2025 INSC 992

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 13015 OF 2024

AJMERA SHYAM ...APPELLANT(S)

VERSUS

SMT. KOVA LAXMI & ORS. ...RESPONDENT(S)

J U D G M E N T

NONGMEIKAPAM KOTISWAR SINGH, J.

1. The present civil appeal has been filed under Section 116A of the Representation of People Act, 1951 (hereinafter referred to as the "*Act*"), against the impugned judgment and order dated 25.10.2024 passed by the High Court for the State of Telangana at Hyderabad, whereby, the High Court dismissed the Election Petition No. 10/2024 preferred by the Appellant herein, Ajmera Shyam, the election petitioner.

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2. The issue which arose for consideration in the said election petition, and which has been canvassed before us is whether non-disclosure of the income as shown in the income tax return for four financial years out of the last five financial years in the Form 26 Affidavit, while submitting the nomination paper by the Respondent No.1, Smt. Kova Laxmi, the returned candidate and acceptance of the said nomination by the Returning Officer would amount to improper acceptance of her nomination and/or whether such non-disclosure would amount to a corrupt practice by the returned candidate. Further, whether such non-disclosure would amount to non-compliance of the provisions of the Representation of the People Act, 1951 and rules or orders made under the said Act, thus, rendering the election of Respondent No. 1 liable to be declared void under Section 100 of the Act, at the instance of the unsuccessful candidate being the Appellant herein.

3. The High Court rejected the election petitioner's arguments, holding that the omission of income details in the income tax return for four out of the last five financial years is not of a significant nature. Based on this, the election of Respondent No. 1 cannot be declared null and void under Section 100 of the Act. It was also concluded that such non-disclosure does not constitute a corrupt practice that

would have materially affected the outcome of the election. Furthermore, the High Court found that Respondent No. 1 did not deliberately suppress information, and therefore, there is no corrupt practice or undue influence on the voters. Accordingly, the High Court dismissed the election petition, and the election petitioner is now before us, challenging the said dismissal.

4. FACTS IN BRIEF:

4.1 Before we proceed to examine the issue(s), it would be apposite to briefly refer to the facts of the case as can be culled out from the pleadings.

4.2 Prior to the impugned election of 2023, Respondent No.1 was a member of the Legislative Assembly for the State of Telangana from the Asifabad Assembly Constituency (ST) (hereinafter referred to as the "Constituency") for the period 2014-2018. Subsequently, in 2019, Respondent No.1 contested the elections to the Zilla Parishad Territorial Constituency (ZPTC) and was elected as a ZPTC Member on 02.05.2019. She was then elected as the Chairperson of Kumuram Bheem Zilla Parishad, Asifabad, and continued in that role until 03.12.2023, before being re-elected as an MLA, which is the subject matter of this challenge.

4.3 Upon notification of the General Election to the Telangana Legislative Assembly by the Election Commission of India in 2023, Respondent No.1 submitted her nomination along with the required Form 26 Affidavit on 09.11.2023, as a nominee of the Bharat Rashtra Samithi (BRS) Party. There were a total of 17 candidates contesting from the constituency, including the Appellant (as a nominee of the Indian National Congress) and Respondent No.1.

4.4 The polling was held on 30.11.2023, and the result of the said election was declared on 03.12.2023. The Respondent No.1 had secured 83,036 votes, whereas the Appellant secured 60,238 votes. Thus, the Respondent No.1 was declared as the returned candidate by a margin of 22,798 votes.

4.5 Thereafter, the Appellant filed the Election Petition No.10 of 2024 before the High Court of Telangana, challenging the election of the Respondent No. 1 as void, and consequently, to declare the Appellant election petitioner as the elected candidate from the said Constituency.

5. The Appellant challenged the election of the Respondent No.1 by raising the following pleas:

(i) *Firstly*, the Respondent No.1, while submitting the Form 26 Affidavit, at the time of filing the nomination paper, did

not disclose her income shown in the income tax returns for four completed financial years (as of 31st March), i.e., F.Y. 2018-2019 to F.Y. 2021-2022, out of the last five financial years, i.e., F.Y. 2018-2019 to F.Y. 2022-2023, as required to be furnished in the Form 26 Affidavit under Rule 4A of the Conduct of Election Rules, 1961 (hereinafter referred to as the "Rules"). Instead, the Respondent No.1 mentioned her income as "Nil" for the said period in her Form 26 Affidavit.

It was alleged that Respondent No. 1 failed to disclose the income she was earning from her monthly honorarium of Rs. 1,00,000/- while serving as the Chairperson of Zila Parishad, Kumuram Bheem, Asifabad District.

It was further contended that the Respondent No.1 did not disclose the Ex-Legislator's Pension received by her during the relevant financial years on account of her being an MLA from the same constituency during 2014-2018.

Thus, the nomination form of the Respondent No.1 was improperly

accepted by the Returning Officer, which materially affected the election of the returned candidate, being the Respondent No.1, which would render her election as void.

(ii) *Secondly,* due to the non-disclosure of income for the four financial years viz., honorarium, and pension, the Respondent No.1 engaged in a corrupt practice as contemplated under Section 123(2) of the Act, making her election void.

(iii) *Thirdly*, since the Respondent No.1 concealed the relevant information required to be mentioned in the Form 26 Affidavit, it amounts to non-compliance with the provisions of the Act, in particular Sections 33, 33A, and 34 of the Act and the rules framed thereunder, rendering her election liable to be declared as void.

6. RESPONDENT NO.1'S CASE:

6.1 The Respondent No.1 contested the election petition by filing her written statement/counter-affidavit.

6.2 Although Respondent No.1 did not specifically deny the allegation that she did not provide information regarding her income for four financial years, she argued that she disclosed all her assets, both immovable and movable, along with PAN details, occupation, and the source of her income. Therefore, such non-disclosure did not constitute a material defect, as it was not of a substantial character. It was contended that her nomination was not improperly accepted and did not materially affect the outcome of her election, thus, not warranting voiding of her election.

6.3 It was also argued that, since she had submitted her latest income tax returns for the financial year 2022-23 along with her PAN details, there was no deliberate suppression to mislead voters, and therefore, it does not constitute a corrupt practice. It was also mentioned that Respondent No. 1 was elected as a member of the Legislative Assembly in 2014 from the same constituency and served as an MLA until 2018.

6.4 She contended that she had also disclosed her source of income through the honorarium she was receiving as the Chairperson of the Zilla Parishad of Kumuram Bheem, Asifabad District.

6.5 The Respondent No.1 contended that after her election as the Chairperson of the Zilla Parishad, Kumuram Bheem, Asifabad District, from 04.07.2019 to 03.12.2023, she did not receive the Ex-MLA pension as alleged in the election petition. To support this contention, Respondent No.1 submitted a Non-drawal Certificate dated 20.06.2024, issued by the Assistant Secretary to the State Legislature.

6.6 It was argued that the nomination paper of Respondent No.1 was properly scrutinised by the Returning Officer, and the election petitioner never raised any objection regarding the alleged defects or non-disclosure of information in Respondent No.1's nomination paper before the Returning Officer at the time of scrutiny, which was conducted in the presence of all the candidates and their agents. Hence, her nomination was accepted.

It was, thus, argued that since the nomination of Respondent No.1 was accepted, as no defect was found or pointed out by the election petitioner during the scrutiny, the election petitioner is now estopped from raising this issue in the election petition.

6.7 It was further argued by the Respondent No.1 that the election petition is not maintainable because it does not demonstrate how the outcome of Respondent No.1's election was materially affected by

the alleged non-disclosure of the relevant information.

It was also argued that the election petitioner failed to comply with the provisions of Section 83 of the Act read with Rule 94A of the Rules, which states that when the election petition alleges any corrupt practice, it must be supported by an affidavit in the format of Form 25, providing details of such corrupt practice.

7. THE ISSUE(S) BEFORE US:

The primary issues that call for our consideration are,

Firstly, whether the non-mentioning of the income shown in the income tax return for four financial years in the Form 26 Affidavit and its portrayal as "Nil" would amount to non-disclosure, thereby rendering the acceptance of the nomination of Respondent No.1 as improper and making her election liable to be declared void under Section 100(1)(d)(i) of the Act, and,

Secondly, whether such non-disclosure constitutes a corrupt practice, rendering her election liable to be declared void under Section 100(1)(b) of the Act, and,

Thirdly, does such non-disclosure amount to a violation of Rule 4A of the Rules, despite mentioning the assets and liabilities, source of income, and profession, thereby materially affecting the election of Respondent No. 1 and warranting the voiding of her election under Section 100(1)(d)(iv) of the Act?

