

Kisan Shankar Kathore vs Arun Dattatraya Sawant & Ors on 9 May, 2014

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Bench: A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4261 OF 2007

KISAN SHANKAR KATHORE APPELLANT (S)	
VERSUS		
ARUN DATTATRAY SAWANT & ORS. RESPONDENT (S)	

J U D G M E N T

A.K. SIKRI, J.

The appellant herein was the successful candidate in the election of legislative assembly, which he contested from 56, Ambernath Constituency, Thane District, Maharashtra. There were five candidates in the fray for which the elections were held on October 13, 2004 and the results were declared on October 16, 2004. After he was declared elected, his election was challenged by the first respondent, who is a voter in the said constituency. He filed the election petition in the High Court of Judicature at Bombay stating that the appellant's nomination had been improperly accepted by the Returning Officer and the election was void due to non-compliance of the provisions of the Constitution of India, the Representation of the People Act, 1951 (hereinafter referred to as 'the Act') as well as Rules and Orders framed under the said Act.

2. The election petition was filed under Section 100(1)(d)(i) and (iv) of the Act on the ground that in the nomination form filled in by the appellant he had suppressed his dues payable to the Government, suppressed the assets of his spouse and also suppressed the information and assets of a partnership firm of which he is a partner. The appellant contested the said petition. Evidence was led. After hearing the arguments, the High Court passed judgment dated August 16, 2007 accepting

the plea of the first respondent that the nomination form of the appellant was defective and should not have been accepted by the Returning Officer. Thus, while allowing the election petition and setting aside of the election of the appellant, the High Court recorded the non-disclosure on following counts:

- a) Non-disclosure of dues to Maharashtra State Electricity Board in respect of two service connections held by him amounting to Rs.79,200/- and Rs.66,250/-.
- b) The appellant failed to disclose the ownership of Bungalow No. 866 and the taxes dues thereof amounting to Rs.3,445/- owned by his wife.
- c) The appellant failed to disclose the particulars of the vehicle MH-05-AC-55 owned by the wife.
- d) The appellant is guilty of non-disclosure of property owned by firm Padmavati Developers of which the appellant is a partner, which owns two plots of lands measuring 1313 sq.mtrs. and 1292 sq.mts. in Survey No. 48, Hissa No. 9 of Mouze Kalyan, Taluka Ambarnath, District Thane, Maharashtra.

Challenging the impugned judgment, the present statutory appeal is filed, as provided under Section 116A of the Act.

3. We may state, at the outset, that there is no dispute on facts, namely, the appellant had not disclosed certain informations, as found by the High Court and noted above, in his nomination form. Entire dispute rests on the issue as to whether it was incumbent upon the appellant to have disclosed such an information and non-disclosure thereof rendered his nomination invalid and void. The nature of information given by the appellant in his nomination form, on the basis of which the appellant contends that it ought to have been treated as substantial compliance, would be taken note of later at the appropriate stage. We deem it appropriate to state the legal position contained in the Act, Rules and Orders as well as the judgments of this Court in order to understand as to whether there was a substantial compliance by the appellant in the form of information given by him or it amounted to non-disclosure of the material information warranting rejection of his nomination.

4. Since the petition filed before the High Court was under Section 100(1)(d)(i) and (iv), we first take note of these provisions, which are to the following effect:

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

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

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

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

5. Section 100(1)(d) talks of result of election being 'materially affected' by improper acceptance, we would like to reproduce here Section 33(1) of the Act, which mandates filing of a nomination paper completed in the prescribed form in order to constitute it to be a valid nomination. It reads as under:

“33. Presentation of nomination paper and requirement for a valid nomination. – (1) On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer:

xx xx xx”

6. Other relevant provisions are Sections 33A, 34, 35 and 36 of the Act, which are as under:

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

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence other than any offence referred to in sub-section (1) or sub-

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

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

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

constituency for which the nomination paper is delivered.” xx xx xx

34. Deposits. – (1) A candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited. –

(a) in the case of an election from a Parliamentary constituency, a sum of twenty-five thousand rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe, a sum of twelve thousand five hundred rupees; and

(b) in the case of an election from an Assembly or Council constituency, a sum of ten thousand rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe, a sum of five thousand rupees:

Provided that where a candidate has been nominated by more than one nomination paper for election in the same constituency, not more than one deposit shall be required of him under this sub-section.

(2) Any sum required to be deposited under sub-section (1) shall not be deemed to have been deposited under that sub-section unless at the time of delivery of the nomination paper under sub-section (1) or, as the case may be, sub-section (1A) of section 33 the candidate has either deposited or caused to be deposited that sum with the returning officer in cash or enclosed with the nomination paper a receipt showing that the said sum has been deposited by him or on his behalf in the Reserve Bank of India or in a Government Treasury.

xx xx xx

35. Notice of nominations and the time and place for their scrutiny. – The returning officer shall, on receiving the nomination paper under sub-section (1) or, as the case may be, sub-section (1A) of section 33, inform the person or persons delivering the same of the date, time and place fixed for the scrutiny of nominations and shall enter on the nomination paper its serial number, and shall sign thereon a certificate stating the date on which and the hour at which the nomination paper has been delivered to him; and shall, as soon as may be thereafter, cause to be affixed in some conspicuous place in his office a notice of the nomination containing descriptions similar to those contained in the nomination paper, both of the candidate and of the proposer.

