 7 Rule 11 of the Code to reject the election petition at the threshold. The argument is twofold viz.:

> (*i*) that even if the election petition was liable to be dismissed ultimately, it should have been dismissed only after affording an opportunity to the election petitioner to adduce evidence in support of his allegation in the petition, and
>
> (*ii*) since Section 83 does not find a place in Section 86 of the Act, rejection of the petition at the threshold would amount to reading into sub-section (1) of Section 86 an additional ground.

In our opinion, both the contentions are misconceived and untenable.

18. Undoubtedly, by virtue of Section 87 of the Act, the provisions of the Code apply to the trial of an election petition and, therefore, in the absence of anything to the contrary in the Act, the court trying an election petition can act in exercise of its power under

the Code, including Order 6 Rule 16 and Order 7 Rule 11 of the Code. The object of both the provisions is to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy the judicial time of the courts. If that is so in matters pertaining to ordinary civil litigation, it must apply with greater vigour in election matters where the pendency of an election petition is likely to inhibit the elected representative of the people in the discharge of his public duties for which the electorate have reposed confidence in him. The submission, therefore, must fail.

19. Coming to the second limb of the argument viz. absence of Section 83 in Section 86 of the Act, which specifically provides for dismissal of an election petition which does not comply with certain provisions of the Act, in our view, the issue is no longer res integra. A similar plea was negatived by a three-Judge Bench of this Court in *Hardwari Lal* v. *Kanwal Singh* [(1972) 1 SCC 214], wherein speaking for the Bench, A.N. Ray, J. (as His Lordship then was) said : (SCC p. 221, para 23)

> "*23*. Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasised that Section 83 did not find place in Section 86. Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Civil Procedure Code, 1908, to the trial of suits. A suit which does not furnish cause of action can be dismissed."

20. The issue was again dealt with by this Court in *Azhar Hussain*v. *Rajiv Gandhi* [1986 Supp SCC 315]. Referring to earlier pronouncements of this Court in *Samant N. Balkrishna* [(1969) 3 SCC 238] and *Udhav Singh* v. *Madhav Rao Scindia* [(1977) 1 SCC 511] wherein it was observed that the omission of a single material fact would lead to incomplete cause of action and that an election petition without the material facts is not an election petition at all, the

Bench in *Azhar Hussain case* [1986 Supp SCC 315] held that all the facts which are essential to clothe the petition with complete cause of action must be pleaded and omission of even a single material fact would amount to disobedience of the mandate of Section 83(1)(*a*) of the Act and an election petition can be and must be dismissed if it suffers from any such vice.

21. We may now advert to the facts at hand to examine whether the election petition suffered from the vice of non-disclosure of material facts as stipulated in Section 83(1)(*a*) of the Act. As already stated the case of the election petitioner is confined to the alleged violation of Section 100(1)(*d*)(*iv*). For the sake of ready reference, the said provision is extracted below:

> "**100.** *Grounds for declaring election to be void*.—
>
> (1) Subject to the provisions of sub-section
>
> (2) if the High Court is of opinion—
>
> ***
>
> (*d*) that the result of the election, insofar as it concerns a returned candidate, has been materially affected—
>
> ***
>
> (*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."
>
> It is plain that in order to get an election declared as void under the said provision, the election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under the Act, the result of the election, insofar as it concerned the returned candidate, was materially affected."

28. The legal position enunciated in afore-stated cases may be summed up as under:—

> i. Section 83(1)(a) of RP Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on which the petitioner

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

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

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

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

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

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

14. After enunciating the legal position which would govern election petitions generally, the Court made the following pertinent observations:

> "**31.** Mere bald and vague allegations without any basis would not be sufficient compliance of the requirement of stating material facts in the Election Petition. As well settled not only positive statement of facts, even a positive statement of negative fact is also required to be stated, as it would be a material fact constituting a cause of action. The material facts which are primary and basic facts have to be pleaded by the Election petitioner in support of the case set up by him to show his cause of action and omission of a single material fact would lead to an incomplete cause of action, entitling the returned candidate to pray for dismissal of Election petition under Order VII Rule 11(a) CPC read with Section 83(1)(a) of the RP Act.
>
> **32.** It is also significant to note that an affidavit in Form 26 along with the nomination paper, is required to be furnished by the candidate as per Rule 4A of the said Rules read with Section 33 of the said Act. The Returning Officer is empowered either on the objections made to any nomination or on his own motion, to reject any nomination on the grounds mentioned in Section 36(2), including on the ground that there has been a failure to comply with any of the provisions of Section 33 of the Act. However, at the time of scrutiny of the nomination paper and the affidavit in the Form 26 furnished by the Appellant-returned candidate, neither any objection was raised, nor the Returning Officer had found any lapse or non-compliance of Section 33 or Rule 4A of the Rules. Assuming that the election petitioner did not have the opportunity to see the Form No. 26 filled in by the Appellant-returned candidate, when she submitted the same to the Returning Officer, and assuming that the Returning Officer had not properly scrutinized the nomination paper of the appellant, and assuming that the election petitioner had a right to question the same by filing the Election petition under Section 100(1)(d)(iv) of the said Act, then also there are no material facts stated in the petition constituting cause of action under Section 100(1)(d)(iv) of the RP Act. In absence of material facts constituting cause of action for filing Election petition under Section 100(1)(d)(iv) of the said Act, the Election petition is required to be dismissed under Order VII Rule 11(a) CPC read with Section 13(1)(a) of the RP Act.
>
> **33.** As elaborately discussed earlier, Section 83(1)(a) of RP Act mandates that an Election petition shall contain a concise statement of material facts on which petitioner relies, and which facts

> constitute a cause of action. Such facts would include positive statement of facts as also positive averment of negative fact. Omission of a singular fact would lead to incomplete cause of action. So far as the present petition is concerned, there is no averment made as to how there was non-compliance with provisions of the Constitution or of RP Act or of the Rules or Order made thereunder and as to how such non-compliance had materially affected the result of the election, so as to attract the ground under Section 100(1)(d)(iv) of the RP Act, for declaring the election to be void. The omission to state such vital and basic facts has rendered the petition liable to be dismissed under Order VII, Rule 11(a) CPC read with Section 83(i)(a) of the RP Act, 1951."

15. It was in the aforesaid backdrop that Mr. Narayan submitted that since the petitioner had failed to plead that charges had either been framed or cognizance taken, the ground of challenge as embodied in the petition in this respect is bound to fail. It was thus contended that the petition fails to disclose any cause of action under the head of non-disclosure of criminal antecedents and thus there is an evident failure to lay a foundation with respect to corrupt practice as defined under Section 123(2) of the Act or any violation of a statutory instrument referable to Section 100(1)(d)(iv) read along with Section 125(A).

16. It was then contended that even the verification of the aforenoted allegation pertaining to non-disclosure of criminal offences suffers from apparent mistakes and inconsistencies inasmuch as while paragraph 9 in the verification is asserted to be based on information received, in the affidavit which accompanies the petition, the petitioner avers that the contents of para 9 are as per his personal knowledge. It was then submitted that there is also an apparent failure on the part of the petitioner to disclose the source from which the information is stated to have been received. This, according to Mr. Narayan, clearly establishes that the petition fails to meet the standards judicially

recognized and which must imbue verification of election petitions. In support of the aforenoted submission Mr. Narayan relied upon the following observations as appearing in **LR Shivaramagowda & Ors. vs TM Chandrashekar (Dead) by LRs & Ors.**[14]**:**

> "**16.** If the above well-settled principles are applied in this case, there is no doubt whatever that the election petition suffers from a very serious defect of failure to set out material facts of the alleged corrupt practice. The defect invalidates the election petition in that regard and the petitioner ought not to have been permitted to adduce any evidence with reference to the same.
>
> **16A.** We have already extracted paras (*f*) and (*g*) of the affidavit filed along with the election petition. It does not disclose the source of information. Nor does it set out which part of the election petition was personally known to the petitioner and which part came to be known by him on information. Significantly, paras (*a*) to (*e*) of the affidavit state that the averments therein are true to his information. Para (*f*) is silent on this aspect of the matter. Para (*g*) refers to all the 42 paragraphs in the petition. The affidavit is not in conformity with the prescribed Form No. 25. Thus there is a failure to comply with Rule 94-A of the Conduct of Elections Rules. It is a very serious defect which has been overlooked by the High Court."

17. Mr. Narayan also cited for our consideration the following passages from the decision of the Supreme Court in **Hari Shankar Jain vs Sonia Gandhi**[15]:

> "**32.** In both the election petitions there are averments made touching the contents of the respondent's application filed for grant of certificate of citizenship so as to point out alleged infirmities in the application and the proceedings taken thereon but without disclosing any basis for making such averments. None of the petitioners states to have inspected or seen the file nor discloses the source of knowledge for making such averments. Clearly such allegations are bald, vague and baseless and cannot be put to trial.
>
> **33.** Without further burdening this judgment by dealing with each and every other averment made in the two election petitions, it would suffice to say that we have carefully read each of the two

[14] [(1999) 1 SCC 666]
[15] [(2001) 8 SCC 233

> election petitions and heard each of the two election petitioners (appellants) in very many details especially on the aspect of the election petitions suffering from the vice of not satisfying the mandatory requirement of pleading material facts as required by Section 82(1)(*a*) of RPA, 1951 and we are satisfied that the two election petitions do not satisfy the requirement statutorily enacted and judicially explained in umpteen number of decisions. The petitions are hopelessly vague and completely bald in the allegations made, most of which could not possibly be within the personal knowledge of the petitioners but still verified as "true" to their knowledge, without indicating the source. Such pleadings cannot amount to disclosing any cause of action and are required to be rejected/dismissed under Order 7 Rule 11 CPC."

18. Proceeding then to the issue of office of profit, Mr. Narayan submitted that there has been an abject failure on the part of the petitioner to even assert that the first respondent was holding an office of profit on the date of submission or scrutiny of nominations. According to learned counsel, the petitioner proceeds on an unsubstantiated presumption based on certain material appearing on the website of the DCPCR and assumes that the first respondent was a member of that body on 08 June 2022. According to Mr. Narayan the petitioner has thus failed to assert a material and crucial fact, namely, of the first respondent holding an office of profit on the date of filing of nomination.

19. It was then contended that even the allegation with respect to ITR for FY 2019-20 would not sustain or be liable to be countenanced in light of the following facts. It was firstly contended that the first respondent had filed ITRs' only for FYs 2018-19 and 2020-21 and had not filed any Return for FY 2019-20. According to Mr. Narayan, the requirement as per Form 26 is to disclose the total income for the last five FYs'. It was in the aforesaid backdrop that the petitioner is stated to have mentioned 'not applicable' at the relevant place of

the Form and insofar as it could have pertained to an ITR referable to FY 2019-20. More importantly Mr. Narayan contended, in order for the petitioner to succeed on this ground, it was incumbent upon him to have pleaded that although the applicant had filed a Return for FY 2019-20, he had failed to disclose the same in the nomination form. In any event, according to Mr. Narayan, such an allegation could have at best warranted the election being countermanded only under either Section 100(1)(d)(i) or Section 100(1)(d)(iv) of the Act. According to learned counsel, if the allegation were to be placed within the ambit of the former, that objection would have had to be raised initially before the Returning Officer who could have rejected the nomination form under Section 36(4) only if the defect were found to be of a *'substantial character'*. According to Mr. Narayan the meaning liable to be ascribed to the expression 'substantial character' is no longer res integra as would be evident from a reading of the following enunciation of the legal position in **Karikho Kri v. Nuney Tayang**[16]**:**

> **"40.** Having considered the issue, we are of the firm view that every defect in the nomination cannot straightaway be termed to be of such character as to render its acceptance improper and each case would have to turn on its own individual facts, insofar as that aspect is concerned. The case law on the subject also manifests that this Court has always drawn a distinction between non-disclosure of substantial issues as opposed to insubstantial issues, which may not impact one's candidature or the result of an election. The very fact that Section 36(4) of the Act of 1951 speaks of the Returning Officer not rejecting a nomination unless he is of the opinion that the defect is of a substantial nature demonstrates that this distinction must always be kept in mind and there is no absolute mandate that every non-disclosure, irrespective of its gravity and impact, would automatically amount to a defect of substantial nature, thereby materially affecting the result of the election or

[16] 2024 SCC OnLine SC 519

amounting to 'undue influence' so as to qualify as a corrupt practice.

41. The decision of this Court in *Kisan Shankar Kathore* (supra), also demonstrates this principle, as this Court undertook examination of several individual defects in the nomination of the returned candidate and found that some of them were actually insubstantial in character. This Court noted that two facets required consideration - Whether there is substantial compliance in disclosing requisite information in the affidavits filed along with the nomination and whether non-disclosure of information on identified aspects materially affected the result of the election. This Court observed, on facts, that non-disclosure of the electricity dues in that case was not a serious lapse, despite the fact that there were dues outstanding, as there was a *bonafide* dispute about the same. Similar was the observation in relation to non-disclosure of municipal dues, where there was a genuine dispute as to re-valuation and re-assessment for the purpose of tax assessment. Earlier, in *Sambhu Prasad Sharma* v. *Charandas Mahant*, this Court observed that the form of the nomination paper is not considered sacrosanct and what is to be seen is whether there is substantial compliance with the requirement as to form and every departure from the prescribed format cannot, therefore, be made a ground for the rejection of the nomination paper.

