

Rasal Singh vs The Election Commission Of India on 4 September, 2014

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EP 10/2014

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

SB: JUSTICE SUJOY PAUL
Election Petition No.10/2014
Rasal Singh

vs.

The Election Commission of India
and others

Shri Anil Mishra, Advocate for the petitioner.

Shri D.K.Katare, Advocate for the respondents No.1 to 4.

Shri S.K.Shrivastava, Advocate for the respondent No.5.

ORDER

(04/09/2014) Parties were heard on IA No. 2952/2014, an application filed by respondent No.5 under Section 81 (3) read with Section 86 of Representation of The People Act, 1951 (for brevity, the 'RP Act') for dismissing the petition, IA No. 2953/2014, an application filed under Order 7 Rule 11 (a) of CPC read with Order 6 Rule 16 CPC for dismissing the election petition and IA No. 3224/2014, another application filed under Section 81(3) read with Section 86 of the RP Act.

2. The petitioner, a member of Bhartiya Janta Party (BJP), submitted his nomination to contest the State Legislative Assembly Election of 2013. The nomination form was submitted for Constituency No.11, Lahar district Bhind. The respondent No.5 also submitted his nomination form with requisite affidavit for contesting the election. The nomination form and affidavit of respondent No.5 was scrutinized by the officers of the Election Commission. The petitioner submitted his objection against the nomination form and affidavit of respondent No.5. The petitioner stated in his objection that respondent No.5 has not furnished full and correct informations and, therefore, his nomination form needs to be rejected. It is submitted that the returning officer has committed an error in not rejecting the form of respondent No.5. The petitioner's objection dated 9.11.2013 against the nomination form of respondent No.5 was rejected by returning officer by order dated 9.11.2013. In the assembly election, respondent No.5 was declared as elected.

3. Shri S.K.Shrivastava, learned counsel for the respondent No.5, who has filed these IAs, submits that there is no triable issue and cause of action in this matter and, therefore, election petition needs to be dismissed at this stage itself. He submits that the petitioner has challenged the election of respondent No.5 on the ground that the nomination paper of respondent No.5 is wrongly accepted. He submits that educational qualification, criminal antecedents/cases and assets/ properties are shown as per the requirement of law. By taking this Court to various provisions of the RP Act, it is

submitted that the nomination form and affidavit of respondent No.5 is in accordance with law and there is no infirmity in the same. The election petition can be entertained only on the grounds mentioned in Section 100 of the RP Act. There is no such ground available in the present matter and, therefore, the election petition be dismissed at the threshold.

4. Shri Anil Mishra, learned counsel for the petitioner, on the other hand, submits that the petitioner has challenged the action of the respondents in improperly accepting the nomination of respondent No.5. By placing reliance on Section 100 (1)(d)(i) of the RP Act, it is contended that it is a case of "improper acceptance of the nomination form" of the respondent No.5. Shri Mishra further submits that the respondent No.5 has not furnished correct and complete information regarding his :- (i) educational qualification, (ii) criminal antecedents/ cases, and (iii) properties and assets. Shri Mishra relied on para 12 to 15 of the election petition to submit that the respondent No.5 has concealed the information, which was mandatorily required to be mentioned under clause 5(1)(i) of Form 26 of Conduct of Election Rules, 1961 (for brevity, the "Rules"). To elaborate, it is contended that the respondent No.5 has not disclosed the fact of pending criminal matters against him. It is submitted that there are two criminal cases pending against the respondent No.5 before Economic Offence Wing, Bhopal bearing Crime Nos. 13/2004 and 37/2004. In addition, it is contended that in the same form, the respondent No.5 has only disclosed about one criminal case No. 544/2006 pending before JMFC, Lahar district Bhind, whereas there is another criminal case pending against him on the basis of a private complaint. It is urged that the said complaint has been filed by one Chhaviram for the offences punishable under Sections 323, 294, 506-B, 336 of IPC, read with Section 3(1)(iv)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is submitted that because of suppression of aforesaid facts, it is clear that the respondent No.5's nomination is incorrectly accepted. By taking this Court to the judgment of Apex Court, reported in (2002) 5 SCC 294 (Union of India vs. Association for Democratic Reforms and another) and (2003) 4 SCC 399 [People's Union For Civil Liberties (PUCL) and another Vs. Union of India and another], it is argued that even if the respondent No.5 is exonerated from the criminal cases, he was required to disclose the same in the said form. In absence thereof, the form/affidavit was improper and should have been rejected by the Returning Officer. By taking this Court to para 16 to 22 of election petition, it is submitted that the respondent No.5 has not disclosed complete description of his immoveable properties. The names of co-owners and shareholders with limit of shares has not been disclosed, which was required to be disclosed as per clause 7-A(1) of the Form 26. He submits that in view of aforesaid judgments of Supreme Court, the affidavit of respondent No.5 was defective and accordingly his nomination form should have been rejected.