36. Scrutiny of nomination. – (1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorised in writing by each candidate but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.

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

(a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:— Articles 84, 102, 173 and 191, Part II of this Act, and sections 4 and 14 of the Government of Union Territories Act, 1963; or

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

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

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

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

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

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

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

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

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

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

7. After having taken note of the aforesaid statutory provisions, let us now proceed to discuss some of the important judgments of this Court and to cull out legal principles therefrom on the subject, which have a direct bearing on the issue of disclosure of information.

8. First case that needs a mention, which is a milestone and triggered electoral reforms in this country, is *Union of India v. Association for Democratic Reforms & Anr.*, (2002) 5 SCC 294. In this case, the Court held that it was incumbent upon every candidate, who is contesting election, to give information about his assets and other affairs, which requirement is not only essential part of fair and free elections, inasmuch as, every voter has a right to know about these details of the candidates, such a requirement is also covered by freedom of speech granted under Article 19(1)(a) of the Constitution of India. The summing up the entire discussion in the judgment can be found in the following passage:

“46. To sum up the legal and constitutional position which emerges from the aforesaid discussion, it can be stated that:

1. The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word “elections” is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps.

2. The limitation on plenary character of power is when Parliament or State Legislature has made a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. IN case where law is silent, Article 324 is a reservoir of power to act for the avowed purpose of having free and fair election. The Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the enacted laws or the rules. By issuing necessary directions, the Commission can fill the vacuum till there is legislation on the subject. In *Kanhiya Lal Omar case* (1985) 4 SCC 628 the Court construed the expression “superintendence, direction and control” in Article 324(1) and held that a direction may mean an order issued to a particular individual or a precept which many may have to follow and it may be a specific or a general order and such phrase should be construed liberally empowering the Election Commission to issue such orders.

3. The word “elections” includes the entire process of election which consists of several stages and it embraces many steps, some of which may have an important bearing on the process of choosing a candidate. Fair election contemplates disclosure

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

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

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

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

“(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

6. On cumulative reading of a plethora of decisions of this Court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Articles 141 and 142 of 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.

9. On the basis of the aforesaid discussion, this Court issued directions for filing affidavit and the nature of information which was to be given, spelling out the same in para 48 of the judgment, which reads as under:

“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.”

10. The judgment in Association for Democratic Reforms led to amendment in the Act with the induction of Section 33A (already reproduced above) as well as Section 33B therein. Election Commission also laid down guidelines in the year 2002. Insofar as Section 33B is concerned, it was struck down by this Court in the case of People's Union for Civil Liberties (PUCL) & Anr. v. Union of India & Anr., (2003) 4 SCC 399.

11. In order to bring the directions contained in the aforesaid two judgments within the statutory framework, revised guidelines were issued by the Election Commission on March 23, 2006. In para 5 of these guidelines, para 14 of the judgment in Association for Democratic Reforms is reproduced. Likewise, para 13 takes note of the directions given in the case of People's Union for Civil Liberties. In para 15, it is noted that the Supreme Court, while striking down Section 33B of the Act, stated that earlier directions of Election Commission dated June 28, 2002 would continue to operate subject to the afore-mentioned directions of the Court and, therefore, revised directions had become necessary. In para 16, these directions are issued in supersession of earlier directions dated June 28, 2002. Paras 1 and 3 of these guidelines/directions are relevant for us, and, therefore, we reproduce

the same as under:

“(1) Every candidate at the time of filing his nomination paper for any election to the Council of State, House of the People, Legislative Assembly of a State of the Legislative Council of a State having such a council, shall furnish full and complete information in regard to the matters specified by the Hon'ble Supreme Court and quoted in paras 13 and 14 above, in an affidavit, the format whereof is annexed hereto as Annexure-I to this order.

xx xx xx (3) Non-furnishing of the affidavit by any candidate shall be considered to be violation of the order of the Hon'ble Supreme Court and the nomination of the candidate concerned shall be liable to rejection by the returning officer at the time of scrutiny of nomination such non-

furnishing of the affidavit.”

12. We would also like to reproduce para 17 of these guidelines, which concerns the case at hand:

“17. For the removal of doubt, it is hereby clarified that the earlier direction contained in para 14(4) of the earlier order dated 28th June, 2002, in so far 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 is not enforceable in pursuance of the order dated 13th March, 2003 of the Apex Court. It is further clarified that apart from the affidavit Annexure-I hereto referred to in para 16(1) above, the candidate shall have to comply with the other requirements as spelt out in the Representation of the People Act, 1951, as amended by the Representation of the People (Third Amendment) Act, 2002 and the Conduct of Election Rules, 1961, as amended by the Conduct of Elections (Amendment) Rules, 2002.”