42. In the case on hand, it is not in dispute that there were no actual outstanding dues payable by Karikho Kri in relation to the government accommodation occupied by him earlier. His failure in disclosing the fact that he had occupied such accommodation and in filing the 'No Dues Certificate' in that regard, with his nomination form, cannot be said to be a defect of any real import. More so, as he did submit the relevant documents of 2014 after Nuney Tayang raised an objection before the Returning Officer. His explanation that he submitted such Certificates in the year 2014 when he stood for re-election as an MLA is logical and worthy of acceptance. The most important aspect to be noted is that there were no actual dues and the failure of Karikho Kri to disclose that he had been in occupation of government accommodation during the years 2009 to 2014 cannot be treated as a defect that is of substantial character so as to taint his nomination and render its acceptance improper."

20. Mr. Narayan in this respect also placed reliance on the judgment in **Kisan Shankar Kathore vs. Arun Dattatray Sawant**[17] wherein the following was held:

> "**38.** With these remarks we proceed to deal with the first aspect. Insofar as non-disclosure of the electricity dues is concerned, in the given facts of the case, we are of the opinion that it may not be a serious lapse. No doubt, the dues were outstanding, at the same time, there was a bona fide dispute about the outstanding dues in respect of the first electricity meter. It would have been better on the part of the appellant to give the information along with a note about the dispute, as suggested by the High Court, we still feel that when the appellant nurtured belief in a bona fide manner that because of the said dispute he is not to give the information about the outstanding amount, as it had not become "payable", this should not be treated as a material lapse. Likewise, as far as the second electricity meter is concerned, it was in the premises which was rented out to the tenants and the dues were payable by the tenants in the first instance. Again, in such circumstances, one can bona fide believe that the tenants would pay the outstanding amount. No doubt, if the tenants do not pay the amount the liability would have been that of the owner i.e. the appellant. However, at the time of filing the nomination, the appellant could not presume that the tenants would not pay the amount and, therefore, it had become his liability. Same is the position with regard to non-payment of a sum of Rs 1783 as outstanding municipal dues, where there was a genuine dispute as to revaluation and reassessment for the purpose of assessing the taxes was yet to be undertaken. Having said so, we may clarify that it would depend on the facts and circumstances of each case as to whether such a non-disclosure would amount to material lapse or not. We are, thus, clarifying that our aforesaid observation in the facts of the present case should not be treated as having general application."

According to Mr. Narayan the legal position as propounded in *Kisan Shankar* also finds resonance in the recent decision of the Supreme Court in *Kanimozhi Karunanidhi*. Reliance in this respect was placed specifically on paragraph 32 which has been extracted hereinabove.

[17] [(2014) 14 SCC 162]

21. Without prejudice to the above, Mr. Narayan then submitted that if the petitioner were to elect to place the allegation under Section 100(1)(d)(i), it was incumbent upon him to have proceeded further to plead and establish that the result of the election had come to be *'materially affected'*. The imperatives for such an averment being made, according to Mr. Narayan, stands duly elucidated in *LR Shivaramagowda* in the following words:

> "**18.** We shall now proceed to the second limb of the argument of the appellant's counsel. The High Court has held that the appellant had not maintained a true and correct account of expenditure incurred or authorised and the same amounted to corrupt practice. "Corrupt practices" have been set out in Section 123 of the Act. According to the first respondent, the appellant is guilty of a corrupt practice described in sub-section (6) of Section 123. Under that sub-section, the incurring or authorising of expenditure in contravention of Section 77 of the Act is a corrupt practice. Section 77 provides that every candidate at an election shall keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent and that the accounts shall contain such particulars as may be prescribed. Rule 86 of the Conduct of Elections Rules, 1961 sets out the particulars to be contained in the account of election expenses. Sub-sections (1) and (2) of Section 77 deal only with the maintenance of account. Sub-section (3) of Section 77 provides that the total of the election expenses referred to in sub-section (1) shall not exceed such amount as may be prescribed. Rule 90 of the Conduct of Elections Rules prescribes the maximum limit for any Assembly Constituency. In order to declare an election to be void, the grounds were set out in Section 100 of the Act. Sub-section (1)(*b*) of Section 100 relates to any corrupt practice 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. In order to bring a matter within the scope of sub-section (1)(*b*), the corrupt practice has to be one defined in Section 123. What is referred to in sub-section (6) of Section 123 as corrupt practice is only the incurring or authorising of expenditure in contravention of Section 77. Sub-section (6) of Section 123 does not take into its fold, the failure to maintain true and correct accounts. The language of sub-section (6) is so clear that the corrupt practice defined therein can relate only to sub-section (3) of Section 77, i.e., the incurring or authorising of expenditure in excess of the amount prescribed. It

> cannot by any stretch of imagination be said that non-compliance with Sections 77(1) and (2) would also fall within the scope of Section 123(6). Consequently, it cannot fall under Section 100(1)(*b*). The attempt here by the first respondent is to bring it within Section 100(1)(*d*)(*iv*). The essential requirement under that sub-section is that the result of the election insofar as it concerns the returned candidate has been materially affected. It is needless to point out that failure on the part of the returned candidate to maintain accounts as required by Sections 77(1) and (2) will in no case affect, and much less materially, the result of the election."

22. Our attention was also drawn to the following succinct observations appearing in the decision of the Supreme Court in **Ram Sukh vs Dinesh Aggarwal**[18]:

> "**24.** It needs little reiteration that for the purpose of Section 100(1)(*d*)(*iv*), it was necessary for the election petitioner to aver specifically in what manner the result of the election insofar as it concerned the first respondent was materially affected due to the said omission on the part of the Returning Officer. Unfortunately, such averment is missing in the election petition."

23. Addressing submissions lastly on the allegation of an over-estimation in the value of shares, Mr. Narayan submitted that declarations in respect of assets are liable to be appreciated bearing in mind the legal position which came to be enunciated by the Supreme Court in **Lok Prahari vs Union of India & Ors.**[19]. Reliance was specifically placed on the following passages from that decision:

> "**31.** The petitioner believes that certain further steps are required to be taken for improving the electoral system in order to strengthen democracy. According to the petitioner, the assets of some of the members of Parliament and the State Legislatures (hereafter referred to as "legislators") and their associates grew disproportionately to their known sources of income (hereafter referred to as "undue accretion of assets"). The petitioner made representations to bodies like the Central Board of Direct Taxes and the Election Commission of India requesting them to examine the matter and take appropriate remedial measures. It appears that

[18] [(2009) 10 SCC 541]
[19] [(2018) 4 SCC 699

the petitioner annexed a (sample) list of certain legislators whose assets increased more than 5 times after they got elected for the first time to the legislative bodies concerned. The petitioner believes that there is a need to periodically examine the sources of income of the legislators and their associates to ascertain whether there is an undue accretion of assets. In the representation to the Chairperson of CBDT dated 30-6-2015, the petitioner stated, inter alia,

> "… As a result, the wealth of politicians has been growing by leaps and bounds at the expense of "We, the People". Evidently, no improvement in system and governance is possible unless the role of money power in winning elections is curbed and the public representatives who misuse their position for amassing wealth are brought to book.
>
> … A list of re-elected MPs and MLAs whose assets are increased more than five times (500%) after the previous election, provided by the ADR, is annexed herewith. Detailed information about the total income shown in the last income tax return of these MPs/MLAs and their spouses and dependants is available in the affidavit in Form 26 filed with the nomination paper at the time of last election. These affidavits are available on the websites of the Election Commission of India as well as Chief Electoral Officers of the States. All that is required to be seen is as to whether the increase in assets is proportionate to the increase in income *from the known sources* in the intervening period. CBDT is best equipped to do this exercise as part of responsibility cast upon them under the law. After completion of this exercise necessary follow up can be taken to serve as a lesson to them and deterrent to others to desist from converting public service into private enterprise."

32. It is in this background, the instant petition came to be filed wherein the petitioner alleges:

> "That in view of the reluctance of Parliament to act on their 18-year-old resolution referred to above and the failure of the respondents to even respond, leave alone meaningfully effectuate implementation of the judgments of this Hon'ble Court in *Assn. for Democratic Reforms* [*Union of India* v. *Assn. for Democratic Reforms*, (2002) 5 SCC 294 : AIR 2002 SC 2112] , *PUCL* [*PUCL* v. *Union of India*, (2003) 4 SCC 399 : AIR 2003 SC 2363] , *Resurgence India* v. *Election Commission of India* [*Resurgence India* v. *Election Commission of India*, (2014) 14 SCC 189 : AIR 2014 SC 344] and *Krishnamoorthy* v. *Sivakumar* [*Krishnamoorthy* v. *Sivak*

umar, (2015) 3 SCC 467 : (2015) 2 SCC (Cri) 359 : AIR 2015 SC 1921] in this regard for restoring and maintaining the purity of our highest legislative bodies in accordance with the intentions of the Founding Fathers of the Constitution and the concern expressed by the Framers of the Representation of the People Act, 1951 intervention of this Hon'ble Court has become necessary in terms of the following observation of this Hon'ble Court in *Vineet Narain* [*Vineet Narain* v. *Union of India*, (1998) 1 SCC 226 : 1998 SCC (Cri) 307] , SCC para 49."

to justify their approaching this Court for the various reliefs sought in the writ petition. They are:

"1. Issue a writ, order or direction, in the nature of mandamus—

(1) to Respondents 1 and 2 to make necessary changes in Form 26 prescribed under Rule 4-A of the Conduct of Elections Rules, 1961 keeping in view the suggestion in Para 38 of the writ petition;

(2) to Respondent 1 to consider suitable amendment in the Representation of the People Act, 1951 to provide for rejection of nomination papers of the candidates and disqualification of MPs/MLAs/MLCs deliberately furnishing wrong information about their assets in the affidavit in Form 26 at the time of filing of the nomination;

(3) to Respondents 3 to 5 to—

(*i*) conduct inquiry/investigation into disproportionate increase in the assets of MPs/MLAs/MLCs included in list in Annexure P-6 to the writ petition,

(*ii*) have a permanent mechanism to take similar action in respect of MPs/MLAs/MLCs whose assets increase by more than 100% by the next election,

(*iii*) fast track corruption cases against MPs/MLAs/MLCs to ensure their disposal within one year.

2. Declare that non-disclosure of assets and sources of income of self, spouse and dependants by a candidate would amount to undue influence and thereby, corruption and as such election of such a candidate can be declared null and void under Section 100(1)(*b*) of the 1951 RP Act in terms of the judgment in *Krishnamoorthy* v. *Sivakumar* [*Krishnamoorthy* v. *Sivaku mar*, (2015) 3 SCC 467 : (2015) 2 SCC (Cri) 359 : AIR 2015 SC 1921].

3. Issue a writ, order or direction in the nature of mandamus to the respondents to consider amending Section 9-A of the Act to include contracts with appropriate Government and any public company by the Hindu undivided family/trust/partnership firm(s)/private company (companies) in which the candidate and his spouse and dependants have a share or interest.

4. Issue a writ, order or direction in the nature of mandamus to the respondents that pending amendment in Section 9-A of the Act, information about the contracts with appropriate Government and any public company by the candidate, his/her spouse and dependants directly or by Hindu undivided family/trust/partnership firm(s)/private company (companies) in which the candidate and his spouse and dependants have a share or interest shall also be provided in the affidavit in Form 26 prescribed under the Rules.

5. By way of IA No. 8 of 2016 the petitioner prayed that an amendment be made to the writ petition for the addition of the following prayers: As Form 26 prescribed under the Rules provides information only about possible disqualification on the basis of conviction in criminal cases, mentioned in Section 8 of the 1951 RP Act, it does not contain information on the provisions in Sections 8-A, 9, 9-A, 10, and 10-A regarding disqualification in Chapter III of the said Act which may render a candidate ineligible to contest. The petitioner therefore, prays that Form 26 may be further amended to provide the following information:

I. Whether the candidate was found guilty of a corrupt practice under Section 99 of the 1951 RP Act?

II. If yes, the decision of the President under Section 8-A(3) of the Act on the question of his disqualification, along with the date of the decision.

III. Whether the candidate was dismissed for corruption or for disloyalty while holding an office under the Government of India or the Government of any State?

IV. If yes, the decision of such dismissal as per the certificate issued by the EC under Section 9 of the Act.

V. Whether the candidate is a managing agent, manager or Secretary of any company or corporation (other than cooperative society) in the capital of which the appropriate Government has not less than twenty-five per cent share?

VI. Whether the candidate has lodged an account of election expenses in respect of the last election contested

by him within the time and in the manner required by or under the 1951 RP Act?"

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34. Undue accretion of assets of legislators and their associates is certainly a matter which should alarm the citizens and voters of any truly democratic society. Such phenomenon is a sure indicator of the beginning of a failing democracy. If left unattended it would inevitably lead to the destruction of democracy and pave the way for the rule of mafia. Democracies with higher levels of energy have already taken note of the problem and addressed it. Unfortunately, in our country, neither Parliament nor the Election Commission of India paid any attention to the problem so far. This Court in *ADR case* [*Union of India* v. *Assn. for Democratic Reforms*, (2002) 5 SCC 294 : AIR 2002 SC 2112] took note of the fact that in certain democratic countries, laws exist [United States of America enacted a law known as Ethics in Government Act, 1978 which was further amended in 1989. "Ethics Manual for Members, Employees and Officers of the US House of Representatives" indicates that such disclosure provisions were enacted to "monitor and deter possible conflicts of interests".] compelling legislators, officers and employees of the State to periodically make financial disclosure statements. But this Court did not issue any further direction in that regard. Hence the present writ petition.

