

Farsubhai Muljibhai Gokalani vs State Of Gujarat & 6....Opponent(S) on 30 March, 2016

Author: R. Subhash Reddy

Bench: R.Subhash Reddy, Anant S. Dave

C/WPPIL/215/2015

CAV JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WRIT PETITION (PIL) NO. 215 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MR. R.SUBHASH REDDY

and

HONOURABLE MR.JUSTICE ANANT S. DAVE

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

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FARSUBHAI MULJIBHAI GOKALANI....Applicant(s)
Versus
STATE OF GUJARAT & 6....Opponent(s)

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Appearance:

MR SHALIN MEHTA Senior Advocate MR RUCHIR A PATEL, ADVOCATE for

the Applicant(s) No. 1

MR PK JANI Addl. Advocate General with MR DHARMESH DEVNANI AGP for the Opponent(s) No. 1

MR ND NANAVALY Senior Advocate with MR AY KOGJE, ADVOCATE for the Opponent(s) No. 2

MR PC KAVINA Senior Advocate with MR BIREN A VAISHNAV, ADVOCATE for the Opponent(s) No. 7

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C/WPPIL/215/2015

CAV JUDGMENT

MS MAMTA R VYAS, ADVOCATE for the Opponent(s) No. 6

CORAM: HONOURABLE THE CHIEF JUSTICE MR. R.SUBHASH
REDDY
and
HONOURABLE MR.JUSTICE ANANT S. DAVE

Date : 30/03/2016

CAV JUDGMENT

(PER : HONOURABLE MR.JUSTICE ANANT S. DAVE) 1 The petitioner, a social worker and also member of District Panchayat, Patan has filed this Public Interest Litigation under Article 226 of the Constitution of India with a prayer to issue writ of mandamus or any other appropriate writ, order or direction, directing respondent No.2, an elected Member of Legislative Assembly of State of Gujarat from Vav constituency and also Minister of State in the Cabinet of the State of Gujarat holding portfolio of Urban Housing [Independent charge], Health and Family Welfare and Transport, to produce original certificates regarding his degree of Higher Secondary Education [HSC] examination as well as Master of Business Administration, on the basis of which he filed affidavit before the Election Commission, while filing his nomination from Vav Constituency for the election of Member of Legislative Assembly in the year 2012. Inter HC-NIC Page 2 of 31 Created On Fri Apr 01 01:12:55 IST 2016 alia, it is prayed that mandamus be issued directing the respondent No.3 - State Election Commission or the respondent No.4 - Police authority to register FIR against respondent No.2 for committing an offence under Section 125A of the Representation of People Act, 1951 or under Section 191 of the Indian Penal Code, 1860 and further to make inquiry in this regard.

2 It is the case of the petitioner that respondent No.2 has declared certain facts in view of provisions of Rule 4A of 'Conduct of Election Rules, 1961' and order No.3/ER/2003 dated 27.03.2003 issued by the Election Commission of India whereby a

candidate is to submit affidavit in support of certain disclosure of information, including education qualifications, assets and liabilities, criminal cases, etc. in which passing of HSC examination by respondent No.2 was in the year 1987 as per the examination conducted by the Gujarat Higher Secondary Education Board. This disclosure was made by respondent No.2 in the earlier election, which was held in the year 2007 and affidavit was filed. In the next election, which was held in the year 2012 the respondent No.2 filed his candidature from the Vav constituency and informations were declared as required in his affidavit on 30.11.2012 whereby passing of HSC HC-NIC Page 3 of 31 Created On Fri Apr 01 01:12:55 IST 2016 Examination by respondent No.2 was in July, 2011. That the above declaration of passing HSC by respondent No.2 in one subject in the year March, 2011 and another subject in July, 2011 was also doubtful. Besides, obtaining Master of Business Administration [for short, 'MBA'] degree from National Institution of Management [for short, 'NIM'] by respondent No.2 was highly suspicious and it was impossible for respondent No.2 to obtain MBA degree within a year of passing his HSC examination in July, 2011, as mentioned in the affidavit dated 30.11.2012. Further, credentials of NIM was doubtful and even criminal cases came to be registered against NIM as per newspaper report and detailed investigation was carried out. Therefore, in all probabilities, MBA degree availed by respondent No.2 from NIM was a fake degree and representations were made to His Excellency the Governor of Gujarat and also to the Hon'ble Chief Minister, Gujarat State and Chief Election Commission, but no decision is taken much less an inquiry is ordered, and therefore, the petitioner is constrained to file this petition invoking extraordinary jurisdiction under Article 226 of the Constitution of India.