13. The meaning and scope of these guidelines came up for discussion before this Court in *Resurgence India v. Election Commission of India & Anr.*, (2013) 11 Scale 348. That judgment was rendered in a writ petition filed under Article 32 of the Constitution of India for issuance of specific directions to effectuate meaningful implementation of the judgments in *Association of Democratic Reforms*, *People's Union for Civil Liberties* and also to direct the Election Commission to make it compulsory for the Returning Officer to ensure that the affidavits filed by the contestants are complete in all respects and to reject the affidavits having blank particulars. This petition, thus was filed taking note of the practice which had started prevailing, namely, many candidates were leaving some of the columns blank in their affidavits thereby omitting to provide the required information. As per the petitioner in that case, in such an eventuality the Returning Officer should reject the nomination whereas the Union of India pleaded that it should be treated at par with filing false affidavits and the candidate filing such an affidavit should be prosecuted under Section 125A of the Act. The Court took note of the provisions of Sections 33A, 36 and 125A of the Act and thereafter referred to the earlier three Judge Bench judgment of this Court in *Shaligram Shrivastava v. Naresh*

Singh Patel, (2003) 2 SCC 176, wherein the Court had discussed the power of rejecting the nomination paper by the Returning Officer of a candidate filing the affidavit with particulars left blank. The relevant discussion in this behalf is in paras 15 and 16 of the said judgment, which read as under:

“15. Although, the grounds of contention may not be exactly similar to the case on hand but the reasoning rendered in that verdict will come in aid for arriving at a decision in the given case. In order to arrive at a conclusion in that case, this Court traversed through the objective behind filing the proforma. The proforma mandated in that case was required to be filed as to the necessary and relevant information with regard to the candidate in the light of Section 8 of the RP Act. This Court further held that at the time of scrutiny, the Returning Officer is entitled to satisfy himself whether the candidate is qualified and not disqualified, hence, the Returning Officer was authorized to seek such information to be furnished at the time or before scrutiny. It was further held that if the candidate fails to furnish such information and also absents himself at the time of the scrutiny of the nomination papers, then he is obviously avoiding a statutory inquiry being conducted by the Returning Officer under Section 36(2) of the RP Act relating to his being not qualified or disqualified in the light of Section 8 of the RP Act. It is bound to result in defect of a substantial character in the nomination. This Court further held as under:

“17. In the case in hand the candidate had failed to furnish such information as sought on the proforma given to him and had also failed to be present personally or through his representative at the time of scrutiny. The statutory duty/power of Returning Officer for holding proper scrutiny of nomination paper was rendered nugatory. No scrutiny of the nomination paper could be made under Section 36(2) of the Act in the light of Section 8 of the Act. It certainly rendered the nomination paper suffering from defect of substantial character and the Returning Officer was within his rights in rejecting the same.”

16. It is clear that the Returning Officers derive the power to reject the nomination papers on the ground that the contents to be filled in the affidavits are essential to effectuate the intent of the provisions of the RP Act and as a consequence, leaving the affidavit blank will in fact make it impossible for the Returning Officer to verify whether the candidate is qualified or disqualified which indeed will frustrate the object behind filing the same. In concise, this Court in Shaligram (supra) evaluated the purpose behind filing the proforma for advancing latitude to the Returning Officers to reject the nomination papers.”

14. The legal position is, thereafter, summarized in para 27, which becomes important for our purpose and, therefore, we produce the same hereunder:

“27. What emerges from the above discussion can be summarized in the form of following difections:

(i) The voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament/Assemblies and such right to get information is universally recognized. 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.

(ii) 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.

(iii) Filing of affidavit with blank particulars will render the affidavit nugatory.

(iv) 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 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.

(v) We clarify to the extent that Para 73 of People's Union for Civil Liberties case (supra) will not come in the way of the Returning Officer to reject the nomination paper when affidavit is filed with blank particulars.

(vi) 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.

(vii) Filing of affidavit with blanks will be directly hit by Section 125A(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 penalized for the same act by prosecuting him/her.”

15. Keeping in mind the aforesaid statutory framework as well as the legal principles enunciated in the afore-noted judgments, we now proceed to discuss the nature of information about which there was non-disclosure by the appellant.

RE – Non-disclosure of Government dues

16. The appellant had not disclosed, in his nomination paper/ affidavit, that he was in arrears in respect of two electricity meters standing in his name, in respect whereof electricity connection was given by the Maharashtra State Electricity Board (for short, 'MSEB'). The outstanding amount in these two meters was Rs.79,200/- and Rs.66,250/- respectively. It was proved, on the basis of

evidence led by the respondent herein, that the aforesaid dues were outstanding against these two electricity connections. The defence of the appellant, however, was that one electricity meter, which was in his residential bungalow, was defective and complaints in this behalf were made to MSEB from time to time and because of that dispute he was orally advised by the officials of MSEB not to pay the amount.