The secondary issues that arise are whether the Respondent No. 1 had fully disclosed her income in the form of honorarium she was drawing and whether she was receiving ex-MLA pension during the relevant period.

8. THE LEGAL FRAMEWORK ON THE RIGHT TO INFORMATION:

8.1 Having identified the core issues, we will now focus our attention on the relevant law, which will facilitate resolving the dispute at hand.

8.2 As our country became free and independent, we took a solemn resolution to make this country a democratic republic, as encapsulated in the Preamble to the Constitution of India. Democracy, in its essence, means a society governed by the elected representatives of the people based on universal adult franchise in a free and transparent manner. Thus, free and fair elections go to the root of a functional democracy. Because of the great significance attached to it, the subject of election

finds a special place in the Constitution of India under Part XV which lays down the constitutional mechanism under a constitutional body viz., the Election Commission of India as provided under Article 324 of the Constitution, has been assigned the unique responsibility of superintending, directing and controlling, amongst others, the conduct of all elections to the Parliament and the Legislature of every State and of elections to the office of the President and Vice President.

Article 327 of the Constitution empowers the Parliament to make laws covering all aspects related to elections for the Houses of Parliament and the State Legislatures. Based on this Article, the Parliament has passed the Representation of the People Act, 1951, which explicitly details the conduct of elections to the Parliament and State Legislatures, the qualifications and disqualifications for membership, the corrupt practices and other offences connected with these elections, and the procedure for resolving doubts and disputes arising from them.

Thus, the Act of 1951 offers a comprehensive and self-contained framework for the conduct of elections by the Election Commission of India.

To implement the provisions of the Act, the Central Government, in consultation with the

Election Commission of India, framed rules known as "The Conduct of Elections Rules, 1961" (hereinafter referred to as the "Rules").

8.3 It may be apt to mention herein that the framers of the Constitution had envisaged a robust electoral system to sustain democracy in our country by incorporating Constitutional provisions, and since the Independence, the Election Commission of India has successfully undertaken periodical elections for electing the representatives to the Houses of the Parliament and the State Legislatures. Unfortunately, certain pernicious malaise like criminalisation of politics crept in the electoral system compromising with the purity of the elections, causing a serious dent in the electoral system and credibility of the results, which in turn posed a serious challenge to the rule of law and the principles of democracy which are the foundational tenets of our Constitution and the society.

8.4 One of the remedies widely discussed in the public domain was how to prevent criminal elements from taking part in the electoral process and subvert the electoral mandate. The most effective means perceived was to disqualify such candidates who had been convicted of serious crimes and/or for corrupt practices, corruption or disloyalty, etc. as incorporated under Section 8 to Section 11A of the

Act. With the passage of time, even such deterrent provisions appeared to be inadequate and there were calls from the public demanding complete disclosure of the antecedents and assets of the candidates, so that the electorate can make a meaningful and informed choice at the time of exercise of franchise, which was also recommended by the Law Commission of India, in its 170th Report.

8.5 It was in this background that when the Parliament and the Election Commission of India, did not show any inclination to bring in the desired appropriate legal measures, a Writ Petition, C.W.P. No. 7257 of 1999 came to be filed before the Delhi High Court in the year 1999 by a public spirited organisation called the Association for Democratic Reforms, seeking for directions to be issued to the Union of India and the Election Commission of India for the implementation of the suggestions/recommendations of the Law Commission of India to make it mandatory for every candidate to provide information on various aspects including criminal antecedents, assets, liabilities, educational qualifications, etc. by amending the Forms 2-A to 2-E prescribed under the Rules, and to make the information public in print form as well as on electronic media for proper dissemination so as to

enable the voters to make an informed decision while exercising their voting rights.

8.6 The intrinsic link between a robust democracy and well-informed citizens who periodically elect the representatives who will have the legitimate right to manage the affairs of the society for a specified period can never be overstated. For making the right choice of the elected representatives, there is nothing more important than a well-informed electorate, who have the right to get the information about the candidates. This right to have information by the citizens of the particulars of the candidates has been acknowledged to be part of the fundamental right of speech and expression as guaranteed under Article 19(1)(a) of the Constitution.

It also goes without saying that strong leadership can be provided by individuals who are held in high esteem by the people and who are above board in terms of integrity and public standing. Certainly, candidates who are involved in criminal activities cannot be ideal candidates and are to be shunned. Thus, making the antecedents of the candidates known to the electorate before the election assumes great significance for a healthy democracy.

It is for this reason that there had been a strident movement to make the antecedents of the

candidates' public. Spurred by this necessity and popular demand, to ensure proper functioning of the parliamentary democracy, which is a basic structure of the Constitution, and in view of the reluctance of the Parliament and the Election Commission to take appropriate remedial steps, the extraordinary writ jurisdiction of the Court was invoked.

8.7 In this background, the Delhi High Court, at the instance of Association for Democratic Reforms in ***Association for Democratic Reforms vs. Union of India and Anr.,* (2001) 57 DRJ 82 (DB),** issued the following directions to ensure that the antecedents and assets of the candidates are made public and known to the electorate:

> *".....Accordingly, it is directed that the Election Commission shall secure to the voters the following information pertaining to each of the candidates standing for election to the Parliament and to the State Legislatures and the parties they represent:—*
>
> > *1. Whether the candidate is accused of any offence(s) punishable with imprisonment? If so, the details thereof.*
> >
> > *2. Assets possessed by a candidate, his or her spouse and dependent relations.*
> >
> > *3. Facts giving insight to candidate's competence, capacity and suitability for acting as parliamentarian or legislator*

> *including details of his/her educational qualifications.*
>
> *4. Information which the election commission considers necessary for judging the capacity and capability of the political party fielding the candidate for election to Parliament or the State Legislature.*
>
> *.....*
> *....."*

8.8 The aforesaid directions of the Delhi High Court were unsuccessfully challenged by the Union of India before this Court in ***Union of India v. Association for Democratic Reforms & Anr.*, (2002) 5 SCC 294,** in which this Court elaborately discussed the various legal issues including the right of the citizen to know about the candidates contesting the elections and clarified the legal position, emphasising the importance of the right to information of the voters of the candidates, as are relevant, as follows:

> *"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.....

3.

.....

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

5. The right to get information in democracy is 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****."*

8.9 Thereafter, in the light of the above legal principles enunciated, this Court in ***Assn. for Democratic Reforms (supra)*** issued following directions for disclosure of certain relevant

information about antecedents relating to criminal offenses, assets and liabilities and educational qualification:

> *"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."*

8.10 After the aforesaid judgment of this Court in ***Assn. for Democratic Reforms (supra)***, an

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Ordinance was promulgated by the President of India on 24.08.2002 by way of which, Sections 33A and 33B were inserted in the Representation of People Act, 1951 purportedly in compliance of the directions issued by this Court. Later the said Ordinance was repealed and the Representation of People (3rd Amendment) Act, 2002 (72 of 2002) was notified inserting Sections 33A and 33B in the 1951 Act.

Section 33A requires the candidate to furnish additional information as to-

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

Section 33B, however, provides that notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made there under.

8.11 It may be noted that, the aforesaid Section 33A did not provide for furnishing of the information as directed by this Court in ***Assn. for Democratic Reforms (supra)*** and the scope of the directions issued by this Court was further sought to be whittled down by incorporating Section 33B.