35. Undue accumulation of wealth in the hands of any individual would not be conducive to the general welfare of the society. It is the political belief underlying the declaration of the Preamble of the Constitution that India should be a Socialistic Republic. Articles 38 and 39 of our Constitution declare that the State shall direct its policy towards securing that the ownership and control of material resources of the community are distributed so as to best subserve the common good and guaranteeing that the economic system does not result in the concentration of wealth and means of production to the common detriment. In our opinion, such declarations take within their sweep the requirement of taking appropriate measures to ensure that legislators and the associates do not take undue advantage of their constitutional status afforded by the membership of the legislature enabling the legislator to have access to the power of the State. Accumulation of wealth in the hands of elected representatives of the people without any known or by questionable sources of income paves way for the rule of mafia substituting the rule of law. In this regard, both the petitioner and the 2nd respondent are ad idem. The second respondent in its counter stated:

> "4. The increasing role of money power in elections is too well known and is one of the maladies which sometimes reduces the process of election into a mere farce by placing some privileged candidates with financial resources in a distinctly advantageous position as compared to other candidates. The result of such an election cannot reflect the true choice of the people. The system also sometimes deprives qualified and able persons of the prerogative to represent masses."

36. If assets of a legislator or his/her associates increase without bearing any relationship to their known sources of income, the only logical inference that can be drawn is that there is some abuse ["behind every great fortune lies a great crime" — Balzac] of the legislator's Constitutional Office. Something which should be fundamentally unacceptable in any civilised society and antithetical to a constitutional government. It is a phenomenon inconsistent with the principle of the Rule of Law and a universally accepted Code of Conduct expected of the holder of a public office in a constitutional democracy. Cromwell declared that such people are "enemies to all good governments". The Framers of the Constitution and Parliament too believed so. The Makers of the Constitution gave sufficient indication of that belief when they provided under Articles 102(1)(*a*) and 191(1)(*a*) that holding of any office of profit would disqualify a person either to become or continue to be a legislator. It is that belief which prompted Parliament to make the prevention of corruption laws.

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48. Manifold and undue accretion of assets of legislators or their associates by itself might be a good ground for disqualifying a person either to be a legislator or for seeking to get re-elected as a legislator. Statutes made by Parliament are silent in this regard. But Section 169(1) ["**169.** ***Power to make rules***.—(1) The Central Government may, after consulting the Election Commission, by notification in the Official Gazette, make rules for carrying out the purposes of this Act."] of the 1951 RP Act authorises the Central Government to make rules for carrying out the purposes of the Act. If the nation believes that those who are elected to its legislative bodies ought not to take undue advantage of their election to the legislature for accumulation of wealth by resorting to means, which are inconsistent with the letter and spirit of the Constitution and also the laws made by the legislature, appropriate prescriptions are required to be made for carrying out the purpose of the 1951 RP Act. The purpose of prescribing disqualifications is to preserve the purity of the electoral process. Purity of electoral process is fundamental to the survival of a healthy democracy. We do not see

any prohibition either under the Constitution or the laws made by Parliament disabling or stipulating that the Central Government should not make rules [in exercise of the powers conferred by Parliament under Section 169 of the 1951 RP Act read with Articles 102(1)(*e*) and 191(1)(*e*) of the Constitution] providing for such disqualification. On the other hand, Parliament under Section 169 of the 1951 RP Act authorised the Government of India to make rules for carrying out the purposes of the Act.

49. The Conduct of Elections Rules, 1961 is an example of subordinate legislation; enacted by the Central Government pursuant to the power given under Section 169(1) of the 1951 RP Act. ["**169. (1)** The Central Government may, after consulting the Election Commission, by notification in the Official Gazette, make rules for carrying out the purposes of this Act."] Section 169(2) authorises the making of rules for carrying out the purposes of the Act — "without prejudice to the generality of the power to make Rules". The power under Section 169 is very wide. The function of rule-making is to fill up the gaps in the working of a statute because no legislature can ever comprehend all possible situations which are required to be regulated by the statute. [Para 133 of *J.K. Industries Ltd.* v. *Union of India*, (2007) 13 SCC 673"*133.* It is well settled that, what is permitted by the concept of "delegation" is delegation of ancillary or subordinate legislative functions or *what is fictionally called as "power to full up the details*". The judgments of this Court have laid down that the legislature may, after laying down the legislative policy, confer discretion on administrative or executive agency like the Central Government *to work out details within the framework of the legislative policy laid down in the plenary enactment*."(emphasis in original)]

50. Logically, we see no difficulty in accepting the submission of the petitioner in the light of the mandate of the directive principles and the prescription of Parliament under the PC Act that such undue accretion of wealth is a culpable offence. There is a need to make appropriate provision declaring that the undue accretion of assets is a ground for disqualifying a legislator even without prosecuting the legislator for the offences under the PC Act. It is well settled that a given set of facts may in law give rise to both civil and criminal consequences. For example; in the context of employment under the State, a given set of facts can give rise to a prosecution for an offence and also simultaneously form the basis for disciplinary action under the relevant Rules governing the service of an employee.

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72. We have already taken note of (*i*) the fact that increase in the assets of the legislators and/or their associates disproportionate to

> the known sources of their respective incomes is, by compelling inference, a constitutionally impermissible conduct and may eventually constitute offences punishable under the PC Act, and (*ii*) "undue influence" within the meaning of Section 123 of the 1951 RP Act. In order to effectuate the constitutional and legal obligations of legislators and their associates, their assets and sources of income are required to be continuously monitored to maintain the purity of the electoral process and integrity of the democratic structure of this country. Justice Louis D. Brandeis, perceptively observed: "the most important political office is that of the private citizen".
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> xxxx xxxx xxxx
>
> **81.** For the very same logic as adopted by this Court in *Krishnamoorthy* [*Krishnamoorthy* v. *Sivakumar*, (2015) 3 SCC 467 : (2015) 2 SCC (Cri) 359 : AIR 2015 SC 1921] , we are also of the opinion that the non-disclosure of assets and sources of income of the candidates and their associates would constitute a corrupt practice falling under heading "undue influence" as defined under Section 123(2) of the 1951 RP Act. We, therefore, allow Prayer 2."

24. According to Mr. Narayan, a declaration in respect of assets is essentially required in light of the Supreme Court having identified a constitutional right of information which inheres in a voter coupled with the check that must be put in place in regard to unexplained or undisclosed accretion in income and assets of legislators and which may be attributable to impermissible conduct after taking over office. According to Mr. Narayan, the declaration of assets is only in aid of the aforesaid objective. Learned counsel submitted that undisclosed or unjustified accretion in income and assets or impermissible conduct while holding an office are factors which could constitute undue influence. However, according to learned counsel, a mere inadvertent over-estimation of one's movable assets cannot possibly constitute a corrupt practice.

25. In any event, according to Mr. Narayan, since the aforenoted allegation could be said to fall only within the ambit of clauses (i) to

(iv) of Section 100(1)(d) it was incumbent upon the petitioner to have pleaded how the aforesaid incorrect or inaccurate declaration could be said to have *'materially affected'* the result of the election. In the absence of any such allegation, according to learned counsel, the same is not liable to be tried at all and the petition is liable to be rejected on this score also.

26. Controverting the aforenoted contentions, Mr. Kurup, learned counsel appearing for the petitioner, submitted that it is well-settled that while trying an application purporting to be under Order VII Rule 11 of the Code the Court must confine its gaze to the petition alone and cannot try an action seeking rejection of a plaint or a petition based on any allegation contained in the written statement or any material in support thereof that may be brought on the record. This position, according to Mr. Kurup, though well settled, stands duly articulated in the decisions of the Supreme Court in **R.K. Roja vs. U.S. Rayudu & Anr**.[20] and **Saleem Bhai & Ors. vs. State of Maharashtra & Ors**.[21].

27. Mr. Kurup submitted that there was an evident concealment of details when the first respondent failed to divulge any details pertaining to FY 2019-20 and only referred to Returns filed for FYs 2018-19 and 2020-21. According to learned counsel, the election petition pleads all material facts pertaining to the first respondent holding an office of profit as would be evident from the clear assertion of the DCPCR's website until 08 June 2022 showing the said individual as being a member of that body and thus after the deadline which had been prescribed in the notification. According to Mr. Kurup holding an

[20] (2016) 14 SCC 275
[21] (2003) 1 SCC 557

office of profit even at the time of being chosen as an MLA is a disqualification contemplated under Article 191(1)(a) of the Constitution.

28. In any event, according to learned counsel, the question of whether the first respondent held an office of profit is a triable issue and which position in law was duly explained by the Supreme Court in **Ashraf Kokkur vs. K.V. Abdul Khader & Ors.**[22] in the following terms:

> "**21**. The pleadings, if taken as a whole, would clearly show that they constitute the material facts so as to pose a triable issue as to whether the first respondent is disqualified to contest election to the Kerala State Legislative Assembly while holding an office of profit under the State Government as Chairperson of the Kerala State Wakf Board. The question is not whether the Chairperson of the Kerala State Wakf Board is an office of profit or not. That is the issue to be tried. The question is whether the petitioner has raised such a question in the election petition. The disqualification under the Constitution of India being, holding an office of profit under the State Government. The petitioner has furnished all the material particulars in that regard. Therefore, the petition discloses a cause of action.
>
> **22.** After all, the inquiry under Order 7 Rule 11(*a*) CPC is only as to whether the facts as pleaded disclose a cause of action and not complete cause of action. The limited inquiry is only to see whether the petition should be thrown out at the threshold. In an election petition, the requirement under Section 83 of the RP Act is to provide a precise and concise statement of material facts. The expression "material facts" plainly means facts pertaining to the subject-matter and which are relied on by the election petitioner. If the party does not prove those facts, he fails at the trial [see *Philipps* v. *Philipps* [(1878) LR 4 QBD 127 (CA)] (QBD p. 133); *Mohan Rawale* v. *Damodar Tatyaba* [(1994) 2 SCC 392] (SCC p. 399, para 16)]."

29. Mr. Kurup submitted that even if the respondent no.1 alleges that he had resigned prior to the filing of his nomination, the same would be

[22] (2015) 1 SCC 129

a question which would have to be examined at trial. Reliance in this respect was placed on the following observations as appearing in the decision of the Supreme Court in **Raj Narain vs. Smt. Indira Nehru Gandhi & Anr.**[23]:

> "**21**. For the reasons mentioned above, we think that the learned Judge was not justified in striking out Issue 1. On the other hand, he should have reframed that issue, as mentioned earlier. Before leaving this question, it is necessary to mention one other fact. Yashpal Kapur appears to have tendered his resignation to the office he was holding on January 13, 1971. The certified copy of the notification produced shows that the President accepted his resignation on January 25, 1971, and the same was gazetted on February 6, 1971. The order of the President shows that he accepted Yashpal Kapur's resignation with effect from January 14, 1971. The learned trial Judge without examining the true effect of the President's order has abruptly come to the conclusion that Yashpal Kapur's resignation became effective as from January 14, 1971. This conclusion, in our opinion, requires re-examination. It is necessary to examine whether a Government servant's resignation can be accepted with effect from an earlier date. At any rate whether such an acceptance has any validity in considering a corrupt practice under Section 123(7). If such a course is permissible, it might enable the Government to defeat the mandate of Section 123(7). The question as to when a Government servant's resignation become effective came up for consideration by this Court in Raj Kumar v. Union of India [AIR 1963 SC 180 : (1968) 3 SCR 857]. Therein this Court ruled that when a public servant has invited by his letter of resignation the determination of his employment, his service normally stands terminated from the date on which the letter of resignation is accepted by the appropriate authority and, in the absence of any law or statutory rule governing the conditions of his service, to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Hence the question as to when Yashpal Kapur's resignation became effective will have to be examined with reference to his conditions of service. This examination having not been done, the conclusion of the learned trial Judge that it became effective on January 14, 1971, has to be ignored."

Mr. Kurup further contended that the factum of resignation would be a subject in the special knowledge of respondent no.1 and that

[23] [(1972) 3 SCC 850]

consequently the petitioner cannot be expected to have provided all particulars and details.

30. Insofar as non-disclosure of criminal antecedents is concerned, it was Mr. Kurup's submission that the first respondent is clearly mentioned in the complaint set out in the FIR and which itself had received widespread coverage in main stream media. It was further submitted that this Court in **Yogender Chandolia vs. Vishesh Ravi & Ors.**[24] has held that a candidate must disclose information with respect to a pending FIR also. Reliance in this respect was placed on the following passages from the judgment rendered by a learned Judge of the Court in *Yogender Chandolia*:

> "**38.** Therefore, what emerges, is that as per the law which obtains at present the candidate who files his nomination is required, inter alia, to disclose his educational qualifications as also his past convictions including fines imposed, imprisonments suffered, acquittals/discharge, if any, obtained.
>
> **39.** Disclosure qua the aforesaid is in addition to the disclosure of information qua pending criminal case where a person if convicted, can be sentenced to imprisonment for two years or more, albeit, where charge is framed or cognizance is taken by court of law, and information concerning the candidate's assets including those of the spouse and dependents as also liabilities, particularly, those related to the Government or public institutes.
>
> **40.** Therefore, the assertions made in the election petition have to be viewed in the broad framework of law, as enunciated by the Supreme Court in the aforementioned judgments.
>
> **41.** The petitioner, even according to the applicant Respondent 1, has adverted to the fact that FIR No. 64 of 2016 dated 30-1-2016 was filed with PS Paharganj, Delhi. Concededly, the said assertion is made in the election petition and a copy of the FIR has been placed on record by the petitioner.
>
> **42.** The argument advanced by Mr Srivastava that the relevant entry in the prescribed form required the applicant Respondent 1 to only disclose pending criminal cases, may not be a tenable

[24] [(2021) SCC Online Del 5540]

argument, given the enunciation of law by the Supreme Court in the aforementioned judgments. The candidate who files his/her nomination is required to disclose his past conviction/acquittal/discharge, if any, and punishment awarded by way of imprisonment and/or fine. Likewise, if prior to six months of filing nomination, if a candidate is accused of an offence punishable with imprisonment of two years or more, in which charge is framed or cognizance is taken by a court of law, the same needs to be disclosed.