17. The High Court proceeded on the assumption that there was a dispute.

However, as per the High Court that could not be a valid reason for not disclosing this information with a note that the matter was pending review at the hands of MSEB. Thereafter, the High Court posed the question as to whether such non-disclosure can be treated as a technical defect or it is a substantive one. As per the High Court, the answer could be found by adverting to the form and the affidavits to be filed along with the nomination form. These forms required the candidates to disclose his liabilities/overdues to public financial institution and Government dues. Since MSEB is a Government body, the appellant was supposed to give this information. The High Court opined that non-disclosure of this information, which is very vital to enable the voter to form his opinion about the candidate's antecedents, resulted in misinformation and disinformation thereby influencing the voters to take an uninformed decision. The discussion on this aspect is summed up by the High Court in the following manner:

“Accordingly, I have no hesitation in taking the view that it is a case of non-disclosure of liability in respect of outstanding electricity bills payable to Government Undertaking (M.S.E.B.); and that non-disclosure is a substantive defect in the affidavits filed along with nomination form. The test to hold that the defect is substantive, in my opinion, is not the amount involved, but the conscious act of non-disclosure and suppression of that fact. It would be a case of technical defect if there was some clerical error in the information disclosed by the candidate or for that matter, a case of omission due to lack of knowledge of existence of such dues. In the present case, the Respondent was conscious and aware of the fact that on the date of filing of the nomination form, there were two outstanding electricity bills in relation to two meters standing in his name, payable to M.S.E.B. It would have been a different matter if the Respondent was unaware of that fact or that no such bill was ever issued by the M.S.E.B. That is not the case of the Respondent. Thus understood, non-disclosure about the outstanding electricity bill in the sum of Rs. 79,200/- payable by the Respondent to M.S.E.B. Is a substantive defect in the affidavit. Resultantly, the nomination form filed along with such affidavit would become tainted and for which reason, it will have to be held that the same has been improperly accepted within the meaning of Section 100(1)(d)(i) of the Act. Besides, the candidate has failed to comply with the requirements of the order issued by the Election Commission in exercise of powers under Article 324(1) of the Constitution of India which order is founded on the Law declared by the Apex Court in the case of Union of India vs. Association for Democratic Reforms (supra) and binding under Article 141 of the Constitution, therefore, affecting his nomination as well as the Election being void under Section 100(1)(d)(iv) of the Act.”

18. Insofar as outstanding dues in respect of the second electricity meter are concerned, that pertained to premises which had been let out by the appellant to his tenants. There was no dispute that the amount was outstanding. However, the defence of the appellant was that the primary liability of making payment was that of the tenants. The High Court had discarded this defence with the observations that electricity meter stood in the name of the appellant in relation to which there was an outstanding, which amount was payable on the date of filing of the nomination. Even the premises where this meter had been installed were owned by the appellant. Therefore, in law, it was the appellant who was liable to be proceeded against for recovery of the amount and this fact was enough justification to disclose the aforesaid outstanding. As per the High Court, even this non-disclosure amounted to substantive defect.

On that basis, the High Court held that non-disclosure of these Government dues rendered the nomination paper invalid and, therefore, it was a case of improper acceptance.

. RE – Non-disclosure of bungalow No. 866 in the name of spouse and outstanding taxes thereof

19. Bungalow No. 866 at Badlapur in the limits of Kulgaon-Badlapur Municipal Council stands in the name of Kamal Kishore Kathore, wife of the appellant. At the time of filing the nomination, there were municipal dues in the sum of Rs.3,465/-. Allegation of the first respondent was that both the aforesaid informations were suppressed and not disclosed in the affidavit filed by the appellant along with the nomination form. According to him, this was crucial information regarding immovable property owned by the appellant's wife, suppression whereof amounted to filing a defective affidavit and such an affidavit was no affidavit in the eyes of law.

20. Significantly, the averment of the first respondent in the election petition that the appellant had suppressed information regarding the aforesaid immovable property belonging to his wife was not specifically denied by the appellant. The appellant only denied the liability of taxes pertaining to this property, that too on the ground that this property was required to be put to revaluation and reassessment for the purpose of assessing the taxes and for this purpose since the measurement of the property was undertaken to assess the taxable value, no demand notices were issued by the municipal authority. Even hearing regarding re-assessment took place on December 28, 2014 before the Collector and it is only after the completion of the reassessment work the municipal authority had issued tax demand notices.

21. In view of the aforesaid, the High Court observed that as far as the ownership of the property in the name of the wife of the appellant is concerned, it was a clear case of non-disclosure and the ownership was proved even on the basis of evidence produced before the Court. As far as non-payment of municipal dues is concerned, the High Court noted that the appellant merely explained the circumstances in his written statement as to why the municipal taxes in relation to that property had not been paid. However, the municipal taxes were paid in part on October 28, 2004, after the date of filing of nomination with the payment of Rs.1,783/- pertaining to the year 2003-04. It would show that the appellant was in arrears. The Court also discussed the evidence on this aspect, namely, about the purported dispute relating to the reassessment as set up by the appellant in his defence and has returned a finding of fact that, in fact, there were arrears of

municipal taxes in relation to that house.