8.12 Thus, Section 33B came to be challenged before this Court in ***People's Union for Civil Liberties (PUCL)* & anr. v. *Union of India*, (2003) 4 SCC 399**. This Court in ***PUCL (supra)*** while dealing with this issue touched upon various aspects of the directions issued by this Court in the earlier decision of ***Association for Democratic Reforms' case (supra)*** and reaffirmed the said decision requiring furnishing of information by the candidates as regards the antecedents relating to criminal cases/offences, assets, liabilities and debts of the candidates, their spouses and children and educational qualification of the candidates. The directions by this Court for furnishing such information was based on a broader interpretation of Article 19(1)(a) which guarantees freedom of speech and expression to the citizens of this country. The aforesaid information was held to be an essential ingredient of Article 19(1)(a) and accordingly, this Court in ***PUCL (supra)*** made the following observations:

*"**18.** So, the foundation of a healthy democracy is to have well-informed citizens-voters. The reason to have right of information with regard to the antecedents of the candidate is that voter can judge and decide in whose favour he should cast his vote. It is the voter's discretion whether to vote in favour of an illiterate or literate candidate. It is his choice whether to elect a candidate against whom criminal cases for serious or non-serious charges were filed but is acquitted or discharged. He is to consider whether his candidate may or may not have sufficient assets so that he may not be tempted to indulge in unjustified means for accumulating wealth. For assets or liability, the voter may exercise his discretion in favour of a candidate whose liability is minimum and/or there are no overdues of public financial institution or government dues. From this information, it would be, to some extent, easy to verify whether unaccounted money is utilized for contesting election and whether a candidate is contesting election for getting rich or after being elected to what extent he became richer. Exposure to public scrutiny is one of the known means for getting clean and less polluted persons to govern the country. A little man — a citizen — a voter is the master of his vote. He must have necessary information so that he can intelligently decide in favour of a candidate who satisfies his criterion of being elected as an MP or MLA. On occasions, it is stated that we are not having such intelligent voters. This is no excuse. This would be belittling a little citizen/voter. He himself may be illiterate but still he would have the guts to decide in whose favour he should cast his vote. In any case, for having free and fair election and not to convert democracy into a mobocracy*

and mockery or a farce, information to voters is a necessity."

(emphasis added)

8.13 M.B. Shah, J in his elaborate judgment in the case of ***PUCL (supra)*** summarised the conclusions as mentioned in para 78 of the judgment, relevant portions of which are reproduced herein below:

*"**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

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furnished under the Act or the rules made thereunder, is on the face of it beyond the legislative competence, as this Court has held that the voter has a fundamental right under Article 19(1)(a) to know the antecedents of a candidate 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 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.*

8.14 Thus, Section 33B was accordingly declared as null and void being contrary to the directions of this court in ***Association for Democratic Reforms*** (supra).

8.15 P. Venkatarama Reddi, J. though endorsed the view as regards the unconstitutionality of Section

33B, expressed his disagreement in certain areas, inter alia, holding that the failure to provide for disclosure of educational qualification, does not, in practical terms, infringe the freedom of expression as summarised in para 123 of the judgment, which is reproduced herein below:

> ***"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[1] intended to operate only till the law was made by the legislature and in that sense "pro tempore" in nature. Once legislation is made, the Court has to make an independent assessment in order to evaluate whether the items of information*

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

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

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

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

(7) The provision made in Section 75-A regarding declaration of assets and liabilities of the elected candidates to the Speaker or the Chairman of the House has failed to effectuate the right to information and the freedom of

> *expression of the voters/citizens. Having accepted the need to insist on disclosure of assets and liabilities of the elected candidate together with those of the spouse or dependent children, Parliament ought to have made a provision for furnishing this information at the time of filing the nomination. Failure to do so has resulted in the violation of guarantee under Article 19(1)(a).*
>
> *(8) The failure to provide for disclosure of educational qualification does not, in practical terms, infringe the freedom of expression.*
>
> *(9) The Election Commission has to issue revised instructions to ensure implementation of Section 33-A subject to what is laid down in this judgment regarding the cases in which cognizance has been taken. The Election Commission's orders related to disclosure of assets and liabilities will still hold good and continue to be operative. However, Direction 4 of para 14 insofar as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not be enforced."*
>
> (**emphasis added**)

8.16 Relating to the desirability of disclosure of assets and liabilities, this Court, in the words of P. Venkatarama Reddi, J., took the view that, it is primarily to ascertain whether unaccounted money is used for electoral gain and whether an elected representative gets enriched after assuming public

office. Thus, this prior disclosure acts as a deterrent to any possible misuse of money and public office.

In this regard, we may refer to paragraphs no. 119 and 120 of the judgment wherein the justification for disclosure of information about assets has been explained which are reproduced herein below:

> ***"IV. (2) Assets and liabilities***
>
> ***119.*** *Disclosure of assets and liabilities is another thorny issue. If the right to information is to be meaningful and if it is to serve its avowed purpose, I am of the considered view that the candidate entering the electoral contest should be required to disclose the assets and liabilities (barring articles of household use). A Member of Parliament or State Legislature is an elected representative occupying high public office and at the same time, he is a "public servant" within the meaning of the Prevention of Corruption Act as ruled by this Court in the case of P.V. Narasimha Rao v. State [(1992) 3 SCC 637] . They are the repositories of public trust. They have public duties to perform. It is borne out by experience that by virtue of the office they hold there is a real potential for misuse. The public awareness of financial position of the candidate will go a long way in forming an opinion whether the candidate, after election to the office had amassed wealth either in his own name or in the name of family members viz. spouse and dependent children. At the time when the candidate seeks re-election, the citizens/voters can have a comparative idea of the assets before and after the election so as to assess whether the high public office had possibly been*

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used for self-aggrandizement. Incidentally, the disclosure will serve as a check against misuse of power for making quick money, a malady which nobody can deny, has been pervading the political spectrum of our democratic nation. As regards liabilities, the disclosure will enable the voter to know, inter alia, whether the candidate has outstanding dues payable to public financial institutions or the Government. Such information has a relevant bearing on the antecedents and the propensities of the candidate in his dealings with public money. "Assets and liabilities" is one of the important aspects to which extensive reference has been made in Assn. for Democratic Reforms case. The Court did consider it, after an elaborate discussion, as a vital piece of information as far as the voter is concerned. But, unfortunately, the observations made by this Court in this regard have a been given a short shrift by Parliament with little realization that they have a significant bearing on the right to get information from the contesting candidates and such information is necessary to give effect to the freedom of expression.

120. *As regards the purpose of disclosure of assets and liabilities, I would like to make it clear that it is not meant to evaluate whether the candidate is financially sound or has sufficient money to spend in the election. Poor or rich are alike entitled to contest the election. Every citizen has equal accessibility in the public arena. If the information is meant to mobilize public opinion in favour of an affluent/financially sound candidate, the tenet of socialistic democracy and the concept of equality so firmly embedded in our Constitution will be distorted. I cannot also share the view that this information on assets would*

> *enable the public to verify whether unaccounted money played a part in contesting the election. So long as Explanation 1 to Section 77 of the RP Act, 1951 stands and the contributions can legitimately come from any source, it is not possible for a citizen/voter to cause a verification to be made on those lines. In my opinion, the real purposes of seeking information in regard to assets and liabilities are those which I adverted to in the preceding paragraph. It may serve other purposes also, but, I have confined myself to the relevancy of such disclosure vis-à-vis right to information only."*
>
> *(emphasis added)*

8.17 Dharmadhikari, J. while agreed with Paras 78 (A) to (E) of the opinion of M.B. Shah, J, and the Conclusions (1), (2), (4), (5), (6) (7) and (9) of the opinion of P. Venkatarama Reddi, J, however, expressed his inability to agree with Conclusions (3) and (8) of the opinion of P. Venkatarama Reddy, J., and on those aspects expressed his agreement with views of M.B. Shah J. as mentioned in para 131 and 132 of the judgment, which are quoted herein below:

> *"**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.*
>
> ***132.** With utmost respect, I am unable to agree with Conclusions (3) and (8) in the opinion of Brother P.V. Reddi, J., as on those aspects, I have expressed my*

> *respectful agreement with Brother Shah, J."*

8.18 Thus, Dharmadhikari J. did not agree with the view of P. Venkatarama Reddi J. that the failure to provide for disclosure of educational qualification does not in practical terms infringe the freedom of expression.

However, as regards other conclusions including requirement for disclosure of assets, there appears to be unanimity in the Bench.