3 Mr. Shalin Mehta, learned Senior Advocate appearing with Mr. Ruchir Patel, learned counsel for the petitioner has vehemently argued HC-NIC Page 4 of 31 Created On Fri Apr 01 01:12:55 IST 2016 that having passed SSC / 10th Standard examination by respondent No.2 in 1987, a false information is submitted by him about his passing HSC examination in the year 2011 and availing MBA degree in the year 2012. Ordinarily, MBA degree is a post graduation course conferred upon a candidate after completion of two years course and in view of several proceedings, including criminal proceedings initiated against NIM, a private institute, of selling degree certificates and mark sheets and recovery of such certificates, it appears that the respondent No.2 has obtained MBA degree by using his influence as an Elected Member of the Legislative Assembly. It is, therefore, necessary that directions be issued to respondent No.2 to produce the said documents including original degree certificates on record of the petition. Besides, earlier in the year 2007, the respondent No.2 was elected as a Member of the Legislative Assembly and being MLA, it was doubtful as how it was possible for him to attend classes and to appear in HSC examinations. The sequences, as above would show that educational qualifications of respondent No.2 are highly doubtful and respondent No.2 has filed a false affidavit and thereby committed an offence under Section 125A of The Representation of People Act, 1951 [for short, 'the Act, 1951'] and for disclosing such false information by HC-NIC Page 5 of 31 Created On Fri Apr 01 01:12:55 IST 2016

respondent No.2, which he knew or had reason to believe to be false and has concealed the information relating to his real educational qualification in his nomination papers filed under sub-section (1) of section 33 or in his affidavit which was required to be filed under sub-section (2) of section 33A of the Act, 1951 and the respondent No.2 has committed offence punishable with imprisonment for a term which may extend to six months or with fine or with both. Further, even the respondent No.2 is also guilty of offence under Section 191 of the Indian Penal Code for giving false evidence with regard to his educational qualifications. The above strong suspicion by the petitioner can prima facie be looked into and as respondent No.2 is having criminal record, a case is made out to grant prayer made in this petition.

3.1 Learned Senior Advocate appearing for the petitioner has referred to certain information received under The Right to Information Act, 2005 that NIM is not in the approved list of AICTE and NIM is not even included in the list of universities maintained by Universities Grants Commission. With regard to directions to be issued to Election Commission of India - respondent No.7, Mr. Shalin Mehta, learned Senior Advocate would contend that the HC-NIC Page 6 of 31 Created On Fri Apr 01 01:12:55 IST 2016 Election Commission is duty bound to order registration of FIR and in spite of detailed representation, no action is taken, and therefore also, prayers made in this petition be granted.

3.2 Learned Senior Advocate appearing for the petitioner has relied on the following decisions:

[1] Resurgence India v. Election Commission of India and Another [(2014)14 SCC 189] in support of submission that a voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament and such right to get information is universally recognized natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution of India.

[2] Kisan Shankar Kathore v. Arun Dattatray Sawant and others [(2014) 14 SCC 162] in support of submission that a voter has right to know credential of a candidate, which is human and civil right and non-disclosure of material information, required to be disclosed under the rules or provisions of the Act, 1951 entails election of such candidate to be set aside.