22. As far as non-disclosure of the immovable property is concerned, the only reply given by the appellant was that there was a substantial compliance because of the reason that the appellant in his affidavit had disclosed the value of all the properties belonging to him and his spouse, in the sum of Rs.11,10,000/-. The High Court, however, found that no such case was made out in the written statement. Moreover, in the affidavit filed by the appellant, against the column of immovable properties, he had disclosed the properties at Badlapur and Kulgaon, valued at Rs.11,10,000/-, shown against the column 'Self'. Thus, the valuation of the properties given in the affidavit was of those properties which belong to the appellant and, therefore, it was a clear case of non-disclosure of wife's property. This non-disclosure is also taken as a material defect. Summing up the discussion on this aspect, the High Court, in para 74, observed as under:

“74. Insofar as the present case is concerned, as is mentioned earlier, the fact asserted by the Petitioner is that the Respondent has not disclosed the ownership of his wife in relation to house No. 866/4 in the affidavit “at all”. That allegation has remained unchallenged and undenied. In my opinion, therefore, there is substance in the stand taken on behalf of the Petitioner that the affidavit filed by the Respondent along with the nomination paper is only to do lip-service and is no affidavit at all as is required by the mandate of law or the order issued by the Election Commission which is founded on the Law declared by the Apex Court. As the affidavit filed by the Respondent along with the nomination form suffers from this substantive defect, the nomination of the Respondent has been improperly accepted within the meaning of Section 100(1)(d)(i) of the Act. Besides, the election of the Respondent was void also on account of non-compliance of the order passed by the Election Commission under Article 324 of the Constitution of India, which is founded on the Law declared by the Apex Court under Article 141 of the Constitution of India, within the meaning of Section 100(1)(d)(iv) of the Act.” RE – Non-disclosure of vehicle MH-05-AC-555 owned by the appellant's wife

23. Here again, from the detailed discussion contained in the impugned judgment of the High Court, it becomes clear that by leading requisite and sufficient evidence, the first respondent proved that wife of the appellant owned the aforesaid vehicle and the particulars thereof were not disclosed. The defence of the appellant was that he had mentioned the value thereof in his affidavit, but accepted that it was against column 'Self' and not in the independent column of his spouse. His defence is discussed and rejected by the High Court in the following manner:

“89. On analysis of the pleadings, it follows that the Respondent admits that motor vehicle in question is owned by his wife. However, it is not his case that in the nomination form, he has disclosed the ownership of the said vehicle of his wife. Perhaps, the Respondent intends to suggest that he has substantially complied with the requirements by disclosing the ownership of motor vehicle valued Rs.5,50,000/- and that it was purchased against loan given by M & M Financial Services Ltd.

90. Before we deal with the ocular evidence of the parties, it will be useful to make reference to the details to be disclosed by the candidate as per the prescribed affidavit. The requirement is that the candidate should disclose the “details of the motor vehicles” owned and possessed by him, his wife and/or other dependent members of his family separately. The Respondent, however, against the said column has only mentioned figure of Rs.5,50,000/- under the column 'Self', which gives an impression that the Respondent himself owns vehicle valued Rs.5,50,000/- and nothing more. No details of the motor vehicle such as number of vehicle, the make, the model such as economic, luxury or the year of purchase and the like are disclosed so as to enable the voters to assess whether the details disclosed are correct or undervalued, including the legitimate means and capability of the candidate to possess such assets. As in the case of disclosure made by the Respondent in respect of buildings, in similar manner, the disclosure in respect of vehicle is also incomplete, vague and misleading. The candidate cannot get away with the explanation that he has disclosed some amount in one of the columns as sufficient or substantial compliance. The purpose of disclosure of assets (movable and immovable) and liabilities to be made by the candidate, is to educate the voters about the complete financial status of the candidate, which information also facilitates the voter to assess whether the assets (movable and immovable) declared by the candidate have been procured by him out of his legitimate and known source of income. The voters have a fundamental right to know and receive such information about the candidate before they take an informed decision to elect their candidate. As it is the fundamental right of the voters, there is corresponding duty on the candidate to disclose truthful and complete information regarding the assets (movable and immovable) as per the prescribed affidavits which forms integral part of the nomination form.” RE – Non-disclosure of property purchased in the name of the firm

24. The first respondent had alleged that the appellant has a right, title and interest in land measuring 1330 sq.mts. being Survey No. 48, Hissa No. 9, Plot No.2 and also in land admeasuring about 1292 sq.mts. being Survey No. 48, Hissa No. 9, Plot No.3 at Mouje Kalyan, Taluka Ambernath, District Thane. These properties are purchased in the name of the partnership firm M/s. Padmavati Developers under agreement of development and sale. The appellant was one of the partners in the said firm. However, the appellant had not disclosed his interest in the aforesaid assets in the affidavit filed along with the nomination form. The defence of the appellant in relation to this allegation was that he had retired from the partnership firm in the year 2003 and in his letter dated October 28, 2004 sent to the Returning Officer, he had stated that the aforesaid two properties do not belong to him. The High Court noted that admittedly there was no reference about the two properties in the affidavits filed along with the nomination form. Further, it was a common case that M/s. Padmavati Developers was formed as a partnership firm in the year 1995, of which the appellant was one of the partners. There was also no dispute that the bank account was operated in the name of the said partnership firm and appellant was one of the joint signatory. Thus, the only aspect which needed determination was as to whether the appellant had retired from the said partnership firm in November 2003, as claimed by him. However, from the plethora of documentary evidence placed on record, the High Court returned a finding that those documents

clearly show that the appellant continued to remain an active partner even after 2003 and was, in fact, a partner on the date of filing of the nomination. Apart from various documents revealing and establishing this fact, most important document was the Deed of Dissolution of the partnership firm, which was dated January 11, 2005 and at the time of evidence, the appellant had admitted the contents thereof, as well as the signatures of the three partners appearing on that document.