5. Shri Anil Mishra relied on para 23 of the election petition to submit that the respondent No.5 has knowingly and with malafide intention concealed the information, which was mandatorily required to be disclosed under clauses 10 and 11 of Form 26. The respondent No.5 has not disclosed the details of Primary School Certificate, Middle School Certificate, High School Certificate and Inter School Certificate. Thus, the respondent No.5 has not properly disclosed his higher educational qualification. It is contended that because of false, incomplete and incorrect information given by respondent No.5, his nomination form should have been rejected. In support of his contention, he also relied on (2012) 7 SCC 788 [Ponnala Lakshmaiah Vs. Kommuri Pratap Reddy and others]; (2013) 4 SCC 776 (G.M.Siddeshwar vs. Prasanna Kumar) and 2012 (5) MPHT 299 [Rajendra Singh

Rawat Vs. State of M.P. and others].

6. Shri D.K.Katare, learned counsel for the Election Commission, relied on AIR 2002 SC 1041 (Michael B. Fernandes Vs. C.K. Jaffar Sharief and others), to submit that this election petition is not tenable against the Election Commission. In other words, it is argued that the petitioner has committed an error in impleading the respondents No.1 to 4 in the present petition.

7. Shri S.K.Shrivastava, learned counsel for the respondent No.5 also relied on other grounds taken in the aforesaid IAs. It is contended that the copy of election petition and documents, which is supplied by the petitioner, does not contain his signatures in original. As per Section 81(3) of the RP Act, every election petition must be accompanied by as many copies thereof as there are respondents in the petition and every such copy shall be attested by the petitioner under his own signatures to be a true copy of the petition. It is submitted by respondent No.5 that copies of the election petition and documents are neither attested by the petitioner nor contain his original signatures in his own handwriting. It is submitted that this defect is not curable in view of AIR 1980 SC 303 (Sharif-Ud-Din Vs. Abdul Gani lone). It is submitted that as per the judgment in G.M.Siddeshwar (supra), only the defects arising out of Section 83 (1) of the RP Act are curable. It is further submitted that the FIR registered at Crime No.13/04 was challenged by the respondent No.5 by filing a petition under Section 482 CrPC before the Principal Bench, which was registered as Misc.Cri.Case No.4633/2004. By order dated 18.03.2005 (Annexure R/5/A), the Principal Bench has allowed the said petition and FIR of Crime No.13/04 was quashed. This order passed in M.Cr.C. No.4633/2004 was put to test by the State by filing Criminal Appeal No. 1173/2006 before the Apex Court. The Apex Court by order dated 25.1.2011 (Annexure R/5/B) dismissed the said appeal. So far Crime No. 37/2004 is concerned, reliance is placed at Annexure R/5/C dated 26.5.2014, whereby the Economic Offences Wing, MP, informed the respondent No.5 that after preliminary enquiry in Crime No. 37/2004, the matter is closed. It is, therefore, submitted that there was no need to disclose about the said matters arising out of Crime Nos. 13/2004 and 37/2004. So far the private complaint of Chhaviram is concerned, the attention of this Court is drawn on the private complaint and the order sheets of the concerned Court, wherein said complaint is pending. It is submitted that in the said complaint, the cognizance has not been taken by the Court. No notices have been issued to the respondent No.5. The respondent No.5 was not aware about the pendency of said complaint (Annexure P/9) and, therefore, the question of suppression does not arise.