HC-NIC Page 7 of 31 Created On Fri Apr 01 01:12:55 IST 2016 [3] B. R. Kapur v. State of Tamilnadu [(2001) 7 SCC 231] in support of contention that duty cast upon the Election Commission and disqualification incurred by the respondent No.2 under Article 191(1)(e) read with Section 8(3) of the Representation of the Peoples Act, 1951 and even quo warranto could also be issued in case if

elected member is suffered from disqualification to hold public office.

4 Mr. P.C.Kavina, learned Senior Advocate appearing with Mr. Biren Vaishnav, learned counsel for the respondent No.7 - Election Commission of India would contend that no doubt Election Commission is vested with the power to conduct free and fair election as mandated under Article 324 of the Constitution of India and The Model Code of Conduct is enforced from the date of announcement of election schedule by the Election Commission and all necessary steps are taken to ensure that no illegality is committed by anyone including the candidates and free and fair elections are held. Learned Senior Advocate appearing for the Election Commission of India also relied on provisions of Section 125A of the Act, 1951 and submitted that the above section does not mandate the Returning Officer to take action or other proceedings and as held in the HC-NIC Page 8 of 31 Created On Fri Apr 01 01:12:55 IST 2016 case of People's Union for Civil Liberties [PUCL] vs. Union of India & Ors. [(2003) 4 SCC 399] and subsequent decision relied in the case of Shri Kisan Shankar v. Shri Arun Dattatray Sawant [AIR 2014(5) SCJ 152], the making of such false affidavit is not a ground for rejection of nomination paper. It is submitted that nothing prevents an aggrieved person to initiate appropriate proceedings before the competent court of law having jurisdiction under Section 125A of the Act, 1951 and accordingly the petitioner can move such court in accordance with law. Learned Senior Advocate appearing for Election Commission of India has further relied on the decision dated 09.07.2014 rendered by the Andhra Pradesh High Court in the case of Dubbaka Narsimha Reddy vs. Election Commission of India decided in Writ Petition No.12066 of 2014 in support of his submission that Election Commission is not bound nor vested with any power to take action under section 125A of the Act, 1951.

4.1 Inter alia, a communication dated 26.04.2014 addressed by Principal Secretary of Election Commission of India to the Chief Electoral Officer of all States and Union Territories with regard to subject of filing of HC-NIC Page 9 of 31 Created On Fri Apr 01 01:12:55 IST 2016 false affidavits in Form-26 appended to the Election Rules, 1951 is relied on, wherein, a clarification is issued about powers conferred under Section 125A of the Act, 1951 that there is no stipulation that complaints under this Section have to be made by the public servant concerned viz. the Returning Officer, but it would be open to any aggrieved person to move petition before appropriate court of competent jurisdiction for action under the said section.

4.2 Learned Senior Advocate appearing for Election Commission of India has drawn our attention to various provisions of the Act, 1951, and The Constitution of India, 1950 and submitted that no mandamus could be issued as prayed for by the petitioner in this Public Interest Litigation.

5 Mr. P.K.Jani, learned Additional Advocate General appearing for the State authorities had drawn attention to Chapter A of offences related to elections and provisions of

Section 171A to 171I and submitted that on mere surmise or even strong suspicion of petitioner about education qualifications of respondent No.2 and failure on the part of the petitioner to take appropriate action in accordance with law in spite of availability of various remedies, no HC-NIC Page 10 of 31 Created On Fri Apr 01 01:12:55 IST 2016 prayer could be granted in the exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. Learned Additional Advocate General relied on the submissions made by learned Senior Advocate for the Election Commission of India in this petition.

6 Mr. N.D.Nanavaty, learned Senior Advocate, appearing for respondent No.2 vehemently opposed grant of relief and contended that the petitioner is an arch political rival of respondent No.2 and having lost in the State Legislative Assembly Elections, 2012 from Vav Constituency and having failed to raise any objection at any stage during the election process, has chosen to file the present Writ Petition [Public Interest Litigation].

It is further submitted that even no election petition is filed challenging the election of respondent No.2. It is further submitted that this writ petition is nothing but an abuse of process of law and hence deserves to be dismissed, at the threshold.