43. That being said, one cannot quibble with the proposition that the registration of an FIR does not bring the matter adverted to therein, within the ambit of a pending criminal case. Mr Srivastava is right when he says that a criminal case is said to be pending, either when the Magistrate concerned has taken cognizance under Section 190 of the Code of Criminal Procedure, 1973, or a charge-sheet has been filed. Admittedly, the petitioner has neither made any assertion nor placed any document on record, in this behalf. However, this by itself may not help the applicant Respondent 1 in sustaining his defence that he has made full disclosure given the directions issued by the Supreme Court concerning the disclosure of information by a candidate while filing his nomination.

xxxx xxxx xxxx

50. A bare reading of sub-section (4) of Section 123 of the 1951 Act would show that, inter alia, corrupt practice as defined in the said provision includes publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true in relation to:

(*i*) The personal character or conduct of any candidate.

(*ii*) In relation to a candidature or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

51. The expression "in relation to candidature" should, in my view, include information concerning the educational qualification of a candidate, since the Supreme Court has unambiguously held that voters have the fundamental right to know the antecedents of the candidate. A false declaration made, qua educational qualification can be brought within the four corners of Section 123(4) of the 1951 Act."

31. It was lastly submitted by Mr. Kurup that respondent no.1 had clearly overstated the value of his investments and thus misleading voters by hiding details of income and that overstating one's net worth

would amount to a corrupt practice. Such acts, according to learned counsel, would clearly fall short of providing full and correct particulars and thus effect the free exercise of electoral rights, the importance of which was duly underlined by the Supreme Court in **Krishnamoorthy vs. Sivakumar & Ors.**[25]. Reliance in this regard was placed on the following passages of the report:

> "**58.** From the aforesaid authorities, the following principles can be culled out:
>
> **58.1.** The words "undue influence" are not to be understood or conferred a meaning in the context of English statutes.
>
> **58.2.** The Indian election law pays regard to the use of such influence having the tendency to bring about the result that has been contemplated in the clause.
>
> **58.3.** If an act which is calculated to interfere with the free exercise of electoral right, is the true and effective test whether or not a candidate is guilty of undue influence.
>
> **58.4.** The words "direct or indirect" used in the provision have their significance and they are to be applied bearing in mind the factual context.
>
> **58.5.** Canvassing by a Minister or an issue of a whip in the form of a request is permissible unless there is compulsion on the electorate to vote in the manner indicated.
>
> **58.6.** The structure of the provisions contained in Section 171-C IPC are to be kept in view while appreciating the expression "undue influence" used in Section 123(2) of the 1951 Act.
>
> **58.7.** The two provisos added to Section 123(2) do not take away the effect of the principal or main provision.
>
> **58.8.** Freedom in the exercise of the judgment which engulfs a voter's right, a free choice, in selecting the candidate whom he believes to be best fitted to represent the constituency, has to be given due weightage.
>
> **58.9.** There should never be tyranny over the mind which would put fetters and scuttle the free exercise of an electorate.
>
> **58.10.** The concept of undue influence applies at both the stages, namely, pre-voting and at the time of casting of vote.

[25] [(2015) 3 SCC 467]

58.11. "Undue influence" is not to be equated with "proper influence" and, therefore, legitimate canvassing is permissible in a democratic set up.

58.12. Free exercise of electoral right has a nexus with direct or indirect interference or attempt to interfere.

xxxx xxxx xxxx

82. Having stated about the need for vibrant and healthy democracy, we think it appropriate to refer to the distinction between disqualification to contest an election and the concept or conception of corrupt practice inhered in the words "undue influence". Section 8 of the 1951 Act stipulates that conviction under certain offences would disqualify a person for being a Member either of the House of Parliament or the Legislative Assembly or Legislative Council of a State. We repeat at the cost of repetition unless a person is disqualified under law to contest the election, he cannot be disqualified to contest. But the question is when an election petition is filed before an Election Tribunal or the High Court, as the case may be, questioning the election on the ground of practising corrupt practice by the elected candidate on the foundation that he has not fully disclosed the criminal cases pending against him, as required under the Act and the Rules and the affidavit that has been filed before the Returning Officer is false and reflects total suppression, whether such a ground would be sustainable on the foundation of undue influence. We may give an example at this stage. A candidate filing his nomination paper while giving information swears an affidavit and produces before the Returning Officer stating that he has been involved in a case under Section 354 IPC and does not say anything else though cognizance has been taken or charges have been framed for the offences under the Prevention of Corruption Act, 1988 or offences pertaining to rape, murder, dacoity, smuggling, land grabbing, local enactments like the Maharashtra Control of Organised Crime Act, 1999, U.P. Control of Goondas Act, 1970, embezzlement, attempt to murder or any other offence which may come within the compartment of serious or heinous offences or corruption or moral turpitude. It is apt to note here that when an FIR is filed a person filing a nomination paper may not be aware of lodgement of the FIR but when cognizance is taken or charge is framed, he is definitely aware of the said situation. It is within his special knowledge. If the offences are not disclosed in entirety, the electorate remain in total darkness about such information. It can be stated with certitude that this can definitely be called antecedents for the limited purpose, that is, disclosure of information to be chosen as a representative to an elected body.

83. The sanctity of the electoral process imperatively commands that each candidate owes and is under an obligation that a fair election is held. Undue influence should not be employed to enervate and shatter free exercise of choice and selection. No candidate is entitled to destroy the sacredness of election by indulging in undue influence. The basic concept of "undue influence" relating to an election is voluntary interference or attempt to interfere with the free exercise of electoral right. The voluntary act also encompasses attempts to interfere with the free exercise of the electoral right. This Court, as noticed earlier, has opined that legitimate canvassing would not amount to undue influence; and that there is a distinction between "undue influence" and "proper influence". The former is totally unacceptable as it impinges upon the voter's right to choose and affects the free exercise of the right to vote. At this juncture, we are obliged to say that this Court in certain decisions, as has been noticed earlier, laid down what would constitute "undue influence". The said pronouncements were before the recent decisions in *People's Union for Civil Liberties* [*People's Union for Civil Liberties* v. *Union of India*, (2003) 4 SCC 399] , *People's Union for Civil Liberties* [*People's Union for Civil Liberties* v. *Union of India*, (2013) 10 SCC 1 : (2013) 4 SCC (Civ) 587 : (2013) 3 SCC (Cri) 769 : (2014) 2 SCC (L&S) 648] and *Assn. for Democratic Reforms* [*Union of India* v. *Assn. for Democratic Reforms*, (2002) 5 SCC 294] and other authorities pertaining to corruption were delivered. That apart, the statutory provision contained in Sections 33, 33-A and Rules have been incorporated.

84. In this backdrop, we have to appreciate the spectrum of "undue influence". In *People's Union for Civil Liberties* [*People's Union for Civil Liberties* v. *Union of India*, (2003) 4 SCC 399] Venkatarama Reddi, J. has stated thus: (SCC pp. 460-61, para 97)

> "*97.* … Freedom of voting as distinct from right to vote is thus a species of freedom of expression and therefore carries with it the auxiliary and complementary rights such as right to secure information about the candidate which are conducive to the freedom."

85. In *Patangrao Kadam* v. *Prithviraj Sayajirao Yadav Deshmukh* [(2001) 3 SCC 594] , the Court observed that: (SCC p. 605, para 13)

> "*13.* … Clean, efficient and benevolent administration are the essential features of good governance which in turn depends upon persons of competency and good character."

86. From the aforesaid, it is luculent that free exercise of any electoral right is paramount. If there is any direct or indirect

interference or attempt to interfere on the part of the candidate, it amounts to undue influence. Free exercise of the electoral right after the recent pronouncements of this Court and the amendment of the provisions are to be perceived regard being had to the purity of election and probity in public life which have their hallowedness. A voter is entitled to have an informed choice. A voter who is not satisfied with any of the candidates, as has been held in *People's Union for Civil Liberties* [*People's Union for Civil Liberties* v. *Union of India*, (2013) 10 SCC 1 : (2013) 4 SCC (Civ) 587 : (2013) 3 SCC (Cri) 769 : (2014) 2 SCC (L&S) 648] , can opt not to vote for any candidate. The requirement of a disclosure, especially the criminal antecedents, enables a voter to have an informed and instructed choice. If a voter is denied of the acquaintance to the information and deprived of the condition to be apprised of the entire gamut of criminal antecedents relating to heinous or serious offences or offence of corruption or moral turpitude, the exercise of electoral right would not be an advised one. He will be exercising his franchisee with the misinformed mind. That apart, his fundamental right to know also gets nullified. The attempt has to be perceived as creating an impediment in the mind of a voter, who is expected to vote to make a free, informed and advised choice. The same is sought to be scuttled at the very commencement. It is well settled in law that election covers the entire process from the issuance of the notification till the declaration of the result. This position has been clearly settled in *Hari Vishnu Kamath* v. *Ahmad Ishaque* [AIR 1955 SC 233] , *Election Commission of India* v. *Shivaji* [(1988) 1 SCC 277] and *V.S. Achuthanandan* v. *P.J. Francis* [(1999) 3 SCC 737] . We have also culled out the principle that corrupt practice can take place prior to voting. The factum of non-disclosure of the requisite information as regards the criminal antecedents, as has been stated hereinabove is a stage prior to voting.

87. At this juncture, it will be appropriate to refer to certain instructions issued from time to time by the Election Commission of India. On 2-7-2012, the Election Commission of India has issued the following instructions:

> "To,
>
> The Chief Electoral Officer of all
>
> States and UTs.
>
> Sub.: Affidavit filed by candidates along with their nomination papers—dissemination thereof.
>
> Sir/Madam,
>
> Please refer to the Commission's instructions regarding dissemination of information in the affidavits filed by the

candidates along with the nomination papers. The Commission has, inter alia, directed that copies of affidavits should be displayed on the noticeboard of RO/ARO, and in cases where offices of RO and ARO are outside the boundary of the constituency concerned, copies of affidavits should be displayed in the premises of a prominent public office within the limits of the constituency. Further, affidavits of all contesting candidates are required to be uploaded on the website of the CEO.

2. There are complaints at times that in the absence of adequate publicity/awareness mechanism, the general public is not sensitized about the availability of the affidavits filed by the candidates with the result that the affidavits do not fully serve the intended purpose of enabling the electors to know the background of the candidates so as to enable them to make an informed choice of their representative.

3. The Commission has directed that, at every election, press release should be issued at the State and district level stating that affidavits of the candidates are available for the electors to see and clearly mentioning in the press release of the DEO place(s) at which copies of the affidavits have been displayed. The press release should also make it clear that the affidavits can also be viewed on the website, and the path to locate them on the website should also be mentioned.

4. Please bring these instructions to the notice of all DEOs, ROs and other authorities concerned for compliance in future elections.

Yours faithfully,

(K.F. Wilfred)

Principal Secretary"

88. In continuation, some further instructions were issued on 12-10-2012. The relevant paragraph is reproduced as follows:

"Now the Commission has reviewed the above instruction and has decided that the affidavit filed by all candidates, whether set up by the recognised political parties or unrecognised political parties or independents shall be put up on the website soon after the candidates file same and within 24 hours in any event. Even if any candidate withdraws his candidature, the affidavit already uploaded on the website shall not be removed."

89. At this juncture, it is also relevant to refer to the circular dated 12-6-2013 which deals with complaints/counter-affidavits filed

against the statements in the affidavits and dissemination thereof. It is condign to reproduce the relevant paragraph:

> "From the year 2004 onwards, the affidavits of candidates are being uploaded on the website of the CEO. However, the same is not done in respect of counter-affidavits filed, if any. The Commission has now decided that henceforth, all counter-affidavits (duly notarised) filed by any person against the statements in the affidavit filed by the candidate shall also be uploaded on the website along with the affidavit concerned. Such uploading should also be done within 24 hours of filing of the same."

90. Recently on 3-3-2014, the Commission has issued Circular No. 3/ER/2013/SDR Vol. V to the Chief Electoral Officers of all the States and Union Territories relating to affidavits filed by the candidates and dissemination thereof. We think it appropriate to reproduce the same in toto as it has immense significance:

> "As per the existing instructions of the Commission the affidavits filed by the candidates with the nomination paper are uploaded on the website of the CEO and full hard copies of affidavits are displayed on the noticeboard of the Returning Officer for dissemination of information. In case the office of the ARO is at a place different from the office of the RO, then a copy each of the affidavits is also displayed on the noticeboard in ARO's office. If the offices of both the RO and ARO are outside the territorial limits of the constituency, copies of the affidavits are to be displayed at a prominent public place within the constituency. Further, if any one seeks copies of the affidavits from the RO, copies are to be supplied.
>
> 2. There have been demands from different quarters seeking wider dissemination of the information declared in the affidavits filed by the contesting candidates, for easier access to the electors. Accordingly, views of the CEOs were sought in this regard. The responses received from the various Chief Electoral Officers have been considered by the Commission. The response received from CEOs showed that most of the CEOs are in favour of displaying the abstracts part of the affidavit as given in PART II of the affidavit in Form 26, in different public offices in the constituency.
>
> 3. The Commission after due consideration of the matter has decided that for wider dissemination of information, apart from existing mode of dissemination of information, as mentioned in Para I above, the Abstract Part II of the affidavit (given in Part B of Form 26) filed by the contesting candidates shall be displayed at specified additional public offices, such as (*1*) Collectorate, (*2*) Zila

Parishad Office, (*3*) SDM Office, (*4*) Panchayat Samiti Office (i.e. Block Office), (*5*) Office of municipal body or bodies in the constituency, (*6*) Tahsil/Taluka office, and (*7*) Panchayat Office. This shall be done within 5 days of the date of withdrawal of candidature. In the Collectorate and Zila Parishad Office, abstracts of affidavits of all candidates in all constituencies in the District shall be displayed. Abstracts of one constituency should be displayed together and not in a scattered manner. Similarly, if there is more than one constituency in a Sub-Division, all abstracts of all candidates in such constituencies shall be displayed in the SDM's office.