8. No other point is pressed by learned counsel for the parties.

9. I have heard learned counsel for the parties and perused the record.

10. As canvassed by Shri Anil Mishra, learned counsel for the petitioner, the singular ground of challenge in this election petition is based on Section 100(1)(d)(i) of the RP Act, which reads as under:-

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

(a) xxx xxx xxx

- (b) xxx xxx xxx
- (c) xxx xxx xxx
- (d) that the result of the election, insofar as it
concerns a returned candidate, has been materially
affected-
- (i) by the improper acceptance of any
nomination, or"

11. The acceptance of nomination is said to be improper on three counts, namely, (i) insufficient disclosure of educational qualification;

(ii) incomplete information of criminal antecedents; and, (iii) suppression of fact/improper/incomplete description of properties and assets. Before dealing with these points, I deem it proper to mention that pursuant to the directions of the Supreme Court in Association for Democratic Reforms (supra), Section 33(A), 33(B) and 125(A) were inserted in the R.P. Act in the year 2002. Section 33(A) and 125(A) came into being with effect from 24.08.2002. The provisions read as under:-

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

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

(ii) he has been convicted of an offence other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8 and sentenced to imprisonment for one year or more.

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

(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-

section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered."

125-A. Penalty for filing false affidavit, etc.-- A candidate who himself or through his proposer, with intent to be elected in an election,-

(I) fails to furnish information relating to sub- section (1) of section 33-A; or

(ii) gives false information which he knows or has reason to believe to be false; or

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

12. This is not in dispute that election of a candidate can be called in question in an election petition only as per the grounds mentioned under Section 100 of the RP Act. Apart from this, I deem it apposite to reproduce the following provisions, which are necessary for adjudication of this matter:-

"81(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

86(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117."

13. The main ground raised in these IAs are related to "cause of action". It is the case of respondent No. 5 that there are no "material facts" in the election petition, which constitute a triable cause of action. In (1999) 3 SCC 267 [D. Ramachandran Vs. R.V. Janakiraman and others], the Apex Court opined that in all cases of preliminary objection, the test is to see whether any of the reliefs prayed for could be granted to the appellant if the averments made in the election petition are proved to be true. For the purpose of considering a preliminary objection, the averments in the petition should be assumed to be true and the Court has to find out whether those averments disclose a cause of action or a triable issue as such. (Para 8)

14. In (1999) 2 SCC 217 [H.D. Revanna Vs. G. Puttaswamy Gowda and others], the Apex Court opined that Section 86 does not refer to Section 83 and non-compliance with Section 83 does not lead to dismissal under Section 86. It was held that non-compliance with Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 or Order 7 Rule 11 CPC. In (2009) 9 SCC 310 [Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar], the Apex Court opined that election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of the powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the RP Act to incorporate the material facts in the election petition are not complied with (Para 50). It was further held that there is no definition of "material facts" either in the R.P. Act, nor in CPC. Thus, after taking stock of a plethora of judgments, the Apex Court opined that all facts necessary to formulate a complete cause of action should be termed as "material facts". All basic and primary facts which must be proved by a party to establish the existence of cause of action or defence are material facts. "Material facts" in other words mean the entire bundle of facts which would

constitute a complete cause of action (Para 58).

Point relating to educational qualification:-

(15) In the election petition (Para 23), it is averred that the respondent No. 5 has not disclosed details of Primary School certificate, Middle School certificate, High School certificate and Inter School certificate as per the requirements of Clause 11 of the relevant form. It is apt to quote Clauses 10 and 11 of Form 26.

"(10) My educational qualification is as under:-

..... (Give details of highest School/University education mentioning the full form of the certificate / diploma / degree course, name of the School / College / University and the year in which the course was completed.

(11) Highest educational qualification:

(Give details of highest School/University Education mentioning the full form of the certificate / diploma / degree course, name of the School / College / University and the year in which the course was completed."