8.19 Pursuant to the decision of this Court in ***Association for Democratic Reforms (supra)***, Rule 4A was inserted in the Conduct of Election Rules, 1961, by S.O. 935(E) dated 8th September, 2002 which reads as follows:-

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

8.20 This Court in ***Resurgence India* v. *Election Commission of India*, (2014) 14 SCC 189** re-examined the decisions rendered in ***Association for Democratic Reforms (supra)*** and ***PUCL (supra)***

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when a writ petition was filed under Article 32 of the Constitution for a meaningful implementation of the directions issued in the two judgements mentioned above. This Court in ***Resurgence India (supra)*** revisited the relevant laws and issued the following directions, clarifying the importance of mentioning of the information as required in the Form 26 affidavit, as mentioned in para 29 of the judgment, which reads as follows:

> ***"29. What emerges from the above discussion can be summarised in the form of the following directions:***
>
> ***29.1.*** *The voter has the elementary right to know full particulars of a candidate who is to represent him in Parliament/Assemblies and such right to get information is universally recognised. Thus, it is held that right to know about the candidate is a natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution.*
>
> ***29.2.*** *The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizens under Article 19(1) (a) of the Constitution of India. The citizens are supposed to have the necessary information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information.*
>
> ***29.3.*** *Filing of affidavit with blank particulars will render the affidavit nugatory.*

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> ***29.4.*** *It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the "right to know" of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. We do comprehend that the power of the Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced.*
>
> ***29.5.*** *We clarify to the extent that para 73 of People's Union for Civil Liberties case will not come in the way of the Returning Officer to reject the nomination paper when the affidavit is filed with blank particulars.*
>
> ***29.6.*** *The candidate must take the minimum effort to explicitly remark as "NIL" or "Not Applicable" or "Not known" in the columns and not to leave the particulars blank.*
>
> ***29.7.*** *Filing of affidavit with blanks will be directly hit by Section 125-A(i) of the RP Act. However, as the nomination paper itself is rejected by the Returning Officer, we find no reason why the candidate must be again penalised for the same act by prosecuting him/her."*
>
> *(emphasis supplied)*

8.21 Thus, from the aforesaid directions of this Court, the right to know full particulars of the candidates as a vital part of Article 19(1)(a) of the Constitution of India was reiterated. It was emphasised in ***Resurgence India (supra)*** that filing

of an affidavit with blanks on the particulars of the affidavit would make it liable to be rejected by the Returning Officer.

8.22 In the light of the above, an amendment was made in the year 2002, inserting Section 125 A to the Act, which provides for penalty for filing false affidavit, which reads as follows:

> *"**125A. 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 33A; or*
> *(ii) give 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 33A, 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."*

8.23 It is significant to note that Section 33A of the Act referred to above, introduced in the year 2002 pursuant to the decision of this Court in ***Association for Democratic Reforms (supra)***, which mandatorily requires disclosure of criminal antecedents of the candidate does not provide for disclosure of assets and educational qualifications.

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The requirement of disclosure of the assets and education qualification is to be found not on any Section/provision of the Act, but in the Form 26 Affidavit required to be filed under Rule 4A of the Conduct of Election Rules, 1961. Rule 4A merely provides that the candidate or his proposer, as the case may be, shall, at the time of delivering to the Returning Officer the nomination paper also deliver to him an affidavit sworn by the candidate before a Magistrate or a Notary in Form 26.

8.24 Reference to the said judicial discourse is essential to appreciate that the obligation to disclose information regarding criminal antecedents, assets and educational qualifications has been shaped and strengthened through judicial directions to promote transparency in the electoral process. These requirements, as incorporated into the relevant rules, are thus a result of judicial evolution complementing the existing legislative framework, rather than arising solely from an original statutory mandate.

8.25 This foray into judicial pronouncements provides the contextual perspective of the requirement to provide information about assets of the candidates in contradistinction to the requirement to disclose the criminal antecedents, and how the issue should be dealt with by the courts.

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9. ANALYSIS OF THE RELEVANT STATUTORY PROVISIONS:

9.1 Having examined the legal and constitutional aspects of the right to information in relation to the election process, we can now turn our attention to the relevant statutory provisions governing the election process, more particularly relating to the annulment of election due to non-disclosure of information.

9.2 As empowered by Article 327 of the Constitution, the Parliament enacted the Representation of the People Act, 1951, to establish the procedure for elections to the Houses of Parliament and the State Legislatures, covering qualifications and disqualifications for membership, corrupt practices, other offences related to such elections, and resolution of doubts and disputes arising from or connected to these elections.

Chapter II of Part II of the Act provides for qualifications for membership of State Legislatures and Chapter III provides for disqualifications for membership of State Legislatures.

Section 5 under Chapter II provides that a person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless he is an elector for any Assembly constituency in that State.

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Section 8 of Chapter III on the other hand stipulates the conditions under which a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislature of a State. It provides for the grounds for disqualification of a candidate upon conviction for certain offences. When a person is convicted of offences punishable under any of the acts mentioned therein, he shall be disqualified from contesting election from the date of conviction and shall continue to be disqualified for a further period of six years since his release, as the case may be.

Section 8A provides for disqualification on the ground of corrupt practices.

Section 9 lists the grounds for disqualification for dismissal for corruption or disloyalty for a period of five years from the date of such dismissal.

Sections 9A and 10 entail disqualification under certain circumstances viz., if there subsists a contract between the candidate and the appropriate Government, or if the candidate holds an office under a Government company as mentioned therein.

Further, Section 10A provides for disqualification on the failure to lodge an account of election expenses.

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Section 11 empowers the Election Commission to remove any of the abovementioned disqualifications for reasons to be recorded.

Section 100 deals with the grounds for declaring election to be void.

9.3 In the present case we are primarily concerned with the applicability of Section 100 of the Act. If we carefully analyse the nature of grounds for declaring an election to be void under Section 100 of the Act, these can be broadly categorized in the following manner.

9.3.1 As regards the ground contemplated under Section 100(1)(a) of the Act, on the date of the election, the returned candidate was either not qualified or disqualified from being chosen to fill the seat under the Constitution, the Act, or the Government of Union Territories Act, 1963. This is a ground which is relatable to other provisions of the Act and was already in existence in the statute enacted by the Parliament before the judicial intervention through ***Association for Democratic Reforms (supra)***, ***PUCL (supra)***, etc. The existence of facts applicable to this ground predates the election process. Thus, a candidate who was not eligible—either because he was "not qualified" or "disqualified" is an attribute existing prior to the election process.

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This ground, as is clear, goes to the root of the eligibility of the candidate and there can be no ambiguity in the application of this rule. There is no scope for judicial consideration as to whether such a deficiency is substantial or not. Either it exists or does not exist, and such consideration cannot arise for the reason that once a candidate is found ineligible or disqualified as under Chapter II & Chapter III of the Act, it will be covered under Section 100(1)(a) of the Act and the election shall be declared void. There is no subjective element involved in this process for determination. Neither can there be any liberal approach to it as such a deficiency is fatal to the candidacy.

9.3.2 Regarding the second ground related to corrupt practice as mentioned under Section 100(1)(b) of the Act, the questioned acts will clearly be those committed by the candidate during the election process. This second ground pertains specifically to the acts committed by the returned candidate or on behalf of the returned candidate and is not connected to the candidate's attributes or qualifications. It is also a ground that already existed in the statute as enacted by Parliament before the judicial intervention as mentioned above.

Such acts are censured to ensure the integrity of the election process, to prevent voters from being

misled or unduly influenced, and are essential for the proper conduct of elections, and there can be no leniency when addressing the issue of corrupt practices.

9.3.3 As regards the other grounds concerning improper acceptance or rejection of nominations, or the non-compliance with the provisions of the Constitution, or the Act, or rules, or orders made under the Act, it is observed that these issues are mainly technical and involve some element of subjectivity, since no nomination paper can be rejected for a defect that is not of a substantial character as provided under Section 36 (4) of the Act.

9.4 In light of the foregoing legal position, it is clear that disclosure concerning criminal antecedents is linked to the existing provisions under Section 8 and 9 of the Act, which specify that a candidate would be disqualified if convicted of any offences listed under Section 8 or dismissed for corruption or disloyalty under Section 9 of the Act.

9.5 However, regarding voidance of the election of the returned candidates due to non-disclosure of assets, it is not explicitly stated in the Act. It has become part of election law through judicial intervention and it is to be mentioned as part of the

Form 26 Affidavit filed during the nomination process, as discussed above.

9.6 At the same time, it has to be kept in mind that considering the evolution of law concerning disclosure of information relating to criminal antecedents and assets and the *"raison d'etre"* for the same, these considerations cannot be placed at the same pedestal. By its very nature, the requirement to disclose criminal antecedents has to be examined more scrupulously and dealt with more strictly as the involvement of criminals is a bane in our electoral system, which was the prime focus of judicial intervention which is reflected in the insertion of Section 33A of the Act. On the other hand, disclosure of information about assets and educational qualification were attending requirements to improve the quality of the electoral process and the elected members for which no specific statutory provision has been made in the Act, but forms part of the information required to be mentioned in the Form 26 Affidavit in terms of Rule 4A.