The High Court summed up the decision on this aspect in the following manner:

“124. On overall analysis of the evidence, I have no hesitation in concluding that the Petitioner has established the allegation that the Respondent continued to be partner of the partnership firm Padmavati Developers at least till December 2004. It is also matter of record and admitted position that neither the Respondent nor any other partner of Padmavati Developers caused to give public notice of the retirement of the partner or for that matter, intimation to the Registrar of Firms till January 2005. Obviously, intimation has been sent to the Registrar of Firms only after the institution and service of the present Election Petition, having realised the seriousness of the allegation. If so, it was obligatory on the part of the Respondent to disclose his interest in the properties purchased in the name of the said firm.”

25. It would be pertinent to mention here that the first respondent had alleged non-disclosure of many other assets, liabilities, etc. or suppression of other material information in the affidavits. However, apart from the aforesaid four non-disclosures, other allegations have not been accepted by the High Court. We would also like to mention at this stage itself that on all the four counts the High Court has recorded finding of facts, which are based on the evidence produced on record. As would be noted hereinafter, learned senior counsel appearing for the appellant did not even attempt to argue that these findings are wrong on facts. He only made legal submissions and his entire endeavour was that for non-disclosure of the aforesaid information, the High Court could not have held that the nomination was wrongly accepted and further that since there was a substantial compliance, there was no reason to set aside the election of the appellant.

26. On these aspects, the High Court had framed issues No. 7 and 8, which are as under:

“(7) Does the Petitioner proves that the Respondent's Nomination Form is improperly accepted by the Returning Officer” (8) Whether on account of improper acceptance of the nomination paper, the Election result is materially affected?”

27. On Issue No.7, finding of the High Court is that nomination was improperly accepted by the Returning Officer by giving the following reasons:

“130. That takes me to the next issue as to whether Petitioner proves that the Respondent's nomination form is improperly accepted by the Returning Officer? Insofar as this issue is concerned, the Respondent may be right to the extent that the Returning Officer cannot be faulted for having accepted the nomination form of the Respondent. That was required to be accepted inspite of the objection, in view of the

decision of the Apex Court in the case of PUCL (supra) and the order issued by the Election Commission on the basis of the Law declared in the said Judgment. Inasmuch as, it was not open to the Returning Officer to enquire into contentious issues raised in this Petition in the summary enquiry at the stage of scrutiny of nomination forms. Those matters necessarily have to be addressed only after it is disclosed in an enquiry upon taking evidence on the relevant facts at the trial of the Election Petition. That does not mean that the nomination of Respondent was proper and lawful. As the Respondent's nomination paper suffered from the defects already referred to in the earlier part of this decision, it is plainly a case of improper acceptance of his nomination paper by the Returning Officer, covered by the rigours of Section 100(1)(d)(i) of the Act. The issue No.7 will have to be answered accordingly.”

28. Issue No. 8 pertains to the question as to whether the election result was materially affected because of non-disclosure of the aforesaid information. The High Court took note of provisions of Section 100(1)(d)(i) and (iv) and discussed the same. Thereafter, some judgments cited by the appellant were distinguished and deciding this issue against the appellant, the High Court concluded as under:

“137. In my opinion, it is not necessary to elaborate on this matter beyond a point, except to observe that when it is a case of improper acceptance of nomination on account of invalid affidavit or no affidavit filed therewith, which affidavit is necessarily an integral part of the nomination form; and when that challenge concerns the returned candidate and if upheld, it is not necessary for the Petitioner to further plead or prove that the result of the returned candidate has been materially affected by such improper acceptance.

138. The avowed purpose of filing the affidavit is to make truthful disclosure of all the relevant matters regarding assets (movable and immovable) and liabilities as well as criminal actions (registered, pending or in respect of which cognizance has been taken by the Court of competent jurisdiction or in relation to conviction in respect of specified offences). Those are matters which are fundamental to the accomplishment of free and fair election. It is the fundamental right of the voters to be informed about all matters in relation to such details for electing candidate of their choice. Filing of complete information and to make truthful disclosure in respect of such matters is the duty of the candidate who offers himself or who is nominated for election to represent the voters from that Constituency. As the candidate has to disclose this information on affidavit, the solemnity of affidavit cannot be allowed to be ridiculed by the candidates by offering incomplete information or suppressing material information, resulting in disinformation and misinformation to the voters. The sanctity of disclosure to be made by the candidate flows from the constitutional obligation.”