7 The respondent No.6 has also filed affidavit in which it is declared that respondent No.2 had appeared in SSC examinations in March, 1986 as regular student and he was declared failed in one paper and he had reappeared in the HC-NIC Page 11 of 31 Created On Fri Apr 01 01:12:55 IST 2016 SSC examination in March, 1987 and for HSC, respondent No.2 appeared as external student and in detail explained about necessity for respondent No.2 to appear in the subjects of English and Computer in view of new syllabus and pattern and cleared subject of computer by appearing in supplementary examination in July, 2011 and was declared pass in HSC.

8 Heard learned counsels for the parties and perused the record of case, including various provisions of The Representation of the People Act, 1951, The Constitution of India, The Indian Penal Code and relevant judgments of the Apex Court and judgment of Andhra Pradesh High Court.

8.1 For the purpose of deciding the issue involved in this petition, relevant provisions of The Representation of the People Act, 1951 are reproduced hereinbelow:

PART II - QUALIFICATIONS AND DISQUALIFICATIONS.

CHAPTER I - QUALIFICATIONS FOR MEMBERSHIP OF PARLIAMENT.

CHAPTER II - QUALIFICATIONS FOR MEMBERSHIP OF STATE LEGISLATURES CHAPTER III - DISQUALIFICATIONS FOR MEMBERSHIP OF PARLIAMENT AND STATE HC-NIC Page 12 of 31 Created On Fri Apr 01 01:12:55 IST 2016 LEGISLATURES.

Section 7. Definitions [a] `appropriate Government' [b] `disqualified' Section 8. Disqualification on conviction for certain offences. [1] A person convicted of an offence punishable under--

[a] section 153A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) or section 171E (offence of bribery) or section 171F (offence of undue influence or personation at an election) or sub-section (1) or sub-section (2) of section 376 or section 376A or section 376B or section 376C or section 376D (offences relating to rape) or section 498A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section (2) or sub-section (3) of section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code (45 of 1860); or [b] the Protection of Civil Rights Act, 1955 (22 of 1955) which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising therefrom; or [c] section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962 (52 of 1962); or [d] sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or [e] the Foreign Exchange (Regulation) Act, 1973 (46 of 1973); or [f] the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or [g] section 3 (offence of committing terrorist acts) or section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or [h] section 7 (offence of contravention of the provisions of sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988); or [i] section 125 (offence of promoting enmity between classes in connection with the election) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) of clause (a) of sub-section (2) of section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act; [or] [j] section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act, 1991; [or] [k] section 2 (offence of insulting the Indian National Flag or the Constitution of India) or section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (69 of 1971), [or] [l] the Commission of Sati (Prevention) Act, 1987 (3 of 1988); or [m] the Prevention of Corruption Act, 1988 (49 of 1988); or [n] the Prevention of Terrorism Act, 2002 (15 of 2002),] [shall be disqualified, where the convicted person is sentenced to--

[i] only fine, for a period of six years from the date of such conviction;

[ii] imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.] [2] A person convicted for the contravention of--

[a] any law providing for the prevention of hoarding or profiteering; or [b] any law relating to the adulteration of food or drugs; or [c] any provisions of the Dowry Prohibition Act, 1961 (28 of 1961), and sentenced to imprisonment for not less than six months, shall be disqualified from the date of such conviction and shall continue to be disqualified for a further HC-NIC Page 15 of 31 Created On Fri Apr 01 01:12:55 IST 2016 period of six years since his release].

[3] A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (1) or sub-section (2)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.] [4] Notwithstanding anything [in sub-section (1), sub-section (2) or sub-section (3), a disqualification under either subsection shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.