9.7 Certainly, there was concern also about assets when it was noticed that apart from criminal acts of the candidates, money was being misused by the candidates to influence the voters. Further, it was also observed that there is a tendency of the elected members to misuse their official positions to enrich

themselves at the expense of public funds while in office. It is for these reasons that it was felt that candidates must disclose their assets when seeking re-election.

9.8 It may, however, be noted that there can be no disqualification under the law based on a candidate's wealth or financial status unlike in the case of candidates with criminal antecedents, who will stand disqualified if convicted of certain offences mentioned under Section 8 of the Act. There is no restriction on contesting an election due to having immense wealth or being impoverished in a democracy. Ultimately, the people elect their representative regardless of the candidate's financial condition, judging instead primarily on whether the candidate can genuinely represent their interest.

9.9 This aspect has been succinctly articulated by P. Venkatarama Reddi, J in ***PUCL*** *(supra)* in paragraphs no. 119 and 120 of the judgment as quoted earlier, which in essence conveys the idea that the purpose of disclosure of assets and liabilities of the candidate is not to associate with the prospect or eligibility of his candidature or his capacity to spend money in the electoral process, but primarily to evaluate at a subsequent point in time after the election, whether there has been disproportionate increase in wealth by

misusing official position and by self-aggrandizement.

9.10 This issue relating to disclosure of information may be viewed from another perspective.

There is a provision under the statute to probe the nomination of a candidate before the election is held and result is declared, i.e., during the scrutiny by the Returning Officer, who can reject it at the nomination stage if there has been a failure to disclose necessary information by the candidate.

This exercise of examining the validity of nomination can also be undertaken by the Court *after* the election is over in an election petition and result is known to the voters, as in the present case.

9.10.1 This post-election judicial scrutiny about any such irregularity or deficiency in not disclosing necessary informtion serves as a safeguard against arbitrary actions by the Returning Officer or any injustice caused to a candidate.

9.10.2 Nevertheless, there is a qualitative difference between these two stages in examining the issue of non-disclosure of information. At the time the Returning Officer scrutinizes the nomination papers of the candidates, the voters are yet to express their mind through the ballot box. However, once the election is concluded and the voters have delivered

their verdict and the same has been made public, a new dimension is introduced — that is, the people's mandate, which cannot be overlooked by the court when examining the legality of the acceptance of the nomination.

9.10.3 Election is a hugely expensive and time-consuming process involving not only the candidates in the race but also the vast electorate, who take their valuable time off, to exercise their franchise and choose their representatives. Several State agencies are also involved in ensuring proper and smooth conduct of the elections. A successful election results from the coordinated efforts of various agencies where significant time and national resources are invested. Based on the electoral outcome, the process of forming a new government gets activated, and any interference with the election result would have a bearing on the government formation. Hence, any tinkering with the election result has the potential to undermine the voice of the people and their participation in shaping the government.

9.10.4 In a democracy, the will of the people expressed through election is sacrosanct, which in Latin, is conveyed by the maxim, "*Vox Populi, Vox Dei*," signifying that the voice of the people and collective wisdom should be respected which can

even be placed on the highest pedestal of divine authority.

9.10.5 As noted above, participation by voters who are well-informed not only of the affairs of the state but also with knowledge of the candidates' backgrounds invigorates the electoral process, reaffirming that election is one of the fundamental features of democracy. Voters obtain essential information about the candidates through the exercise of the fundamental right to know about them, derived from Article 19(1)(a) of the Constitution.

This right to know the backgrounds of candidates, which corresponds to their obligation to disclose such information, must, however, be balanced with the people's mandate expressed through ballot boxes, which is central to democracy.

9.10.6 Under the circumstances, once the people have spoken their mind by casting their votes through the ballot box and reposed their confidence in the elected candidate, whenever the issue of invalidating the people’s mandate is raised before the court, the court must be very careful and circumspect.

A fine balance must be struck between holding free and fair election— which involves the

fundamental right of voters to have information about the candidates— and maintaining the sanctity of the mandate of the voters upon the declaration of the result. After all, election result is the embodiment of the will of the people expressed through the exercise of the constitutional right of the people to vote.

The court, therefore, must keep in mind that declaring an election void solely for non-disclosure of assets, if it lacks substantiality, could undermine the validity of the popular mandate. To nullify the choice of the people on a minor technicality and insignificant non-disclosure of assets by the elected candidate, would have serious repercussions on the democratic process.

Thus, while the court plays a vital role in upholding the rule of law, utmost care must be taken to ensure that election results are not invalidated based on subjective interpretation and minor or technical irregularities that do not substantially impinge on the law, since unwarranted interference with the electoral process and overturning election results can erode public trust in democratic institutions.

9.10.7 Under such circumstances, nullifying the election result and overturning the people's verdict through cold, clinical legal analysis and tools should be avoided, unless the electoral process has been

vitiated by gross irregularities that undermine electoral integrity. Courtroom interventions should only happen when there are clear and blatant violations of the law that threaten fairness, legality, and constitutional principles.

9.10.8 Minor procedural errors or purely technical objections of inconsequential nature thus, should not be allowed to override the mandate of the electorate. Courts must be careful not to become tools that undermine the popular mandate in the name of technical perfection. The will of the people, expressed through the election result, should be respected, unless it has been corrupted by fraudulent practices, in which case, the court should intervene without hesitation. A judicial victory based on technicalities rather than the electoral victory won in the electoral battlefield should be avoided, unless the mandate and the integrity of the electoral process are compromised by fraud or corrupt practices.

9.11 Statutory provisions and judicial approach in elections law have also been shaped by this cautious approach.

It is for this reason that it has been aptly noted by this Court in ***Jagan Nath v. Jaswant Singh, (1954) 1 SCC 57*** as follows:

> *"7. The general rule is well settled that the statutory requirements of election law*

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> *must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power. It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. None of these propositions however have any application if the special law itself confers authority on a tribunal to proceed with a petition in accordance with certain procedure and when it does not state the consequences of non-compliance with certain procedural requirements laid down by it. It is always to be borne in mind that though the election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices……."*
>
> *(emphasis added)*

9.11.1 This word of caution against overturning electoral verdicts by the courts was pithily put by this Court in ***Madhukar G.E. Pankakar v. Jaswant Chobbildas Rajani & Ors.*, (1977) 1 SCC 70** in the following words:

> *" **6.** It is plain democratic sense that the electoral process should ordinarily receive no judicial jolt except where pollution of purity or contravention of legal mandates invite the court's jurisdiction to review the result and restore legality, legitimacy and respect for norms. The frequency of forensic overturning of poll verdicts injects*

> *instability into the electoral system, kindles hopes in worsted candidates and induces post-mortem discoveries of "disqualifications" as a desperate gamble in the system of fluctuating litigative fortunes. This is a caveat against overuse of the court as an antidote for a poll defeat. Of course, where a clear breach is made out, the guns of law shall go into action, and not retreat from the rule of law.*

Similar view was expressed by this Court in ***Santosh Yadav v. Narender Singh*, (2002) 1 SCC 160**.

9.11.2 For the said reason, strict conditions are set in the statute for challenging the outcome of an election. Unlike other common lawsuits, the Representation of the People Act of 1951 states that no election can be questioned except through an election petition filed according to the provisions of Part VI of the Act. The Act of 1951 itself specifies the procedure to be followed for challenging elections.

Section 83 of the Act requires that every election petition should include a concise statement of the material facts on which the petitioner relies. The petition must be signed and verified in accordance with the procedures established for pleadings in the Code of Civil Procedure. It must be accompanied by an affidavit in Form 25, as required under Rule 94-A of the Rules, verifying the details under two

headings: statements true to the petitioner's own knowledge and statements true based on the petitioner's information.

The election petitioner is also obliged to disclose the source of his information regarding the corrupt practice to link the returned candidate to the charge, to prevent fishing or roving inquiries, as well as to prevent the returned candidate from being caught off guard. The allegations must be interpreted very strictly and narrowly, considering the serious consequences they may entail, such as disqualification from contesting future elections. Thus, the procedure prescribed by the Act for challenging an election must be strictly followed and any deviation or non-compliance can lead to the dismissal of the petition.

In an election petition involving a charge of corrupt practice, the person charged with corrupt practice enjoys the presumption of innocence. The charge must be proved "to the hilt," meaning that the standard of proof is the same as in a criminal trial, i.e., proof beyond reasonable doubt, not merely on preponderance of probabilities.