Kindly convey these directions to all DEOs, ROs, SDMs, etc. for elections to Lok Sabha Legislative Assembly and Legislative Council constituencies. These instructions will not apply to elections to Council of States and State Legislative Council by MLAs as only elected representatives are electors for these elections."

91. The purpose of referring to the instructions of the Election Commission is that the affidavit sworn by the candidate has to be put in public domain so that the electorate can know. If they know the half truth, as submits Mr Salve, it is more dangerous, for the electorate is denied of the information which is within the special knowledge of the candidate. When something within special knowledge is not disclosed, it tantamounts to fraud, as has been held in *S.P. Chengalvaraya Naidu* v. *Jagannath* [(1994) 1 SCC 1] . While filing the nomination form, if the requisite information, as has been highlighted by us, relating to criminal antecedents, is not given, indubitably, there is an attempt to suppress, effort to misguide and keep the people in dark. This attempt undeniably and undisputedly is undue influence and, therefore, amounts to corrupt practice. It is necessary to clarify here that if a candidate gives all the particulars and despite that he secures the votes that will be an informed, advised and free exercise of right by the electorate. That is why there is a distinction between a disqualification and the corrupt practice. In an election petition, the election petitioner is required to assert about the cases in which the successful candidate is involved as per the rules and how there has been non-disclosure in the affidavit. Once that is established, it would amount to corrupt practice. We repeat at the cost of repetition, it has to be determined in an election petition by the Election Tribunal.

92. Having held that, we are required to advert to the factual matrix at hand. As has been noted hereinbefore, the appellant was involved in 8 cases relating to embezzlement. The State Election Commission had issued a notification. The relevant part of the said notification reads as under:

"1. Every candidate at the time of filing his nomination paper for any election or casual election for electing a member or members or Chairperson or Chairpersons of any panchayat or municipality, shall furnish full and complete information in regard to all the five matters referred to in Para 5 of the Preamble, in an affidavit or declaration, as the case may be, in the format annexed hereto:

Provided that having regard to the difficulties in swearing an affidavit in a village, a candidate at the election to a Ward Member of Village Panchayat under the Tamil Nadu Panchayats Act, 1994 shall, instead of filing an affidavit, file before the Returning Officer a declaration in the same format annexed to this order.

2. The said affidavit by each candidate shall be duly sworn before a Magistrate of the First Class or a Notary Public or a Commissioner of Oaths appointed by the High Court of the State or before an officer competent for swearing an affidavit.

3. Non-furnishing of the affidavit or declaration, as the case may be, by any candidate shall be considered to be violation of this order and the nomination of the candidate concerned shall be liable for rejection by the Returning Officer at the time of scrutiny of nomination for such non-furnishing of the affidavit/declaration, as the case may be.

4. The information so furnished by each candidate in the aforesaid affidavit or declaration as the case may be, shall be disseminated by the respective Returning Officers by displaying a copy of the affidavit on the noticeboard of his office and also by making the copies thereof available to all other candidates on demand and to the representatives of the print and electronic media.

5. If any rival candidate furnished information to the contrary, by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with the affidavit of the candidate concerned in the manner directed above.

6. All the Returning Officers shall ensure that the copies of the affidavit/declaration, prescribed herein by the Tamil Nadu State Election Commission in the Annexure shall be delivered to the candidates along with the forms of nomination papers as part of the nomination papers."

93. We have also reproduced the information that is required to be given. Sections 259 and 260 of the 1994 Act makes the provisions contained under Section 123 of the 1951 Act applicable.

> Submission of Ms V. Mohana, learned counsel for the appellant is that there was no challenge on the ground of corrupt practice. As we find the election was sought to be assailed on many a ground. The factum of suppression of the cases relating to embezzlement has been established. Under these circumstances, there is no need to advert to the authorities which are cited by the learned counsel for the appellant that it has no material particulars and there was no ground for corrupt practice. In fact, in a way, it is there. The submission of the learned counsel for the appellant that he has passed up to Class X and, therefore, was not aware whether he had to give all the details as he was under the impression that all the cases were one case or off-shoots of the main case. The aforesaid submission is noted to be rejected. Therefore, we are of the view that the High Court is justified in declaring that the election as null and void on the ground of corrupt practice."

32. Having noticed the rival submissions, we preface our judgment by bearing in mind the fundamental precept underlying Order VII Rule 11 of the Code as requiring a court to examine the plaint or the petition allegations alone. It is the petition which must ex facie demonstrate a cause of action and thus warranting a case being proceeded further for trial. The provisions of Order VII Rule 11 would get attracted where a court finds that even if the allegations leveled in the petition were taken at their face value, they would give rise to no triable issue or question. Though the position in this respect is well settled, we deem it apposite to extract the following passages from a judgment rendered by the Court in **Akash Mohan Gupta v. Neera Burra**[26].

> "**30.** Having heard learned Senior Counsels for respective parties, the court at the outset notes that for the purposes of invoking its powers under Order 7 Rule 11 of the Code, it must at the outset and from a plain and composite reading of the plaint averments come to the conclusion that the suit either does not disclose a cause of action or appears to be barred by any law including the law of limitation which applies. The various judgments rendered on Order 7 Rule 11 of the Code have consistently taken the position that for the purposes of evaluating whether a plaint is liable to be rejected,

[26] 2022 SCC OnLine Del 4265

it is the plaint averments alone which are determinative and decisive.

31. A plea in support of invocation of Order 7 Rule 11 of the Code cannot be founded on either the defence which is proposed to be set up nor can it rest on the averments contained in the written statement or the evidence that may be proposed to be led. These principles were succinctly explained by the Supreme Court in *Church of Christ Charitable Trust and Educational Charitable Society* v. *Ponniamman Educational Trust*[*Church of Christ Charitable Trust and Educational Charitable Society* v. *Ponniamman Educational Trust*(2012) 8 SCC 706 : (2012) 4 SCC (Civ) 612] in the following terms : (SCC pp. 713-715, paras 10-12)

> "*10*. Since the appellant herein, as the first defendant before the trial Judge, filed application under Order 7 Rule 11 of the Code for rejection of the plaint on the ground that it does not show any cause of action against him, at the foremost, it is useful to refer the relevant provision:
>
> *Order 7 Rule 11CPC*
>
> '11. *Rejection of plaint*.— The plaint shall be rejected in the following cases—
>
> (*a*) where it does not disclose a cause of action;
>
> (*b*) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
>
> (*c*) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;
>
> (*d*) where the suit appears from the statement in the plaint to be barred by any law;
>
> (*e*) where it is not filed in duplicate; and
>
> (*f*) where the plaintiff fails to comply with the provisions of Rule 9:
>
> Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp paper shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp

paper, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.'

It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the court, insufficiently stamped and not rectified within the time fixed by the court, barred by any law, failed to enclose the required copies and the plaintiff fails to comply with the provisions of Rule 9, the court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order 7 Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial.

11. This position was explained by this Court in *Saleem Bhai* v. *State of Maharashtra* [*Saleem Bhai* v. *State of Maharashtra*(2003) 1 SCC 557] , in which, while considering Order 7 Rule 11 of the Code, it was held as under : (SCC p. 560, para 9)

> '*9*. A perusal of Order 7 Rule 11CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (*a*) and (*d*) of Rule 11 of Order 7CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.'

It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. *It is also clear that the averments in the written statement are immaterial and it is the duty of the court to scrutinise the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an*

application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in *Raptakos Brett & Co. Ltd.* v. *Ganesh Property* [*Raptakos Brett & Co. Ltd.* v. *Ganesh Property*(1998) 7 SCC 184] and *Mayar (H.K.) Ltd.* v. *Owners & Parties, Vessel M.V. Fortune Express* [*Mayar (H.K.) Ltd.* v. *Owners & Parties, Vessel M.V. Fortune Express*(2006) 3 SCC 100] .

12. It is also useful to refer the judgment in *T. Arivandandam* v. *T.V. Satyapal* [*T. Arivandandam* v. *T.V. Satyapal*(1977) 4 SCC 467] , wherein while considering the very same provision i.e. Order 7 Rule 11 and the duty of the trial court in considering such application, this Court has reminded the trial Judges with the following observation : (SCC p. 470, para 5)

> '*5*. … The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11CPC taking care to see that the ground mentioned therein is fulfilled. *And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage*. The Penal Code is also resourceful enough to meet such men, (Chapter XI) and must be triggered against them.'

It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order 7 Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer, J. in the above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order 10 of the Code."

32. It is the aforesaid principles which stand reaffirmed and reiterated in *Shakti Bhog Food Industries Ltd. case* [*Shakti Bhog Food Industries Ltd.* v. *Central Bank of India*(2020) 17 SCC 260 : (2021) 4 SCC (Civ) 286] . However, the issue whether a plaint fails to disclose a cause of action or an illusion of a cause of action has been sought to be created by clever draftsmanship, a suit is barred

> by law or is otherwise vexatious are ultimately questions which have to be decided based upon the facts of a particular case. The principles enunciated in the decisions of the Supreme Court noticed above, would ultimately have to be applied and tested against the facts of each particular case. The court thus proceeds to decide whether the plaint in the present case warrants rejection bearing in mind the precepts which govern the exercise of power under Order 7 Rule 11 of the Code."

33. On a comprehensive examination of the election petition, this Court notes that broad and sweeping allegations have been made by the election petitioner alleging corrupt practice, undue influence, as well as improper acceptance of a nomination. However, it becomes evident and apparent that there is a manifest failure on the part of the election petitioner having asserted that the improper acceptance of the nomination or a corrupt practice or non-compliance with the provisions of the Constitution, Act, Rules or Orders made thereunder had materially affected the results of the election.

34. Despite a repeated reading of the petition, we have been unable to discern any paragraph in which the petitioner may have even in passing alleged that the infractions alluded to in Section 100 of the Act had materially affected the result of the election. This aspect assumes significance in light of the exposition of the legal position in *Kanimozhi Karunanidhi* and which had underscored the imperatives of an individual assailing the result of an election being bound by law to assert and place all material particulars not just in support of an allegation of corrupt practice, undue influence, and a violation of the statutory provisions, but also providing all particulars of how the same may have materially impacted the result of the election.

35. For the purposes of examining the Order VII Rule 11 challenge, the Court firstly takes up the allegation which was made with respect to the involvement of the petitioner in the DCPCR and which was an allegation made in Para 9(k) of the petition. It becomes pertinent to note that the election petitioner alleges that respondent no.1 had failed to provide any information as to whether he was presently holding or for that matter had held the post of member in that body. There is an apparent and evident failure to allege that the respondent no.1 was holding a post of member on the relevant date. The allegation comprised in para 9(k) thus clearly fails to plead material facts.

36. The Court is also constrained to observe that mere information displayed on a web portal would not absolve the election petitioner from positively asserting that the respondent no.1 did in fact hold an office of profit on the relevant date and thus contravening Article 191 of the Constitution as well as Section 100(1)(a) of the Act. It becomes pertinent to note that Article 191(1)(a) of the Constitution uses the expression *"if he holds any office of profit"*. It was thus incumbent upon the election petitioner to positively aver that the respondent no.1 held an office of profit thus rendering him disqualified on the date of election. This allegation framed in mere inquisitorial terms cannot be countenanced.

37. The Court further deems it apposite to observe that it has evaluated the merits of this allegation without bearing into consideration the explanation which is proffered by respondent no.1 and who had averred and asserted that he had resigned from that office prior to the relevant date. Our conclusion in this respect rests solely on

the allegation as levelled in Para 9(k) and which clearly falls short of the requirements placed by Article 191 of the Constitution and Section 100(1)(a) of the Act. It is thus manifest that there has been an evident failure on the part of the election petitioner to allege and assert a material fact and which would warrant trial of the petition on that score.

38. The reliance placed by the learned counsel for the election petitioner on the decision in *Ashraf Kokkur* and *Raj Narain* is clearly misplaced. It becomes pertinent to note that *Ashraf Kokkur* was a decision where the election petitioner had specifically taken an objection to the effect that the respondent before the Supreme Court was holding an office of profit. This becomes evident from a reading of Para 4 of the report. It was in the aforesaid context that the Supreme Court had observed that whether the office of the Chairperson of the Kerala State Waqf Board was a profit or not was a question which would merit trial.

39. Contrary to what prevailed in *Ashraf Kokkur* and as noticed hereinabove, there is no allegation in the election petition that respondent no.1 held an office of profit on the date of scrutiny of nominations. The allegation in Para 9(k) in fact places a reverse burden on the first respondent to disclose whether he was holding or had held the office in question. The submissions of Mr. Narayan rendered in this context are thus liable to be accepted.

40. Similarly, the judgment of the Supreme Court in *Raj Narain* is also clearly distinguishable and has no application to the facts of the present case for the following reasons. *Raj Narain* dealt with the nature of pleadings on which a valid challenge to an election may be

entertained. Upon noticing the pleadings taken in that election petition, the Supreme Court had taken note of the gazzeted officer having allegedly submitted a resignation. It was in that context that it had in Para 21 observed that whether that resignation would have any impact on Section 123(7) was one which would require re-adjudication by the Trial Judge.

41. The Court notes that the assertion of respondent no.1 that he had resigned prior to filing his nomination is one which has neither been countenanced nor has constituted the basis on which the Court founds its opinion on this aspect. The issue is not whether the respondent no.1 had resigned prior to filing his nomination, but, and to the contrary, whether the election petitioner had categorically asserted that he held an office of profit on the date of scrutiny of nominations. The aspect of special knowledge which was alluded to is also concerned with the assertion of the respondent no.1 that he had resigned and clearly does not detract from the requirement of a specific allegation being made that the said respondent was holding an office of profit on the relevant date.