Explanation - In this section [a] "law providing for the prevention of hoarding or profiteering" means any law, or any order, rule or notification having the force of law, providing for--

[i] the regulation of production or manufacture of any essential commodity;

[ii] the control of price at which any essential commodity may be bought or sold;

[iii] the regulation of acquisition, possession, storage, transport, distribution, disposal, use or HC-NIC Page 16 of 31 Created On Fri Apr 01 01:12:55 IST 2016 consumption of any essential commodity;

[iv] the prohibition of the withholding from sale of any essential commodity ordinarily kept for sale;

[b] "drug" has the meaning assigned to it in the Drugs and Cosmetics Act, 1940 (23 of 1940);

[c] "essential commodity" has the meaning assigned to it in the Essential Commodity Act, 1955 (10 of 1955);

[d] "food" has the meaning assigned to it in the Prevention of Food Adulteration Act, 1954 (37 of 1954).

Section 8A. Disqualification on ground of corrupt practices.

Section 9. Disqualification for dismissal for corruption or disloyalty.

Section 9A. Disqualification for Government contracts, etc. Section 10. Disqualification for office under Government company.

Section 10A. Disqualification for failure to lodge account of election expenses.

Section 11. Removal or reduction of period of disqualification.

CHAPTER IV - DISQUALIFICATIONS FOR VOTING.

Section 11A. Disqualification arising out of conviction and corrupt practices.

HC-NIC Page 17 of 31 Created On Fri Apr 01 01:12:55 IST 2016 Section 11B. Removal of disqualifications.

PART V - CONDUCT OF ELECTIONS CHAPTER I - NOMINATION OF CANDIDATES Section 36.

36. Scrutiny of nominations -- [1] On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorized 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 HC-NIC Page 18 of 31 Created On Fri Apr 01 01:12:55 IST 2016 and 14 of the Government of Union Territories Act, 1963 (20 of 1963)]; or [b] that there has been a failure to comply with any of the provisions of section 33 or section 34 ; or [c] that the signature of the candidate or the proposer on the nomination paper is not genuine.

[3] Nothing contained in 10[clause (b) or clause (c) of sub]section (2) shall be deemed to authorize 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 grounds 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 2 [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 HC-NIC Page 19 of 31 Created On Fri Apr 01 01:12:55 IST 2016 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 ejecting 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.]
PART VI - DISPUTES REGARDING ELECTIONS.

CHAPTER I - INTERPRETATION.

Section 79. Definitions.

CHAPTER II - PRESENTATION OF ELECTION PETITIONS TO HIGH COURT.

80. Election petitions -- No election shall be called in question except by an election petition presented in accordance HC-NIC Page 20 of 31 Created On Fri Apr 01 01:12:55 IST 2016 with the provisions of this Part.

80A. High Court to try election petitions-- [1] The Court having jurisdiction to try an election petition shall be the High Court.

[2] Such jurisdiction shall be exercised ordinarily by a single Judge of the High Court and the Chief Justice shall, from time to time, assign one or more Judges for that purpose:

Provided that where the High Court consists only of one Judge, he shall try all election petitions presented to that Court.

[3] The High Court in its discretion may, in the interests of justice or convenience, try an election petition, wholly or partly, at a place other than the place of seat of the High Court.

CHAPTER III - ELECTORAL OFFENCES Section 125. Promoting enmity between classes in connection with election -- Any person who in connection with an election under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India shall be punishable, with imprisonment for a term which may extend to three years, or with fine, or with both.] Section 125A. Penalty for filing false affidavit, etc -- A candidate who himself or through his proposer, with intent to be elected in an election,--

HC-NIC Page 21 of 31 Created On Fri Apr 01 01:12:55 IST 2016 [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 . 2 In the constitution of India disqualification of members of both Houses of the Legislature of a State provisions are made.

Article 190 ☐Vacation of Seats Article 191 - Disqualification for membership.

Article 192 is with regard to Decision on questions as to disqualifications of such member, who has become subject to any of the disqualifications mentioned in clause [1] of Article 191 and the question shall have to be referred to the Governor for the decision and such decision of the Governor shall be final. While taking such decision, the Governor shall have to obtain opinion of the Election Commission and shall have to act according to such opinion.

HC-NIC Page 22 of 31 Created On Fri Apr 01 01:12:55 IST 2016 All the above provisions of the Act, 1951 and provisions of Constitution of India reveal an elaborate and extensive mechanism.