Such is the nature of an election petition.

These well settled principles have been pithily put by this Court in ***Jeet Mohinder Singh v.***

***Harminder Singh Jassi*, (1999) 9 SCC 386** in the following words:

> ***40.*** *Before we may proceed to deal, in exercise of our appellate jurisdiction, with the pleas raised on behalf of the appellant-petitioner canvassing commission of corrupt practices by the respondent which in the opinion of the High Court the election petitioner has failed in proving, we would like to state a few well-settled legal principles in the field of election jurisprudence and relevant to our purpose. They are:*
>
> > *(i) The success of a candidate who has won at an election should not be lightly interfered with. Any petition seeking such interference must strictly conform to the requirements of the law. Though the purity of the election process has to be safeguarded and the court shall be vigilant to see that people do not get elected by flagrant breaches of law or by committing corrupt practices, the setting aside of an election involves serious consequences not only for the returned candidate and the constituency, but also for the public at large inasmuch as re-election involves an enormous load on the public funds and administration. (See Jagan Nath v. Jaswant Singh [AIR 1954 SC 210 : 1954 SCR 892] , Gajanan Krishnaji Bapat v. Dattaji Raghobaji Meghe [(1995) 5 SCC 347] .)*
> >
> > *(ii) Charge of corrupt practice is quasi-criminal in character. If substantiated it leads not only to the setting aside of the election of the successful candidate, but also of his being disqualified to contest*

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an election for a certain period. It may entail extinction of a person's public life and political career. A trial of an election petition though within the realm of civil law is akin to trial on a criminal charge. Two consequences follow. Firstly, the allegations relating to commission of a corrupt practice should be sufficiently clear and stated precisely so as to afford the person charged a full opportunity of meeting the same. Secondly, the charges when put to issue should be proved by clear, cogent and credible evidence. To prove charge of corrupt practice a mere preponderance of probabilities would not be enough. There would be a presumption of innocence available to the person charged. The charge shall have to be proved to the hilt, the standard of proof being the same as in a criminal trial. (See Quamarul Islam v. S.K. Kanta [1994 Supp (3) SCC 5 : AIR 1994 SC 1733] , F.A. Sapa v. Singora [(1991) 3 SCC 375 : AIR 1991 SC 1557] , Manohar Joshi v. Damodar Tatyaba [(1991) 2 SCC 342] and Ram Singh v. Col. Ram Singh [1985 Supp SCC 611 : AIR 1986 SC 3])

(iii) The appellate court attaches great value to the opinion formed by the trial Judge more so when the trial Judge recording findings of fact is the same who had recorded the evidence. The appellate court shall remember that the jurisdiction to try an election petition has been vested in a Judge of the High Court. Secondly, the trial Judge may have had the benefit of watching the demeanour of witnesses and forming first-hand

opinion of them in the process of evaluation of evidence. The Supreme Court may reassess the evidence and come to its own conclusions on feeling satisfied that in recording findings of fact the High Court has disregarded settled principles governing the approach to evidence or committed grave or palpable errors. (See Gajanan Krishnaji Bapat v. Dattaji Raghobaji Meghe [(1995) 5 SCC 347] and Kripa Shankar Chatterji v. Gurudas Chatterjee [(1995) 5 SCC 1] .)

(iv) Section 83 of the Act requires every election petition to contain a concise statement of the material facts on which the appellant relies. If the election petition alleges commission of corrupt practice at the election, the election petition shall set forth full particulars of any corrupt practice including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. Every election petition must be signed and verified by the appellant in the manner laid down for the verification of pleadings in CPC. An election petition alleging corrupt practice is required to be accompanied by an affidavit in Form 25 read with Rule 94-A of the Conduct of Elections Rules, 1961. Form 25 contemplates the various particulars as to the corrupt practices mentioned in the election petition being verified by the appellant separately under two headings: (i) which of such statements including particulars are true to the appellant's own knowledge, and (ii) which of the

statements including the particulars are true to information of the appellant. It has been held in Gajanan Krishnaji Bapat case [(1995) 5 SCC 347] that the election petitioner is also obliged to disclose his source of information in respect of the commission of the corrupt practice so as to bind him to the charge levelled by him and to prevent any fishing or roving enquiry, also to prevent the returned candidate from being taken by surprise."

10. ANALYSIS OF THE RELEVANT FACTS:

10.1 Coming to the case at hand, there is no dispute to the fact that the Respondent No.1 had not mentioned the income as per the income tax return for the last four financial years of F.Y. 2018-19, F.Y. 2019-20, F.Y. 2020-21, F.Y. 2021-22 in Form 26 Affidavit. Respondent No.1, however, did not leave the relevant column blank but filled it as "NIL".

10.2 The main issue as discussed above in this case is whether non-disclosure of income, as per the income tax return for four years in Form 26 Affidavit, and showing it as 'NIL' in the relevant column, amounts to concealment of asset-related information and whether this constitutes a material defect that would make the acceptance of the Respondent No.1's nomination improper, thereby attracting the penal clause of Section 100(1)(d)(i) of the Act.

Furthermore, whether such non-disclosure constitutes a corrupt practice that renders the election of Respondent No. 1 void under Section 100(1)(b), and whether it also amounts to non-compliance with the provisions of the Act and Rules, making the election of Respondent No. 1 liable to be declared void under Section 100(1)(d)(iv) of the Act.

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

10.4 Clause no. 4 of Form 26 requires the details of the PAN and the status of filing of income tax return for the last five financial years to be mentioned.

The Respondent No.1 has mentioned the income as per the Income Tax Return for the FY 2022-23 as Rs.11,50,000/-. As regards the remaining four financial years, she has mentioned the same as "NIL" only.

In view of the above, there is no doubt that she did not provide the full details of all financial years in Form 26. To that extent, it cannot be denied that Respondent No.1 has not supplied all the required

details in Form 26 Affidavit, which is a violation of the mandate of Rule 4A mentioned above. As a result, it can be said that the said Form 26 Affidavit filed by the Respondent No.1 is defective and does not conform to the rules.

10.5 Under the circumstances, since the Form 26 Affidavit was deficient in providing relevant information, the nomination papers of Respondent No. 1 risked being rejected by the Returning Officer. As it turned out, such an adverse action was not taken during the scrutiny conducted by the Returning Officer under Section 36 of the Act, and the nomination of Respondent No. 1 was accepted, which the petitioner has alleged in the election petition was improperly accepted by the Returning Officer.

10.6 The Respondent No.1 was, however, ultimately elected, having secured 83,036 votes (44.97%), compared to the Appellant, who secured 60,238 votes (32.62%). The other candidates received votes ranging from 408 to 16,469. The vote margin between Respondent No.1 and the Appellant was 22,798. Therefore, it is clear that Respondent No.1 was elected with a substantial number of votes and a significant margin.

10.7 This Court, in numerous decisions, has held that non-disclosure of assets by candidates and/or their wives and dependents, which is not in conformity with the provisions of the Act and Rules, would render the acceptance of their nomination improper. Such non-disclosure would also amount to a corrupt practice. Therefore, the election of any candidate who has not disclosed their assets could be declared void under Section 100 of the Act.

10.8 In ***Lok Prahari v. Union of India & Ors. (2018) 4 SCC 699*** this Court summarized the legal and contextual position regarding non-disclosure of assets as amounting to a corrupt practice under Section 123(2) of the Act, relevant paragraphs of which are reproduced as below.

> ***"79.*** *We shall now deal with Prayer 2 which seeks a declaration that non-disclosure of assets and sources of income would amount to "undue influence" — a corrupt practice under Section 123(2) of the 1951 RP Act. In this behalf, heavy reliance is placed by the petitioner on a judgment of this Court in Krishnamoorthy v. Sivakumar [Krishnamoorthy v. Sivakumar, (2015) 3 SCC 467: (2015) 2 SCC (Cri) 359: AIR 2015 SC 1921]. It was a case arising under the Tamil Nadu Panchayats Act, 1994. A notification was issued by the State Election Commission stipulating that every candidate at an election to any panchayat is required to disclose information, inter alia, whether the candidate was accused in any pending criminal case of any offence punishable*

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with imprisonment for two years or more and in which charges have been framed or cognizance has been taken by a court of law. In an election petition, it was alleged that there were certain criminal cases pending falling in the above mentioned categories but the said information was not disclosed by the returned candidate at the time of filing his nomination. One of the questions before this Court was whether such non-disclosure amounted to "undue influence" — a corrupt practice under the Panchayats Act. It may be mentioned that the Panchayats Act simply adopted the definition of a corrupt practice as contained in Section 123 of the 1951 RP Act.