42. That then takes the Court to examine the allegations made with respect to ITR pertaining to FY 2019-20. The election petitioner vaguely alleges that respondent no.1 has "left out mentioning" ITR for FY 2019-20 even though disclosures have been made for FYs 2018-19 and 2020-21. In the considered opinion of the Court, Mr. Narayan rightly submitted that for the purposes of maintaining this ground, it was incumbent upon the election petitioner to have alleged that although the first respondent had filed a return for FY 2019-20, he had

failed to disclose or provide particulars in respect thereof in the nomination form. As rightly pointed out by Mr. Narayan, serial no.4 of Form 26 requires a candidate to disclose the total income shown in tax returns for the last five financial years. The first respondent asserts that it had not filed an ITR for FY 2019-20 and thus mentioned "not applicable" in the Form 26. Column IV of the details which are liable to be set out in tabular form requires the candidate to firstly declare the financial year for which the last income tax return has been filed. The respondent no. 1 duly discloses the same to be FY 2020-2021.

43. Column V of that tabular statement then requires the candidate to disclose the "Total income shown in Income Tax Return (in Rupees) for the last five Financial Years". The respondent no. 1 has made appropriate disclosures pertaining to FYs 2018-19 and 2020-21. However, for the balance three FYs, he had asserted "not applicable". Thus the requirements of the aforenoted column and the disclosures liable to be made in terms thereof would have been infracted provided the respondent no.1 had failed to mention the income disclosed in a return which had been filed. It is in the aforesaid backdrop that we find considerable merit in the submission of Mr. Narayan that the election petition would have merited further consideration provided details in respect of a return which had been duly filed had not been disclosed. The petition clearly falls short of the aforesaid fundamental requirement.

44. That then takes us to the aspect pertaining to the alleged overestimation of the value of shares. It becomes pertinent to firstly note that the election petitioner in Para 10(O) alleges that the

respondent no.1 had declared the value of its shareholding as INR 2,50,000/- even though the paid-up capital of Prastav Communications was stated to be INR 1,00,000/-. It was additionally alleged that the reserves and surpluses of the company were (-) 1,81,500/-. It is then alleged that the net worth of the company is also shown as (-) 1,81,500/-. It is in the aforesaid backdrop that it is alleged that there appeared to be no basis for the shares being ascribed the value of INR 2,50,000/-.

45. We had already in the preceding parts of this decision extracted the relevant passages from the decision of the Supreme Court in *Lok Prahari*. The principal requirement which the Supreme Court places upon a candidate is of a disclosure of assets and sources of income. The underlying motive for that declaration is to identify those candidates who may have obtained disproportionate assets or an unjustified accretion in income after assuming office. It is to fight the aforesaid menace pertaining to corruption and abuse of profit that a declaration of assets is now mandated.

46. It is not the case of the petitioner that the respondent no. 1 had devalued the holding of a particular asset or suppressed the value of an asset. The allegation to the contrary is of overestimation. The question which, however arises, is whether the same could constitute a corrupt practice under Section 123(2) of the Act and consequently giving rise to a potential ground of disqualification under Section 100(1)(d)(ii). The allegations leveled in the election petition and which are referable to clauses (i), (ii) and (iv) of Section 100(1)(d) clearly fail in the absence

of the election petitioner having alleged that the same had *'materially affected'* the result of the election.

47. That takes us to lastly deal with the issue of non-disclosure pertaining to the alleged criminal antecedents of the first respondent. As was noticed hereinabove, the allegation of the election petitioner in Para 9(h) was that respondent no.1 had failed to disclose details in respect of FIR No.0050/2020 under the Section relating to criminal antecedents in his nomination affidavit.

48. It had also been asserted in Para 9(e) that respondent no.1 had failed to comply with the requirement of making a public disclosure of in terms of Format C-1 and which had been brought into force by virtue of a directive of the ECI issued on 11 January 2022. The first respondent, on the other hand, had in the Order VII Rule 11 application asserted that since he had neither been named nor any charge sheet submitted or cognizance taken by the competent court, there was no requirement of disclosure being made with respect to the FIR in question.

49. As we read Para 9 of the petition, it becomes apparent that the election petitioner alleges a conspicuous failure on the part of the first respondent providing details with respect to FIR No. 0050/2020. This allegation stands embodied in Para 9(h) of the petition. It is in the aforesaid context that the petitioner appears to have alluded to the decision of the Supreme Court and the guidelines formulated in *Public Interest Foundation*.

50. While we had an occasion to notice the judgment rendered by the Supreme Court in *Public Interest Foundation* in the preceding parts of

this decision, this would perhaps been an appropriate juncture to briefly notice the significant judgments handed down by the Supreme Court in relation to electoral reforms, the imperative of disclosures with respect to criminal antecedents and assets and which had led to the ultimate introduction of Sections 33A and 33B in the Act.

51. In **Union of India vs. Association of Democratic Reforms**[27], the Supreme Court had made the following pertinent observations: -

> "**46.** To sum up the legal and constitutional position which emerges from the aforesaid discussion, it can be stated that:
>
> 1. The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word "elections" is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps.
>
> 2. The limitation on plenary character of power is when Parliament or State Legislature has made a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. In case where law is silent, Article 324 is a reservoir of power to act for the avowed purpose of having free and fair election. The Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the enacted laws or the rules. By issuing necessary directions, the Commission can fill the vacuum till there is legislation on the subject. In *Kanhiya Lal Omar case* [(1985) 4 SCC 628] the Court construed the expression "superintendence, direction and control" in Article 324(1) and held that a direction may mean an order issued to a particular individual or a precept which many may have to follow and it may be a specific or a general order and such phrase should be construed liberally empowering the Election Commission to issue such orders.
>
> 3. The word "elections" includes the entire process of election which consists of several stages and it embraces many steps, some of which may have an important bearing on the process of choosing a candidate. Fair election contemplates disclosure by the candidate

[27] (2002) 5 SCC 294

of his past including the assets held by him so as to give a proper choice to the candidate according to his thinking and opinion. As stated earlier, in *Common Cause case* [(1996) 2 SCC 752] the Court dealt with a contention that elections in the country are fought with the help of money power which is gathered from black sources and once elected to power, it becomes easy to collect tons of black money, which is used for retaining power and for re-election. If on an affidavit a candidate is required to disclose the assets held by him at the time of election, the voter can decide whether he could be re-elected even in case where he has collected tons of money.

Presuming, as contended by the learned Senior Counsel Mr Ashwani Kumar, that this condition may not be much effective for breaking a vicious circle which has polluted the basic democracy in the country as the amount would be unaccounted. Maybe true, still this would have its own effect as a step-in-aid and voters may not elect law-breakers as law-makers and some flowers of democracy may blossom.

4. To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.

5. The right to get information in democracy is recognised all throughout and it is a natural right flowing from the concept of democracy. At this stage, we would refer to Article 19(1) and (2) of the International Covenant on Civil and Political Rights, which is as under:

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

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

Articles 141 and 142of the Constitution to issue necessary directions to the executive to subserve public interest.

7. Under our Constitution, Article 19(1)(*a*) provides for freedom of speech and expression. Voter's speech or expression in case of election would include casting of votes, that is to say, **voter speaks out or expresses by casting vote**. For this purpose, information about the candidate to be selected is a must. Voter's (little man — citizen's) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. **The little man may think over before making his choice of electing law-breakers as law-makers**."

52. It ultimately proceeded to frame the following directions for the Election Commission to implement: -

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

(*1*) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past — if any, whether he is punished with imprisonment or fine.

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

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

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

(*5*) The educational qualifications of the candidate."

53. Sections 33A and 33B thereafter came to be notified on 28 December 2002 with retrospective effect from 24 August 2002. These provisions as introduced, fell for scrutiny of the Supreme Court in

People's Union for Civil Liberties (PUCL) v. Union of India[28]. *PUCL* laid a constitutional challenge to the validity of the Representation of the People (Amendment) Ordinance, 2002. By the time the writ petition under Article 32 of the Constitution came to be decided, the aforenoted Ordinance had come to be replaced by the Representation of the People (Third Amendment) Act, 2002. Sections 33A and 33B as promulgated in terms of the Ordinance stood bodily incorporated in the amending Act.

54. While dealing with the challenge which stood raised, MB Shah, J., speaking for the Bench of three learned Judges held as follows:-

> "**78.** What emerges from the above discussion can be summarised thus:
>
> (*A*) The legislature can remove the basis of a decision rendered by a competent court thereby rendering that decision ineffective but the legislature has no power to ask the instrumentalities of the State to disobey or disregard the decisions given by the court. A declaration that an order made by a court of law is void is normally a part of the judicial function. The legislature cannot declare that decision rendered by the Court is not binding or is of no effect.
>
> It is true that the legislature is entitled to change the law with retrospective effect which forms the basis of a judicial decision. This exercise of power is subject to constitutional provision, therefore, it cannot enact a law which is violative of fundamental right.
>
> (*B*) Section 33-B which provides that notwithstanding anything contained in the judgment of any court or directions issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information in respect of his election which is not required to be disclosed or furnished under the Act or the rules made thereunder, is on the face of it beyond the legislative competence, as this Court has held that the voter has a fundamental right under Article 19(1)(*a*) to know the

[28] (2003) 4 SCC 399

antecedents of a candidate for various reasons recorded in the earlier judgment as well as in this judgment.

The Amended Act does not wholly cover the directions issued by this Court. On the contrary, it provides that a candidate would not be bound to furnish certain information as directed by this Court.

(*C*) The judgment rendered by this Court in *Assn. for Democratic Reforms* [**Ed.**: See full text at 2003 Current Central Legislation, Pt. II, at p. 3] has attained finality, therefore, there is no question of interpreting constitutional provision which calls for reference under Article 145(3).

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

(*E*) It is established that fundamental rights themselves have no fixed content, most of them are empty vessels into which each generation must pour its content in the light of its experience. The attempt of the Court should be to expand the reach and ambit of the fundamental rights by process of judicial interpretation. During the last more than half a decade, it has been so done by this Court consistently. There cannot be any distinction between the fundamental rights mentioned in Chapter III of the Constitution and the declaration of such rights on the basis of the judgments rendered by this Court."

55. Reddi, J., while penning a concurring opinion with respect to the validity of Section 33B expressed disagreement on certain issues including with regard to the extent of disclosure that could be insisted upon by the Court. This becomes evident from a reading of Para 123 of the report and which is extracted hereinbelow: -

> "**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 judgement 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."

56. It becomes pertinent to recall that the original judgment in *Association for Democratic Reforms* had required the ECI to obtain

affidavits from candidates seeking election to the Parliament or the State Legislature disclosing therein whether they had been convicted/ acquitted/ discharged of any criminal offence in the past and also whether the candidate stood accused any pending case of an offence punishable with imprisonment for two years or more and in which charges had either been framed or cognizant taken.

57. Section 33A and which formed the subject matter of consideration of the Supreme Court in *PUCL* had continued to tie the disclosure requirements in respect of a candidate being accused of the commission of an offence punishment with imprisonment for two years or more to a charge having been framed by a court of competent jurisdiction. Reddi J., however, while construing Section 33A had raised a reservation with respect to the exclusion of pending cases in which cognizance had been taken from the ambit of disclosure.

58. When the matter with respect to disclosure in respect of criminal antecedents came up for consideration of the Supreme Court in *Public Interest Foundation*, the Supreme Court took note of the position taken by the Ministry of Law and Justice and which stood reproduced in paragraph 3 of its order dated 16 December 2013 and is extracted hereinbelow:-

> "3. The Note of the Ministry of Law and Justice has been placed on record which reads as follows:
>
> > "This issue of electoral reforms has been engaging the attention of the Government for quite some time. As far back as in 1972, the Joint Parliamentary Committee on amendment of Election Law had suggested that steps should be initiated so that the burden of legitimate election expenses, as are borne by a candidate or a political party, are progressively shifted to the State. Thereafter, a number of Committees have given their recommendations, some

> of which have already been implemented by way of amendments in the election and other related laws. The Law Commission of India had earlier presented the 170th Report on 'Reforms of the Election Laws' in 1999. The issue of State funding of elections was also considered by a Group of Ministers in July 2012 when the GoM agreed that the issue was required to be examined carefully in consultation with the Election Commission.
>
> 2. With a view to advancing the issue of free and fair elections and to progressively eliminate the use of money and muscle power in elections, the funding and conduct of elections, better management of electoral system, regulation of political parties, including the audit and finance thereof and review of the anti-defection laws are some of the issues on which detailed deliberations are required. This would require consultation with the Election Commission as well as with other stakeholders. Also, there is overwhelming public opinion in the country that undesirable elements with criminal antecedents be weeded out from the legislatures and Parliament.
>
> 3. The Law Commission of India may urgently consider the issue of electoral reforms in its entirety after taking into consideration the reports of various committees in the past, views of the Election Commission and the other stakeholders and may suggest comprehensive measures for changes in the law expeditiously, preferably within a period of three months towards achieving the purpose listed in Para 2 above."

59. It thereafter framed two further issues for the consideration of the Law Commission, as would be evident from Para 9 of that order which is extracted hereunder: -

> "9. We, accordingly, request the Law Commission to expedite consideration on the two issues, namely,
>
> (1) Whether disqualification should be triggered upon conviction as it exists today or upon framing of charges by the court or upon the presentation of the report by the investigating officer under Section 173 of the Code of Criminal Procedure (Issue 3.1(ii) of the Consultation Paper) and
>
> (2) Whether filing of false affidavits under Section 125-A of the Representation of the People Act, 1951 should be a ground of disqualification? and, if yes, what mode and mechanism needs to be provided for adjudication on the veracity of the affidavit? (Issue 3.5 of the Consultation Paper)."