8.3 Thus, a detailed provisions are prescribed under the Act, 1951 and in the Constitution of India along with specific Chapter IXA of Indian Penal Code, which is pertaining to offences relation to elections.

8.4 Even in paragraph 5 of the affidavit in reply dated 04.12.2015 filed by Secretary on behalf of Election Commission of India, it is stated as under:

"5. I say that the Election Commission of India has issued a Circular dated 26.04.2014 to the Chief Electoral Officers of All State and Union Territories in respect to the subject of filing false affidavits. A copy of circular is annexed hereto and marked as ANNEXURE R/1 to this Reply. I say that as so explained in the circular, there is no stipulation that complaints under Section 125A have to be made by the public servant i.e. the Officers of the Election Commission i.e. the concerned Returning Officer. It is for the complaint to prove the allegation made by him against the candidate and not for the Election Commission or its machinery which is not in possession of any evidence in this regard. I therefore HC-NIC Page 23 of 31 Created On Fri Apr 01 01:12:55 IST 2016 state and submit that the communication dated 24/7/2015 issued by the CEO, Gujarat is in line with the circular and in accordance thereto it would be open for the Petitioner / Aggrieved person to initiate an appropriate proceeding before the competent court / jurisdiction under Section 125A of the Act. I say that it is not necessary for the Returning Officer to file a complaint and therefore such a complaint can be filed by the complainant/ petitioner herein who has the requisite information to substantial his allegation to move an appropriate court of law for action under the provisions of Section 125A of the Representation of Peoples Act, 1951".

8.5 As seen above, the petitioner, an arch political rival of respondent No.2, has invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and prayer is made to treat this petition as a Writ Petition [PIL] with prayers to move

Election Commission of India to take necessary action under the Act, 1951 in spite of availability of various remedies for redressal of very grievances in accordance with law.

8.6 The petitioner has failed to take any objection at the stage of scrutiny of nomination, as prescribed under Section 36 of the Act, 1950. Prima facie, no allegation of adopting any unfair means or corrupt practice during course of HC-NIC Page 24 of 31 Created On Fri Apr 01 01:12:55 IST 2016 contesting and canvassing the candidature as a Member of Legislative Assembly of the State of Gujarat by respondent No.2 appears on record, much less any election petition for any irregularity or illegality during the election under Sections 80 or 80A of Act, 1951 under Chapter II Election petition is presented to the High Court challenging election of respondent No.2.

8.7 Thus, nowhere in Section 125A of Act, 1951, it prevents the petitioner from taking action in accordance with law. Without taking recourse to Election Commission or if the Election Commission expresses its inability or declined to take any action in this regard, for which guidelines are issued by way of communication dated 26.04.2014 to all concerned about filing of false affidavit in Form□ 26, the petitioner has filed the present Public Interest Litigation. It is thus open for the petitioner to file complaint himself before the concerned court having jurisdiction in this regard.

8.8 We have also perused affidavit in reply filed by respondent No.6 about passing of examination for Standard 10th and Standard 12th respectively by the respondent No.2 and that whether mentioning of MBA in the requisite column HC-NIC Page 25 of 31 Created On Fri Apr 01 01:12:55 IST 2016 in the form for declaration about certain information of educational qualification by respondent No.2 and availing such qualification from NIM was in accordance with law or not need not to be tested at this stage, more particularly, when we hold that adequate, efficacious, lawful remedy is available to the petitioner and facts and circumstances of the case do not warrant exercise of extraordinary PIL jurisdiction under Article 226 of the Constitution of India by a specious plea of false declaration about educational qualification by respondent No.2 while contesting election from Vav Constituency of Gujarat State Legislative Assembly in the year 2012.