29. As pointed out above, there is no dispute on facts that information in respect of the aforesaid four aspects was not disclosed by the appellant in the affidavit filed by him along with the nomination form. The defence and/or justification given for non-disclosing these particulars is rightly rebuffed by the High Court. However, submission of Mr. B. Adinarayana Rao, learned senior counsel appearing for the appellant, was that having regard to the judgment of this Court in *G.M. Siddheshwar v. Prasanna Kumar*, (2013) 4 SCC 776, the Court was required to examine as to whether information given in the affidavits was substantial compliance of those particulars regarding Government dues, assets and liabilities, etc. He submitted that the information amounted to substantial compliance. For this purpose, his attempt was to demonstrate that insofar as electricity dues of MSEB are concerned, there was a genuine dispute about the non-payment; as far as ownership of bungalow No. 866 in the name of his wife is concerned, it was added to the value of the properties belonged to the appellant; municipal taxes in respect of this bungalow were again subject matter of dispute; the value of the vehicle owned by his wife was also disclosed against his own name; and as far as properties owned by the partnership firm are concerned, the appellant was simply a partner from which he had resigned, even when this event occurred after the filing of the nomination form.

30. We may state, in the first instance, that the judgment in *G.M. Siddheshwar* has no application insofar as the present case is concerned. The Court was dealing with the form of affidavit that is required to be filed along with the election petition in order to comply with the provisions of Section 83(1) proviso of the Act. The very maintainability of the election petition was challenged on the ground that the affidavit furnished by the election petitioner was not in absolute compliance with the format affidavit (Form 25). The Court, however, upheld the view of the High Court holding that on perusal of the affidavit, there was substantial compliance with the prescribed format. Even when some defect was found in the verification to the election petition, it was held that said defect is also curable and cannot be held fatal to the maintainability of the election petition. In the present case, we are concerned with the affidavit which a candidate seeking election is required to file along with his nomination form. At the same time, we proceed on the basis that if there is a substantial compliance of the requirements contained in the said affidavits, in the sense that there is a disclosure of required particulars, including assets/liabilities etc., it can be treated as adequate compliance of the provisions of the Act, Rules and Orders.

31. We have also kept in mind the following observations in *G.M. Siddheshwar*, while undertaking our analysis of the issue in the present case:

“31. The Court must make a fine balance between the purity of the election process and the avoidance of an election petition being a source of annoyance to the returned candidate and his constituents. In *Azhar Hussain v. Rajiv Gandhi*, 1986 Supp SCC 315 this Court observed (in the context of summary dismissal of an election petition):

(SCC p. 324, para 12) “12...So long as the sword of Damocles of the election petition remains hanging an elected member of the legislature would not feel sufficiently free to devote his whole-hearted attention to matters of public importance which clamour for his attention in his capacity as an elected representative of the constituency

concerned. The time and attention demanded by his elected office will have to be diverted to matters pertaining to the contest of the election petition. Instead of being engaged in a campaign to relieve the distress of the people in general and of the residents of his constituency who voted him into office, and instead of resolving their problems, he would be engaged in campaign to establish that he has in fact been duly executed.”

32. In view of the aforesaid, two facets of the issue, which require consideration, are as follows:

a) Whether there is a substantial compliance in disclosing the requisite information in the affidavits filed by the appellant along with the nomination paper?

b) Whether non-disclosure of the information on account of aforesaid four aspects has materially affected the result of the election?

33. We have already discussed in detail each item of non-disclosure as well as defence of the appellant pertaining thereto. For the reasons recorded in detail at that stage by the High Court and stated above, with which we agree, we are of the opinion that its finding about non-disclosure of the information qua all the aspects is without blemish. There is a specific format in which the information is to be given, which was not adhered to.

34. With these remarks we proceed to deal with the first aspect.

Insofar as non-disclosure of the electricity dues is concerned, in the given facts of the case, we are of the opinion that it may not be a serious lapse. No doubt, the dues were outstanding, at the same time, there was a bona fide dispute about the outstanding dues in respect of the first electricity meter. It would have been better on the part of the appellant to give the information along with a note about the dispute, as suggested by the High Court, we still feel that when the appellant nurtured belief in a bona fide manner that because of the said dispute he is not to give the information about the outstanding amount, as it had not become 'payable', this should not be treated as a material lapse. Likewise, as far as the second electricity meter is concerned, it was in the premises which was rented out to the tenants and the dues were payable by the tenants in the first instance. Again, in such circumstances, one can bona fide believe that the tenants would pay the outstanding amount. No doubt, if the tenants do not pay the amount the liability would have been that of the owner, i.e. the appellant. However, at the time of filing the nomination, the appellant could not presume that the tenants would not pay the amount and, therefore, it had become his liability. Same is the position with regard to non-payment of a sum of Rs.1,783/- as outstanding municipal dues, where there was a genuine dispute as to revaluation and reassessment for the purpose of assessing the taxes was yet to be undertaken. Having said so, we may clarify that it would depend in the facts and circumstances of each case as to whether such a non-disclosure would amount to material lapse or not. We are, thus, clarifying that our aforesaid observation in the facts of the present case should not be treated as having general application.