60. In the final judgment which thereafter came to be rendered in **Public Interest Foundation v. Union of India**[29], the Supreme Court pertinently observed as follows: -

> "**59.** The eventual recommendations and proposed sections by the Law Commission read as follows:
>
> "1.***
>
> 2. The filing of the police report under Section 173 CrPC is not an appropriate stage to introduce electoral disqualifications owing to the lack of sufficient application of judicial mind at this stage.
>
> 3. The stage of framing of charges is based on adequate levels of judicial scrutiny, and disqualification at the stage of charging, if accompanied by substantial attendant legal safeguards to prevent misuse, has significant potential in curbing the spread of criminalisation of politics.
>
> 4. The following safeguards must be incorporated into the disqualification for framing of charges owing to potential for misuse, concern of lack of remedy for the accused and the sanctity of criminal jurisprudence:
>
> (*i*) Only offences which have a maximum punishment of five years or above ought to be included within the remit of this provision.
>
> (*ii*) Charges filed up to one year before the date of scrutiny of nominations for an election will not lead to disqualification.
>
> (*iii*) The disqualification will operate till an acquittal by the trial court, or for a period of six years, whichever is earlier.
>
> (*iv*) For charges framed against sitting MPs/MLAs, the trials must be expedited so that they are conducted on a day-to-day basis and concluded within a one-year period. If trial not concluded within a one-year period then one of the following consequences ought to ensue:
>
> - The MP/MLA may be disqualified at the expiry of the one-year period; or
>
> - The MP/MLA's right to vote in the House as a Member, remuneration and other perquisites attaching to their office shall be suspended at the expiry of the one-year period.

[29] (2019) 3 SCC 224

> 5. Disqualification in the above manner must apply retroactively as well. Persons with charges pending (punishable by five years or more) on the date of the law coming into effect must be disqualified from contesting future elections, unless such charges are framed less than one year before the date of scrutiny of nomination papers for elections or the person is a sitting MP/MLA at the time of enactment of the Act. Such disqualification must take place irrespective of when the charge was framed.
>
> ***
>
> 1. There is large-scale violation of the laws on candidate affidavits owing to lack of sufficient legal consequences. As a result, the following changes should be made to the RPA:
>
> (*i*) Introduce enhanced sentence of a minimum of two years under Section 125-A of the RPA Act on offence of filing false affidavits.
>
> (*ii*) Include conviction under Section 125-A as a ground of disqualification under Section 8(1) of the RPA.
>
> (*iii*) Include the offence of filing false affidavit as a corrupt practice under Section 123 of the RPA.
>
> 2. Since conviction under Section 125-A is necessary for disqualification under Section 8 to be triggered, the Supreme Court may be pleased to order that in all trials under Section 125-A, the relevant court conducts the trial on a day-to-day basis.
>
> 3. A gap of one week should be introduced between the last date for filing nomination papers and the date of scrutiny, to give adequate time for the filing of objections to nomination papers."

60. The aforesaid recommendations for proposed amendment never saw the light of the day in the form of a law enacted by a competent legislature but it vividly exhibits the concern of the society about the progressing trend of criminalisation in politics that has the proclivity and the propensity to send shivers down the spine of a constitutional democracy.

xxxx xxxx xxxx

108. In spite of what we have stated above, we do not intend to remain oblivious to the issue of criminalisation of politics. This Court has focused on various aspects of the said criminalisation and given directions from time to time which are meant to make the voters aware about the antecedents of the candidates who contest in the election.

xxxx xxxx xxxx

116. Keeping the aforesaid in view, we think it appropriate to issue the following directions which are in accord with the decisions of this Court:

116.1. Each contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the particulars as required therein.

116.2. It shall state, in bold letters, with regard to the criminal cases pending against the candidate.

116.3. If a candidate is contesting an election on the ticket of a particular party, he/she is required to inform the party about the criminal cases pending against him/her.

116.4. The political party concerned shall be obligated to put up on its website the aforesaid information pertaining to candidates having criminal antecedents.

116.5. The candidate as well as the political party concerned shall issue a declaration in the widely circulated newspapers in the locality about the antecedents of the candidate and also give wide publicity in the electronic media. When we say wide publicity, we mean that the same shall be done at least thrice after filing of the nomination papers."

61. Mr. Narayan, while taking us through the decisions rendered by the Supreme Court in *Association for Democratic Reforms*, *PUCL* as well as *Public Interest Foundation* had argued that the disclosure is liable to be made only if charges have been framed or cognizance taken by the competent court. It was in the aforesaid context that reliance had also been placed on the decision in *Satish Ukey* with it being urged that the said judgment was founded upon Form 26 as it exists presently. We, however, deem it necessary to take note of the following facts which emerge upon a consideration of the Act, the Rules as well as the various directives issued by the ECI in purported implementation of the directions of the Supreme Court in the decisions aforenoted.

62. Undisputedly, Section 33A of the Act requires a candidate to furnish information pertaining to any pending criminal case in which

he/she may be accused and in which a charge may have been framed by a court of competent jurisdiction. The candidate is also obliged to make an appropriate disclosure if he be convicted of an offence and sentenced to imprisonment for one year or more. Section 33A came to be incorporated in the statute book with retrospective effect from 24 August 2002 in purported implementation of the directions issued by the Supreme Court in *Association for Democratic Reform*.

63. When the matter relating to criminal antecedents and the right of the voter to be informed came up for consideration before the Supreme Court in *PUCL*, Reddi, J. and Dharmadhikari, J. while penning separate opinions had observed that there appeared to be no justification for disclosures not being required in respect of cases where cognizance may have been taken. This would be evident from a reading of the conclusions arrived at by Reddi J. in Para 123(6) and (9) which are extracted hereinbelow: -

> "**123.** Finally, the summary of my conclusions:
>
> (*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.
>
> (*9*) The Election Commission has to issue revised instructions to ensure implementation of Section 33-A subject to what is laid down in this judgement 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."

64. Dharmadhikari, J. expressed concurrence with the aforesaid conclusion as appearing in the opinion of Justice Reddy, as would be evident from Para 131 which is reproduced hereinbelow:-

> "131. With these words, I agree with Conclusions (A) to (E) in the opinion of Brother Shah, J. and Conclusions (1), (2), (4), (5), (6), (7) and (9) in the opinion of Brother P.V. Reddi, J."

65. It appears that in light of the aforesaid observations rendered in *PUCL*, ECI amended Form 26 and incorporated the disclosures required in terms of Para 5(1) and (2) and which was noticed by the Supreme Court in *Satish Ukey*. As was noticed by us in the preceding parts of this decision, while Para 5(1) required disclosures in respect of cases where charges may have been framed, Para 5(2) required details being set forth in respect of cases in which cognizance may have been taken by the Court. The aforesaid amendments were introduced by ECI by S.O. 1732 (E) dated 01 August 2012.

66. When the petition of *Public Interest Foundation* was taken up for final disposal and judgment rendered on 25 September 2018, the directions framed by the Supreme Court were to the following effect: -

> "**116.** Keeping the aforesaid in view, we think it appropriate to issue the following directions which are in accord with the decisions of this Court:
>
> **116.1.** Each contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the particulars as required therein.
>
> **116.2.** It shall state, in bold letters, with regard to the criminal cases pending against the candidate.
>
> **116.3.** If a candidate is contesting an election on the ticket of a particular party, he/she is required to inform the party about the criminal cases pending against him/her.
>
> **116.4.** The political party concerned shall be obligated to put up on its website the aforesaid information pertaining to candidates having criminal antecedents.

> **116.5.** The candidate as well as the political party concerned shall issue a declaration in the widely circulated newspapers in the locality about the antecedents of the candidate and also give wide publicity in the electronic media. When we say wide publicity, we mean that the same shall be done at least thrice after filing of the nomination papers."

67. As is manifest from the above, the ultimate direction required a disclosure being made by the candidate with regard to "criminal cases pending against the candidate". Following the rendering of that judgment, ECI on 10 October 2018, forwarded for publication the Conduct of Elections (Amendment) Rules, 2018. Clause 3 of that notification and which introduced amendments in Form 26 is extracted hereinbelow: -

> "3. In Form 26 of the principal rules:-
>
> (A) in PART A-
>
> (I) for paragraphs (5) and (6). the following paragraphs shall be substituted, namely:-
>
> "(5) Pending criminal cases.-
>
> (i) I declare that there is no pending criminal case against me.
>
> *(Tick this alternative, if there is no criminal case pending against the Candidate and write NOT APPLIC'ABLE against alternative (ii) below)*
>
> OR
>
> *(ii) The following criminal cases are pending against me:*
>
> *(If there are pending criminal cases against the candidate. then tick this alternative and score off alternative (i) above. and give details of all pending cases in the Table below)*

Table

	FIR No. with name and address of Police Station			

	concerned			
	Case No. with Name of the Court			
	Sections of concerned Acts/Codes involved *(give no. of the section, e.g. Section ……of IPC, etc.).*			
	Brief description of offence			
	Whether charges have been framed *(mention YES or NO)*			
	If answer against item (e) above is YES, then give the date on which charges were framed			
	Whether any Appeal/Application for revision has been filed against the proceedings (Mention YES or NO)			

(6) Cases of conviction.—

(i) I declare that I have not been convicted for any criminal offence.

(Tick this alternative, if the candidate has not been convicted and write NOT APPLICABLE against alternative (ii) below)

OR

(ii) I have been convicted for the offences mentioned below:

(If the candidate has been convicted, then tick this alternative and score off alternative (i) above, and give details in the Table given below)

Table

	Case No.			
	Name of the Court			
	Sections of Acts/Codes involved (give no. of the Section, e.g. Section …….of IPC, etc.)			
	Brief description of offence for which convicted			
	Dates of orders of conviction			
	Punishment imposed			
	Whether any Appeal has been filed against conviction order (Mention YES or No)			
	If answer to item (g) above is YES, give details and present status of appeal			

(6A) I *have* given full and up-to-date information to my political party about all

pending criminal cases against me and about all cases of conviction as given in paragraphs (5) and (6).

[candidates to whom this item is not applicable should clearly write NOT APPLICABLE IN VIEW OF ENTRIES IN PARAGRAPHS 5(i) and 6(0 above.]

Note:

1. Details should be entered clearly and legibly in BOLD letters

2. Details to be given separately for each case under different columns against each item.

3, Details should be given in reverse chronological order, i.e., the latest case to be mentioned first and backwards in the order of dates for the other cases.

4. *Additional sheet may be added if required.*

5, Candidate is responsible for supplying all information in compliance of the Ho''ble Supreme Court's judgment in W.P (C) No. 536 *of 2011,";*"

68. As is evident from a perusal of the amendments introduced in Para 5, the distinction between cases where charges may have been framed and cognizance taken was done away with and the candidate was now required to furnish details in respect of criminal cases that may be pending and those in which he/she may have been convicted. Additionally, and in a case where no criminal case was pending or a judgment of conviction rendered, the candidate was required to declare that there was no pending criminal case against him and that he/she had not been convicted of any criminal offence. The amended Form 26 was also circulated to all National and State Political Parties by ECI.

69. On 19 March 2019, amended Form 26 was also circulated by ECI to the Chief Electoral Officers of all State and Union Territories. The communication of 19 March 2019 specifically alluded to the judgment of the Supreme Court in *Public Interest Foundation*. Of

significance were the FAQs as circulated along with the aforenoted communication and since they would have some bearing on the issue which arises are extracted hereinbelow: -

> "**FAQs : Criminal Antecedents, if any, of a candidate and its publicity in pursuance of Hon'ble Supreme Court judgement dated 25-09-2018 in WP (Civil) No. 536 of 2011.**
>
> **Q.1 Which newspapers are to be chosen for publicity by such candidates?**
> Ans. As per direction in the judgement of the Hon'ble Supreme Court, the declaration is required to be published in newspapers with wide circulation in the area concerned. The CEO may get an indicative list of various newspapers which have wide circulation in the various district/different constituency areas in the State prepared by the State DIP. This indicative list should be shared with the political parties and the candidates.
>
> **Q.2 When has it to be publicised?**
> Ans. It has already been clearly mentioned in the Commission's letter dated 10-10-2018 that the publishing has to be during the period starting from the day following the last date for withdrawal of candidature and up to two days before the date of poll.
>
> **Q.3 There is no column for signature. Who will authenticate it?**
> Ans. The format contains column for mentioning the name and address of the candidate and the name of the political party on the top portion of the format. Thus, the name of the publisher will be clear from the declaration. There is no need for publishing the information with the signature of the publisher.
>
> **Q.4 What if someone publishes false information about criminal cases of another candidate?**
> Ans. There are already provisions to deal with any case of publication of false statement in relation to a candidate [Section 123 (4) of the RP Act, 51 and Section 171G of IPC].
>
> **Q.5 Which TV channel the declaration has to be publicised?**
> Ans. Please refer to the answer against Q.I above. It has to be done in TV channels which are available/popular in the areas concerned.
>
> **Q.6 What will be the font size and duration of publicity in TV?**
> Ans. Font size should be the standard size used for displaying printed material on TV. Its duration may not be less than 7 seconds.

Q.7 If a candidate does not have any criminal record, whether he/she is required to publicise?
Ans. No. Only those candidates who have either pending criminal cases or who have been convicted in the past are required to publish the declaration.

Q.8 Whether FIR cases have to be published by the concerned candidates and political parties?
Ans. Yes. Under the heading 'Case No. and status of case', details regarding FIRs, mentioned inItem-5 of Fonn-26, are required to be mentioned.

Q.9 If after filing nomination, status of criminal case changes, whether candidate can revise the details?
Ans. It will be open to the candidate concerned to notify the revised status to the Returning Officer and to publish that revised status only. If it is NIL, the candidate is not required to publish it.