8.9 In the case of Dubbaka Narsimha Reddy [supra], a Division Bench of Andhra Pradesh High Court had an occasion to consider Section 125A of the Act, 1951 wherein it was held that under Section 125A it does not appear that Election Officer is to take any step for initiating any criminal proceedings and the aforesaid section nowhere says that it is the duty coupled with power or power coupled with duty or power to take any action. It merely provides penal measures for filing affidavit giving false information or concealing information and further there is no stipulation that complaints under this section HC-NIC Page 26 of 31 Created On Fri Apr 01 01:12:55 IST 2016 have to be made by the public servant viz. Returning Officer and, therefore, it would be open to any aggrieved person to move

petition before the appropriate court of competent jurisdiction with petitions for action under Section 125A of the Act in case of any false declaration or concealing of information in the affidavit in Form 26. In the above case, the Andhra Pradesh High Court placing reliance on the decisions; [i] Union of India v. Association for Democratic Reforms and Anr.; [ii] Peoples Union for Civil Liberties v. Union of India; and [iii] Resurgence India vs. Election Commission of India, as mentioned in para 9 of the judgment and after considering Section 125A of the Act, 1951, in paras 14 and 15 held as under:

"14. From a reading of aforesaid Section, it does not appear that Election Officer has to take any step for initiating any criminal proceedings. The aforesaid provision nowhere says that it is the duty coupled with power or power coupled with duty or power to take any action. It merely provides penal measures for filing affidavit giving false information or concealing information.

15. Further more, there is a Circular issued by the Election Commission of India to all the Chief Electoral Officers of all states and Union Territories with regard to filing of false affidavits in Form 26. Paragraph 3 of the aforesaid Circular, reads as follows:

HC-NIC Page 27 of 31 Created On Fri Apr 01 01:12:55 IST 2016 `3. Under Section 125A, there is no stipulation that complaints under that section have to be made by the public servant concerned (in this case the R.O.). Therefore, it would be open to any aggrieved person to move petition before the appropriate Court of competent jurisdiction with petition for action under section 125A in the case of any false declaration or concealing of information in the affidavit in Form 26'.

When the guidelines have been issued that have got statutory force also, have to be followed by all the concerned officials unless Statute requires expressly an officer appointed thereunder has duty or power coupled with duty to act. The Court of law cannot mandate, or concept of rule of law does not permit so".

8.10 Further, about right of voter / citizen to know about the credentials of the candidate is also natural right flowing from the concept of democracy and an integral part of Article 19(1)

(a) of the Constitution of India, the Apex Court in the case of Kisan Shankar Kathore [supra], in para 43, held that;

"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 HC-NIC Page 28 of 31 Created On Fri Apr

01 01:12:55 IST 2016 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, rightly argued that such an enquiry can be only at a later stage and the appropriate stage would be in an election petition as in the instant case, when the election is challenged."

8.11 In the facts of this case no such objection was raised even at the stage of Section 36 nor any election petition is filed and though the jurisdiction of the Election Commission is wide enough for conduct of smooth and fair elections, we are not convinced that the question raised by the petitioner is of such public importance for which powers can be exercised as prayed for.

8.12 In the case of State of Uttaranchal vs. HC-NIC Page 29 of 31 Created On Fri Apr 01 01:12:55 IST 2016 Balwant Chaufal [2010(1)SCALE 492] the Apex Court has traced out history of PIL and scrutinized various decisions of the Apex Court in this regard and sounded a note of caution to the courts exercising jurisdiction and powers in writ petitions of the nature of PIL to be more cautious and careful to see that the case before such courts involves paramount importance of public at large for which no other statutory provision for redressal of grievances exist.

8.13 Nothing shall be construed in this decision as reflecting to the merit of the complaint of the petitioner against the respondent No.2 for which any action already taken, pending or to be taken before the appropriate court / authority / forum and even any observations made in this order shall have no bearing on such proceedings.

9 With the aforesaid, this petition is dismissed.

Notice discharged. However, there shall be no order as to costs.

(R. SUBHASH REDDY, CJ) HC-NIC Page 30 of 31 Created On Fri Apr 01 01:12:55 IST 2016 (ANANT S.DAVE, J.) pvv HC-NIC Page 31 of 31 Created On Fri Apr 01 01:12:55 IST 2016