35. Even if it is so, in respect of the aforesaid aspects, on other non-

disclosures, the case of the appellant has to fail. We find clear case of non-disclosure of bungalow No. 866 in the name of the appellant's wife, which is a substantial lapse. So is the case about the non-disclosure of vehicle in the name of appellant's wife. Likewise, non-disclosure of the appellant's interest/share in the partnership firm is a very serious and major lapse. On all these aspects, we find that the defence/explanation furnished by the appellant does not inspire any confidence. It is simply an afterthought attempt to wriggle out of the material lapse on the part of the appellant in not disclosing the required information, which was substantial. We, therefore, are of the view that in the affidavits given by the appellant along with the nomination form, material information about the assets was not disclosed and, therefore, it is not possible to accept the argument of the appellant that information contained in the affidavits be treated as sufficient/substantial compliance.

36. We have already reproduced above the relevant portions of judgments in the cases of Association for Democratic Reforms and People's Union for Civil Liberties and the guidelines issued by the Election Commission pursuant thereto. A conjoint and combined reading thereof clearly establishes that the main reason for issuing directions by this Court and guidelines by the Election Commission pursuant thereto is that the citizens have fundamental right under Article 19(1)(a) of the Constitution of India to know about the candidates contesting the elections and this is the primary reason that casts a solemn obligation on these candidates to furnish information regarding the criminal antecedents, educational qualifications and assets held by the candidate, his spouse and dependent children. It is on that basis that not only Election Commission has issued guidelines, but also prepared formats in which the affidavits are to be filed. As a fortiori, it follows that if the required information as per the said format in respect of the assets of the candidate, his wife and dependent children is not given, it would amount to suppression/non-disclosure.

37. It was argued that acceptance of nomination is as per Section 33 of the Act, which contains requirement for a valid nomination. Further Section 36(2) deals with rejection of nomination on grounds specified therein. It was the submission of the learned senior counsel that at the time of scrutiny of the nomination under Section 36, nomination could be rejected only if any of the grounds stipulated in sub-section (2) are satisfied and there cannot be any 'deemed' ground, which is not covered by Section 36(2) of the Act. Therefore, the Returning Officer had rightly accepted the nomination form as none of the grounds specified in sub-section (2) of Section 36 were attracted. He further submitted that Sections 8A, 9, 9A, 10 and 10A provide disqualifications for Members of Parliament and State Legislature. As per the counsel, from the scheme of the Act it can be seen that at the time of scrutiny of nomination, all that the Returning Officer is required to examine is as to whether the candidate suffers from any of the disqualifications mentioned in Section 8 to 10A of the Act and as to whether the nomination is in the form prescribed by Section 33 and accompanied by the documents mentioned in sub-sections 2 to 7 of Section 33 and whether it is accompanied by an affidavit prescribed by Rule 4A and the deposit required by Section 34 of the Act. Apart from the aforesaid, the Returning Officer is not empowered to reject the nomination on any other ground. He argued that the right of the Returning Officer to conduct a summary inquiry into the correctness or otherwise of the contents of the affidavit filed along with the nomination was expressly taken away as can be seen from the judgment of this Court in the case of People's Union for Civil Liberties. Having noted that the Returning Officer has no power to reject a nomination where false information is furnished or material information is suppressed, the Election Commission of India

and Union of India have requested this Court to treat the same as equal to a blank affidavit, as noted in the case of Resurgence India.

It is difficult to accept the aforesaid submissions of the learned senior counsel as that would amount to nullifying the effect of the judgments as well as guidelines issued by the Election Commission.

38. When the information is given by a candidate in the affidavit filed along with the nomination paper and objections are raised thereto questioning the correctness of the information or alleging that there is non-disclosure of certain important information, it may not be possible for the returning officer at that time to conduct a detailed examination. Summary enquiry may not suffice. Present case is itself an example which loudly demonstrates this. At the same time, it would not be possible for the Returning Officer to reject the nomination for want of verification about the allegations made by the objector. In such a case, when ultimately it is proved that it was a case of non-disclosure and either the affidavit was false or it did not contain complete information leading to suppression, it can be held at that stage that the nomination was improperly accepted. Ms. Meenakshi Arora, learned senior counsel appearing for the Election Commission, right argued that such an enquiry can be only at a later stage and the appropriate stage would be in an election petition as in the instant case, when the election is challenged. The grounds stated in Section 36(2) are those which can be examined there and then and on that basis the Returning Officer would be in a position to reject the nomination. Likewise, where the blanks are left in an affidavit, nomination can be rejected there and then. In other cases where detailed enquiry is needed, it would depend upon the outcome thereof, in an election petition, as to whether the nomination was properly accepted or it was a case of improper acceptance. Once it is found that it was a case of improper acceptance, as there was misinformation or suppression of material information, one can state that question of rejection in such a case was only deferred to a later date. When the Court gives such a finding, which would have resulted in rejection, the effect would be same, namely, such a candidate was not entitled to contest and the election is void. Otherwise, it would be an anomalous situation that even when criminal proceedings under Section 125A of the Act can be initiated and the selected candidate is criminally prosecuted and convicted, but the result of his election cannot be questioned. This cannot be countenanced.

39. The upshot of the aforesaid discussion would be to hold that the present appeal is totally devoid of any merits and is, accordingly, dismissed.

.....J. (Surinder Singh Nijjar)J. (A.K. Sikri) New
Delhi;

May 09, 2014.