80. *On an elaborate consideration of various aspects of the matter, this Court in Krishnamoorthy case [Krishnamoorthy v. Sivakumar, (2015) 3 SCC 467: (2015) 2 SCC (Cri) 359: AIR 2015 SC 1921] held as follows: (SCC p. 522, para 91)*

> *"91. … 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. …"*

81. *For the very same logic as adopted by this Court in Krishnamoorthy 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."*

10.9 Similarly, in the case of ***S. Rukmini Madegowda v. State Election Commission & Ors. (2022) 18 SCC 1,*** this Court held that false declaration about assets would constitute a corrupt practice, and observed that,

> ***"37.*** *In our considered view, a false declaration with regard to the assets of a candidate, his/her spouse or dependants, constitutes corrupt practice irrespective of the impact of such a false declaration on the election of the candidate. It may be presumed that a false declaration impacts the election."*

10.10 At the same time, this Court has also held that the mere failure to disclose assets in the affidavit, if it does not constitute a material defect and is not of a substantial character, will not make the acceptance of the nomination improper, thus invalidating the election.

Further, whether the non-disclosure of assets is of a substantial character or not, must be determined by the court based on the specific facts of each case, as observed by this Court in ***Karikho Kri v. Nuney Tayang & Anr., 2024 SCC Online SC 519*** as follows:

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

It was further observed that,

> *"44. Though it has been strenuously contended before us that the voter's 'right to know' is absolute and a candidate contesting the election must be forthright about all his particulars, we are not inclined to accept the blanket proposition that a candidate is required to lay his life out threadbare for examination by the electorate. ..... Every case would have to turn on its own peculiarities and there can be no hard and fast or straitjacketed rule as to when the nondisclosure of a particular movable asset by a candidate would amount to*

a defect of a substantial character……"

(emphasis added)

10.11 Section 36 (4) of the Act clearly states that the Returning Officer shall not reject any nomination paper on the basis of a defect that is not of a *substantial character*. Consequently, if the defect is not considered substantial, the nomination cannot be rejected, and acceptance of such nomination cannot be deemed improper to invoke the provisions of Section 100 (1)(d)(i) of the Act.

10.12 Applying the same legal standard, consequently, if such defect in not disclosing the assets or income is not of a substantial nature, it cannot be said to be a corrupt practice within the meaning of Section 100(1)(b) of the Act.

For the same reasons, the provisions of Section 100(1)(d)(iv) of the Act cannot be attracted, if the defect is not a material one.

10.13 Thus, in the present case, as we examine the issue as to whether non-disclosure of income as shown in the income tax return for four years amounts to non-compliance with the mandate of Rule 4A of the Rules, and if so, whether the acceptance of the nomination paper of Respondent No.1 was improper to attract the provisions of Section

100(1)(d)(i), Section 100(1)(b), or Section 100(1)(d)(iv), it must first be ascertained whether such a defect of non-disclosure was of a substantial character under the circumstances. If it is so proved, it has to be then determined whether, this will attract adverse actions contemplated under Section 100, which the election petitioner, the Appellant herein, seeks to invoke.

10.14 Regarding the details of the assets to be declared under Clause 7 of the Affidavit, Respondent No.1 has listed her assets and those of her spouse. Likewise, the details of the immovable assets required under Clause 7(B) have been provided. The liabilities of Respondent No.1 and her spouse have also been specified. Additionally, the details of their professions, occupations, and sources of income have been disclosed.

10.15 The election petitioner's allegation primarily concerns the Respondent No. 1's omission of income details as per income tax returns for four financial years, as provided under Column 4 of the Form 26 Affidavit. The petitioner has not raised *any other* issues regarding the accuracy or insufficiency of information related to assets, movable or immovable, or sources of income, except for the allegation that Respondent No.1 did not disclose her income from honorarium and pension.

10.16 From the pleadings, it is apparent that Respondent No.1 was not contesting the assembly election for the first time. She had served as an MLA from 2014 to 2018 in the same Constituency, and later, was elected as a Member/Chairperson of the Zila Parishad before contesting the assembly election again, which she won.

It is, thus, clearly evident that she is a well-known political figure in her Constituency from which it can be safely inferred that the people of her Constituency are familiar with her work and her reputation, and that she was quite popular in the area. It is also important to note that there has been no allegation of malpractice or corrupt practices or providing false information by her.

10.17 To substantiate the allegations made in the election petition, the election petitioner examined only himself. No other witness was examined. The election petition involved a full-scale trial where the petitioner had all the opportunities to prove his case, but besides examining himself as a witness, no other witnesses were called.

10.18 During the trial, apart from the allegation that the Respondent No.1 did not disclose her income as per the income tax return of the specified period, and her honorarium and pension as mentioned above, no other facts or materials were presented to

demonstrate any significant concealment of assets or sources of income.

10.19 In view of the above undisputed facts and circumstances, the question this Court needs to consider is whether non-disclosure of income for the specified period in the income tax return, along with her honorarium and pension, constitutes a substantial or material defect concerning declaration of her assets.

10.20 Regarding the allegation by the election petitioner that Respondent No.1 was drawing a pension of Rs.30,000/- per month on account of her previous term as an MLA from 2014 to 2018 which she had not disclosed, Respondent No.1 stated that she did not receive any pension after being elected as Chairperson of the Zila Parishad. She supported her claim with a certificate issued by the Assistant Secretary to the State Legislature, dated 20.06.2024, confirming non-drawal of pension. Since the election petitioner did not rebut this claim of the returned candidate, the allegation does not require further consideration.

10.21 Concerning the allegation that Respondent No.1 had not disclosed her income as the Chairperson of the Zilla Parishad, this is also an aspect that may not require further enquiring, as she

had disclosed in paragraph 9 of the Form 26 Affidavit that, at the time of filing of nomination, she was serving as the Zilla Parishad Chairperson and her source of income was the honorarium she received for that position. Therefore, merely because the honorarium amount was not explicitly mentioned, in our opinion, it does not constitute concealment, since her source of income in the form of honorarium she was receiving was clearly disclosed.

10.22 Addressing the most contentious issue of non-disclosure of income as per the income tax return for the four financial years, we have noted that Respondent No.1 had already disclosed her assets, both movable and immovable, source of income, and profession, about which there is no real dispute except for the aspects we have already discussed above.

10.23 Filing of an Income Tax Return is intrinsically related to and based on a person's assets and sources of income. An Income Tax Return cannot be considered in isolation or independently of the person's assets. It merely provides a reference framework for the assets and sources of income from the perspective of Income Tax authorities for the purpose of levying income tax. The Income Tax Return in essence reflects a person's financial position, *viz-a-viz* the assets and sources of income.

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An income tax statement is a declaration in fiscal terms for assessment by the income tax authority, intended for taxation on the assets and income received by a person. It is not to be considered as a statement of fact of the existence of assets or source of income. As long as the assets, income, and sources of income are otherwise disclosed, and if there is no dispute of the same, non-disclosure of the tax return for certain financial years, although a technical defect under the rules, in our opinion cannot be considered to be a defect of significant importance as it does not in any manner amount to hiding the assets. What has not been disclosed in the form of Income Tax Returns is certain information relating to assets and not "of assets", as there was full disclosure of her assets and source of income

10.24 It is also not the case that Respondent No.1 did not disclose her Income Tax Returns at all. She did disclose her Income Tax Returns for the Financial Year 2022-2023, which is reflective of her assets and income. Hence, unless it is shown that the assets and income during the other financial years were substantially in variance and these were not disclosed, not much grievance can be made by the election petitioner, for these income tax returns not disclosed would not have been in variance substantially from the Income Tax Return already

filed. However, nothing has been shown by the election petitioner about any disproportionately higher income vis-à-vis the sources of income in respect of the period for which the income tax returns had not been filed.

10.25 The matter could have been, however, entirely different had there been an averment made by the election petitioner that the returned candidate deliberately did not disclose the income tax returns to hide her real income and assets during that period, or that the returned candidate had accumulated wealth disproportionate to her income, which could have been detected from the income tax returns that were never filed. In that case, one could say without any hesitation that the information withheld was significant enough to invoke the penal provisions of Section 100(1)(d)(i) for improperly accepting the Respondent No.1's nomination. Similarly, under such circumstances, the provisions of Section 100(1)(b) or Section 100(1)(d)(iv) could also have been invoked.