Q. 10 Who will bear the expenses for publishing?
Ans. Expenses, if any, will be borne by the candidate and the political parties in respective cases.

Q. 11 Whether expenditure on this account will be accounted for?
Ans. Yes. This being an expenditure in connection with the election, if expense is incurred in this regard, the same will be counted for the purposes of election.

Q.12 Can RO act on any discrepancy in such details if pointed out?
Ans. No. RO is not supposed to enquire into correctness of declarations published by candidate/political parties.

Q.13 In what manner, such candidates will submit the information about publicity of cases to the DEO?
Ans. Separate formats have been specified by the Commission for the candidates and the political parties to submit report about publishing of the declaration. These are Fonnat-C-4 for candidates and Fonnat-C-5 for political parties.

Q.14 What happens if such candidates or such political parties do not publicise in the manner prescribed?
Ans. Such failure may be a ground for post-election action like election petition or contempt of Hon'ble Supreme Court.

Q.15 What are the Hours during which the information on TV channels is to be displayed?
Ans. Information should be published on TV channels during the period between 8AM and 1OPM.

Q.16 What will be the language in which the information is to be published on TV channels?
Ans. The information should be published in vernacular language or in English."

70. Of significance is Question 8 and which had posed the query whether FIR cases were also to be published. This was categorically answered in the affirmative. The last communication of the ECI which is of some relevance is dated 11 January 2022 and which was prompted by an order dated 10 August 2021 in **Brajesh Singh vs. Sunil Arora and Ors**[30] as well as the directions comprised in *Public Interest Foundation* and *Lok Prahari*.

71. In *Brajesh Singh*, the following additional directions had come to be issued to ECI: -

> "**77.** In furtherance of the directions issued by the Constitution Bench in *Public Interest Foundation* [*Public Interest Foundation* v. *Union of India*, (2019) 3 SCC 224] and our order dated 13-2-2020 [*Rambabu Singh Thakur*v. *Sunil Arora*, (2020) 3 SCC 733 : (2020) 2 SCC (Cri) 215] , in order to make the right of information of a voter more effective and meaningful, we find it necessary to issue the following further directions:
>
> **77.1.** Political parties are to publish information regarding criminal antecedents of candidates on the homepage of their websites, thus making it easier for the voter to get to the information that has to be supplied. It will also become necessary now to have on the homepage a caption which states "Candidates with Criminal Antecedents".
>
> **77.2.** The ECI is directed to create a dedicated mobile application containing information published by candidates regarding their

[30] (2021) 10 SCC 241

criminal antecedents, so that at one stroke, each voter gets such information on his/her mobile phone.

77.3. The ECI is directed to carry out an extensive awareness campaign to make every voter aware about his right to know and the availability of information regarding criminal antecedents of all contesting candidates. This shall be done across various platforms, including social media, websites, TV ads, prime time debates, pamphlets, etc. A fund must be created for this purpose within a period of 4 weeks into which fines for contempt of Court may be directed to be paid.

77.4. For the aforesaid purposes, the ECI is also directed to create a separate cell which will also monitor the required compliances so that this Court can be apprised promptly of non-compliance by any political party of the directions contained in this Court's orders, as fleshed out by the ECI, in instructions, letters and circulars issued in this behalf.

77.5. We clarify that the direction in para 4.4 of our order dated 13-2-2020 [*Rambabu Singh Thakur* v. *Sunil Arora*, (2020) 3 SCC 733 : (2020) 2 SCC (Cri) 215] be modified and it is clarified that the details which are required to be published, shall be published within 48 hours of the selection of the candidate and not prior to two weeks before the first date of filing of nominations.

77.6. We reiterate that if such a political party fails to submit such compliance report with the ECI, the ECI shall bring such non-compliance by the political party to the notice of this Court as being in contempt of this Court's orders/directions, which shall in future be viewed very seriously"

It was in furtherance of the aforesaid that ECI issued the communication of 11 January 2022 and introduced the requirement of Formats C-1 to C-8 being published by candidates as well as the concerned political parties.

72. It thus becomes apparent that the contention of the applicant that the format of Form 26, as was noticed by the Supreme Court in *Satish Ukey* is the one which presently holds the field, is factually incorrect. The distinction which is ex facie manifest between Form 26 as it existed post the amendments introduced in 2012 and the form in which it presently stands is the said declaration no longer making a distinction

between cases in which cognizance had been taken and those in which a chargesheet may have been submitted. Form 26 now speaks only of criminal cases which may be pending and those in which a judgment of conviction may have been passed. This vital distinction was not pointed out to the Court nor was a submission in this respect addressed on behalf of the election petitioner.

73. The question which consequently arises is whether the expression "pending criminal cases", as it appears in Para 5 of Form 26 absolved the first respondent from making a disclosure with respect to the FIR in question notwithstanding a chargesheet having not been filed or cognizance being taken by the competent court. It is pertinent to note that *Satish Ukey* was a judgment which although rendered on 01 October 2019 pertained to an election which was held in 2014 and at which time Form 26 stood in its avatar as amended vide S.O. 1732 (E) dated 01 August 2012. The decision in *Satish Ukey* did not have an occasion to consider Form 26 as it presently stands and post the amendments which had been introduced in 2018.

74. The aspect of declarations being made with respect to the FIR in question clearly gives rise to a triable issue and in any case appears to be an aspect of contestation worthy of a more elaborate consideration. Of equal significance are the following observations as they appear in *Yogender Chandolia*, and where a learned Judge of our Court had observed as follows: -

> "**41.** The petitioner, even according to the applicant Respondent 1, has adverted to the fact that FIR No. 64 of 2016 dated 30-1-2016 was filed with PS Paharganj, Delhi. Concededly, the said assertion is made in the election petition and a copy of the FIR has been placed on record by the petitioner.

> **42.** The argument advanced by Mr Srivastava that the relevant entry in the prescribed form required the applicant Respondent 1 to only disclose pending criminal cases, may not be a tenable argument, given the enunciation of law by the Supreme Court in the aforementioned judgments. The candidate who files his/her nomination is required to disclose his past conviction/acquittal/discharge, if any, and punishment awarded by way of imprisonment and/or fine. Likewise, if prior to six months of filing nomination, if a candidate is accused of an offence punishable with imprisonment of two years or more, in which charge is framed or cognizance is taken by a court of law, the same needs to be disclosed.
>
> **43.** That being said, one cannot quibble with the proposition that the registration of an FIR does not bring the matter adverted to therein, within the ambit of a pending criminal case. Mr Srivastava is right when he says that a criminal case is said to be pending, either when the Magistrate concerned has taken cognizance under Section 190 of the Code of Criminal Procedure, 1973, or a charge-sheet has been filed. Admittedly, the petitioner has neither made any assertion nor placed any document on record, in this behalf. However, this by itself may not help the applicant Respondent 1 in sustaining his defence that he has made full disclosure given the directions issued by the Supreme Court concerning the disclosure of information by a candidate while filing his nomination."

75. We also take note of a recent decision of the Karnataka High Court in **Sri. B G Uday vs. SRI. H G Prashanth**[31] wherein the following was observed:

> **"4.** Having heard the learned counsel for the parties and having perused the Petition Papers, this court is inclined to grant indulgence in the matter for the following reasons: (a) Section 125A of the 1951 Act has been brought on the Statute book by the Parliament vide Act 72 of 2002 w.e.f. 24.08.2002. It intends to bring in purity & transparency in the election process by providing necessary information to the public in general and the voters in particular so that the latter can make an 'informed decision' by knowing inter alia the criminal antecedents of the candidate in the electoral fray. The said provision reads as under:
>
> xxxx xxxx xxxx

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(b) Apparently, the above provision prescribes a punishment of imprisonment 'which may extend to six months, or with fine, or with both.' Thus, the discretion lies with the court awarding the punishment. This provision internalizes inter alia sub-section (2) of section 33A of the 1951 Act. Section 33A has the following text:

This provision is brought on the statute book in the light of Apex Court decision in ***UNION OF INDIA vs. ASSOCIATION OF DEMOCRATIC REFORMS, (2002) 5 SCC 249.*** The Parliament did not incorporate all the suggestions as directed in the said case, but provided for the disclosure of criminal antecedents as specified under the said provision by filing an affidavit in terms of prescription, that should accompany the Nomination Papers filed u/s 33(1). The object was that the citizens are made aware of the criminal antecedents of the candidates before they can exercise their freedom of choice by way of casting votes. Suffice it to say that as the statute now stands, every candidate is obligated to file an affidavit with relevant information with regard to their criminal antecedents, assets and liabilities and educational qualifications in terms of legal prescription, and nothing beyond. The said provision in a way to some extent enacts Right to Information as its very heading shows, in favour of the electors/voters, keeping it jural correlative that is the duty to disclose on the shoulders of the candidate in the electoral fray. In section 33A of 1951 Act, the Parliament in its wisdom has employed the expression, 'in a pending case in which a charge has been framed by the court of competent jurisdiction'. Only then this provision is attracted. However, admittedly no charge has been framed in the subject criminal case. However, that is not the end in all.

xxxx xxxx xxxx

(e) It hardly needs to be stated that 1951 Act is the parent statute which delegates power of rule making and accordingly, 1961 Rules have been promulgated; they are amended from time to time. As already mentioned above, Parliament in its legislative wisdom has restricted the duty to disclose inter alia criminal antecedents by enacting Section 33A byway of amendment to the 1951 Act qua the arguably wider duty arising from the observations in DEMOCRATIC REFORMS case supra,. Law relating to elections is what the

statute says, vide ***JYOTI BASU vs. DEBI GHOSAL, AIR 1982 SC 983***. Thus, the requirement of Rule 4A of 1961 Rules read with Form 26 has to be construed in the light of this amendment. Rules and the Forms prescribed by the Rules cannot be construed to widen the scope of duty beyond what the Parliament has intended. Therefore, it is not that every criminal case launched against a candidate either by way of registering the FIR or by moving the private complaint, has to be disclosed in the affidavit even when charges have not been framed or cognizance of the offences alleged has not been taken, as the case may be. This view gains support from the observations offering at paragraph 75 in ***KRISHNAMOORTHY vs. SIVAKUMAR, (2015) 3 SCC 467***, which reads as under:

> "**75.** On a perusal of the aforesaid format, it is clear as crystal that the details of certain categories of the offences in respect of which cognizance has been taken or charges have been framed must be given/furnished. This Rule is in consonance with Section 33-A of the 1951 Act. Section 33(1) envisages that information has to be given in accordance with the Rules. This is in addition to the information to be provided as per Sections 33(1)(i) and (ii). The affidavit that is required to be filed by the candidate stipulates mentioning of cases pending against the candidate in which charges have been framed by the Court for the offences punishable with imprisonment for two years or more and also the cases which are pending against him in which cognizance has been taken by the court other than the cases which have been mentioned in Clause (5)(i) of Form 26. Apart from the aforesaid, Clause (6) of Form 26 deals with conviction."

In the light of discussion above, one can safely hold that the impugned orders do not accord with the law as obtaining and therefore, are liable to be voided.

(f) The vehement submission of learned counsel for the respondent-complainant that regardless of the stage, disclosure of the pendency of criminal case has to be made in the affidavit accompanying the Nomination Papers is structured keeping in mind the text of Form 26 divorcing the provisions of section 33A of 1951 Act. Such a sectarian view of law does not augur well to the criminal jurisprudence. He was stressing on the observations of the Apex Court in DEMOCRATIC REFORMS supra, in support his contention. The source of law of election, this court reiterates, is what the

> statute says. It is always open to the Parliament/Legislature to dilute the requirement of law declared by the Apex Court, by removing the substratum on which such declaration is founded. That has been done by the Parliament by enacting section 33A. As long as the said provision remains on the statute book, its intent & policy content cannot be ignored, while construing the subordinate legislation such as Rule 4A which internalizes Form 26. The courts below were wrongly swayed away by the literal content of Form 26, without adverting to the substantive provisions of section 33A of the parent Act. This approach is unacceptable, to say the least. ”

76. In order to succeed in an action seeking rejection of a plaint and invoking the Court's jurisdiction under Order VII Rule 11, an applicant would be entitled to succeed provided on an ex facie examination of the plaint allegations, the Court were to come to the irresistible conclusion that no cause of action is discernible and that the petition must inevitably fail. The circumstances must exhibit an inexorable position and which would leave the Court convinced that the petition does not merit trial.

77. That is clearly not the position which emerges bearing in mind the discussion which appears hereinabove. In the considered opinion of the Court, the amendments in Form 26 which came about between 2012 and 2018 clearly give rise to triable issues on which parties would have to be heard. This more so since the distinguishing features that have been discerned did not form subject matter of the oral submissions which were addressed. In fact, and as was pointed out earlier, neither side had even brought those amendments to the notice of the Court. Much of the material which has been noticed in the preceding paragraphs has been independently collated by the Court and the ends of justice would thus warrant parties being placed on due notice lest prejudice be caused to either side.

78. The Court is also conscious of the indubitable position in law that a petition cannot be rejected in part. Consequently, although we have found in favor of the applicant insofar as the office of profit, disclosure of ITR and overestimation of shareholding questions are concerned, we, in light of what has been noted in the context of Form 26, the question of whether a disclosure with respect to a FIR is required in law, the meaning to be ascribed to the expression "pending criminal case" are issues which are clearly triable. We consequently find no justification to reject the election petition at this stage and on that score.

79. The application shall consequently stand dismissed. All rights and contentions of respective parties are kept open.

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80. The election petition be now posted on 22.07.2024 before the concerned Roster Bench subject to appropriate orders being obtained from Hon'ble the Acting Chief Justice.

YASHWANT VARMA, J.

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