10.26 Under the circumstances, since there is no serious dispute about the assets and the source of income of Respondent No.1 which have been already disclosed, non-disclosure of income tax returns, though a procedural and technical defect, in our opinion, does not amount to misrepresentation or non-disclosure of assets which is of consequence.

10.27 It is also noted that Respondent No.1 had not left the relevant column in the Affidavit blank, which would have made the nomination paper fatally defective and liable to be rejected, as per the judgement in ***Resurgence India (supra).***

10.28 As already discussed above, this Court has held as in the case of ***Karikho Kri (supra)*** that what needs to be examined in cases of non-disclosure of information of assets is whether such non-disclosure is of a substantive nature or not. If it is found that the non-disclosure was not of substantial character, the court need not interfere with the election. The court must, therefore, determine whether there was substantial compliance with the legal requirements, or if the deficiency was merely technical or procedural, before the court proceeds to interfere with the election.

10.29 Examined from the above perspective, it is noted that Respondent No.1 did not make a false statement or attempt to mislead the voters by providing erroneous information about the net income or assets as required under Para 4 of the Affidavit.

This is not a case of providing false information or engaging in disinformation, but rather a failure to provide certain information concerning the assets

which, in our opinion, as mentioned above, does not amount to a defect of substantial character warranting declaration of Respondent No.1's election as void.

The present case does not involve any concealment or misrepresentation of criminal antecedents that would warrant censure under the statutory framework or lead to judicial invalidation of the election. The issue here is of lack of full disclosure of information concerning income tax returns of the returned candidate which is of inconsequential import.

10.30 There is another important aspect noticeable in this case, which is the absence of objection during the scrutiny of the nomination forms by the Returning Officer under Section 36 of the Act. Although this failure to object will not prevent anyone from challenging the validity of the nomination by filing an election petition later, the fact that the Appellant did not raise any objection when certain deficiencies which could be easily ascertained and detected is very significant. We note that the election petition mentions that the petitioner's agent verbally objected to the nomination paper, but that agent was not examined at the trial. Therefore, this claim cannot be considered to have been proved, and hence, this argument is of no consequence.

It can, therefore, be inferred that no objection was raised regarding any such deficiency during scrutiny. If no objections were raised by any of the contesting candidates including the petitioner about certain easily noticeable or discernible deficiencies, it is reasonable to assume that the candidates did not have any serious reservation about the Respondent No.1's candidacy. Under the circumstances, having participated in the election and competed with other candidates and taken the chance to be elected, the election petitioner's attempt now to challenge the elected candidate's victory on a technicality, which we have already discussed, lacks substantial basis, does not inspire confidence of this Court as far as the *bona fide* of the election petitioner is concerned. The Court's proceeding should not be reduced to a legal gamble, when electorally defeated.

10.31 We are mindful of the fact that it has also been held by this Court in ***PUCL (supra)***, and ***Kisan Shankar Kathore (supra)*** that it may not be desirable to reject a nomination at the stage of scrutiny considering the fact that the disputes relating to the correctness or non-disclosure of information may require a full scale enquiry during the election trial and there can be no estoppel because of non-raising of objection during the scrutiny. Yet, failure to raise any objection at the time

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of scrutiny raises a question mark on the *bona fide* of the election petitioner, which would prompt the court to minutely examine such a claim by the election petitioner.

It may also be noted that in most of the earlier decisions of this Court referred to by the parties, there were serious objections about the non-disclosure of certain information at the stage of scrutiny by the Returning Officer.

10.32 What is also to be noted in the present case is that apart from the fact that there was no objection at the time of scrutiny, during the election trial, no material has been produced by the election petitioner regarding the non-disclosure of any material information by the returned candidate, which would have had a significant impact on the adequacy or inadequacy of the information regarding the disclosed assets and income of the returned candidate.

10.33 Regarding the plea of the election petitioner that Respondent No.1's election be declared as void due to non-compliance with the provisions of the Constitution, the Act, or rules or orders made under the Act, it must be demonstrated that such non-compliance was of a substantial nature, and that it materially affected the result of the election as far as

the Respondent No.1 is concerned, which is not the case here.

10.34 We are, thus, of the view that merely because a returned candidate has not disclosed certain information related to the assets, courts should not rush to invalidate the election by adopting a highly pedantic and fastidious approach, unless it is shown that such concealment or non-disclosure was of such magnitude and substantial nature that it could have influenced the election result.

In this case, it has not been demonstrated that such concealment or non-disclosure of certain information related to assets was of a substantial nature that could have materially affected the result of the election of the returned candidate. Of course, it was observed by this Court in ***Lok Prahari (supra)***, ***S. Rukmini Madegowda (supra)***, etc., that if it is found that there has been non-disclosure of assets, it amounts to a corrupt practice. But the non-disclosure of income as per Income Tax Return in the present case, as discussed above, is not of a substantial nature to be considered a corrupt practice.

10.35 The true test, in our opinion, would be whether the non-disclosure of information about assets in any case is of consequential or

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inconsequential import, finding of which will be the basis for declaring the election valid or void as the case may be.

11. CONCLUSION

11.1 Judicial intervention in election disputes concerning disclosure of information, as discussed above, was prompted by the quest for sanitising the electoral process by eliminating polluting elements by making candidates' criminal antecedents public. Aiming to prevent criminals from participating in elections to maintain purity of the electoral process — essential for the proper functioning of parliamentary democracy — the court was compelled to exercise its extraordinary power to issue specific directions. Consequently, not only disclosure of criminal antecedents, but also related obligations to disclose assets, liabilities, and educational qualifications of election candidates became mandatory. The knowledge of the criminal antecedents, assets and educational qualifications of the candidates by voters certainly invigorates the electoral process, which is ensured by obligatory disclosure by the candidate. However, the Court has made a subtle distinction between non-disclosure of criminal antecedents and that of assets and educational qualifications. While disclosure of criminal antecedents in the electoral process was the

most critical element to maintain the purity of the electoral process which has to be scrupulously adhered to, disclosure of assets and educational qualifications were considered as attending supplementary requirements to strengthen the electoral process, of which there will be certain scope for consideration as to whether it is of substantial or inconsequential nature.

In the light of the above, this disclosure requirement as far as assets and educational qualification is concerned, should not be unreasonably stretched to invalidate an otherwise validly declared election over minor technical non-compliances that are not of substantial character, and should not be the basis for nullification of the people's mandate.

11.2 In the light of the legal position exposited, on examination of the facts in the peculiar background obtaining in the case, we hold that the non-disclosure of income in the income tax return for four financial years by Respondent No.1, is not a defect of substantial character. Therefore, the nomination could not have been rejected under Section 36(2) of the Representation of the People Act, 1951 as contended by the Appellant and hence, no illegality was committed by the Returning Officer in accepting the nomination of the Respondent No.1. Resultantly,

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the penal clause cannot be invoked to invalidate Respondent No.1's election under Section 100(1)(d)(i) of the Act on the ground that the nomination of Respondent No.1 was improperly accepted.

11.3 As we have held that the defect of non-disclosure mentioned is not of a substantial nature, for the same reason the Respondent No.1 cannot be considered to have indulged in a corrupt practice within the meaning of Section 123 (2) of the Act, and thus, the election of Respondent No.1 cannot be rendered void under Section 100(1)(b) of the Act.

11.4 Consequently, on the same consideration, it cannot be also said that the Respondent No.1 did not comply with the relevant provisions of the Act or any rule or order made under the Act, to attract the provisions of Section 100(1)(d)(iv) of the Act.

11.5 Furthermore, we also hold that the allegation that the Respondent No.1 did not disclose the income from honorarium she received as the Chairperson of Zilla Parishad, or that she did not disclose receiving ex-MLA pension—cannot be considered to have been proved or established, nor these are of any material consequences.

12. VERDICT:

For the reasons stated above, the present appeal, Civil Appeal No.13015 of 2024, is dismissed as devoid of merit.

Parties to bear their own costs.

Registry to notify the concerned authorities by taking necessary steps as required under Section 116C(2) of the Representation of the People Act 1951.

.....J.
(SURYA KANT)

.....
J.
(NONGMEIKAPAM KOTISWAR SINGH)

NEW DELHI;
AUGUST 14, 2025