A conjoint reading of Clauses 10 and 11 aforesaid makes it clear that the candidate was required to give details of "highest educational qualification". Shri Anil Mishra, learned counsel for the petitioner, argued that "oblique (/)" used in the said clauses must be read as "and" and not "or". In other words, he submits that "oblique" means all qualification needs to be disclosed. I do not see any merit in this contention. If the intention of law makers would have been for disclosure of all the qualifications, they would have used the word "and" in place of "oblique (/)". In my view, as per the text and context, the use of "oblique (/)" means "or". The oblique indicates alternative so that a particular candidate may disclose his highest qualification acquired from a school or from a college or from University, as the case may be. I find support in my view from "The Major Law Lexicon" 4th Edition 2010 (Para 4) published by Lexis Nexis Butterworths Wadhwa Nagpur. In this book, the use of 'oblique' is defined as under:-

"OBLIQUE (/) denotes 'or' and not 'and' i.e., it indicates alternatives. Rohit Chauhan V. Chairman University College of Engg. Sambalpur, AIR 2001 Ori 125, 130, para 18."

(16) In AIR 2001 Orissa 125 [Rohit Chauhan V. Chairman University College of Engg. Sambalpur] , the High Court opined as under:-

"18. If the case of the opposite party that the petitioner was required to submit a "permanent resident certificate" and a "nativity certificate" is accepted, it would amount to reading the oblique(/) between the words 'Resident' and 'Nativity' as "and" which would mean, a composite certificate is or two separate certificates are required to be submitted. However, the oblique between the two words cannot be read as "and", but it has to be read as "or" The dictionary meaning of the oblique is as follows :

Cambridge International Dictionary of English, (cambridge Low price Editions)
"Oblique (Stroke) (C) Br and Aus.

An oblique (also slash or specialised solidus is a sloping line often used for separating numbers or words : Fractions can be written with oblique strokes, for example 2/3. Every student must hand in her/his (= her or his) completed application form by the end of the week."

Chambers 21st Century Dictionary- 1997 Reprint published by Allied Chambers (India) Ltd.,-

"An oblique' indicates alternatives- Bring your swimming costume and/or a tennis racket- Tea/Coffee will be served - Dear Sir/Madam Each candidate will be required to give a report on his/her research."

(Underlinings supplied) In the light of aforesaid, it is clear that the respondent No. 5 was not required to give details of educational qualifications of primary school and college level etc. Page 43 of election petition, makes it clear that respondent No. 5 has given the details of the highest educational qualification, i.e., B.A. and B.A.M.S. Thus, this alleged non-disclosure of educational qualification does provide any triable cause of action to the petitioner.

Point relating to criminal cases:-

(17) The allegations of the petitioner in the petition is that the respondent No. 5 has not disclosed about the criminal antecedents.

Cases relating to Crime No. 13/2004 and 37/2004 are mentioned in this regard. In addition, it is submitted that the respondent No. 5 has not disclosed about the criminal complaint filed against him by Chhaviram. A minute reading of Section 33(A) of the RP Act makes it clear that the candidate is required to 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". (18) The contention of Shri Anil Mishra is that even if the respondent No. 5 was exonerated from Crime No. 13/2004 and 37/2004, he should have disclosed the same. In absence thereof, he is guilty of suppression of material facts and his nomination form should have been rejected on this score. Column No. 5 and 6 of Form 26 read as under:-

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

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

(19) The question is whether the respondent No. 5 was required to disclose about the acquittal / discharge and whether because of non-disclosure, his nomination form should have been rejected. In Association for Democratic Reforms (supra), the Apex Court directed the election commission to call for information on affidavit from the candidate whether the candidate is convicted / acquitted / discharged of any criminal offence in the past. After this judgment, Section 33(A) was inserted. Section 33(A) was considered by the Apex Court in PUCL (supra). The Apex Court in Para 14 of this judgment considered the discussion mentioned in the judgment of Union of India Vs. Association For Democratic Reforms (supra) and examined newly inserted Section 33 in the light of the said judgment. In Para 15 of the judgment of PUCL (supra), the Apex Court, in no uncertain terms, opined that "it is clear that a candidate is not required to disclose (a) the cases in which he is acquitted or discharged of criminal offences; (b) his assets and liabilities; and (c) his educational qualification".

(20) Para 123 (6) and (9) of this judgment are also relevant which read as under:-

"123(6). The right to information provided for by Parliament under Section 33-A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. However, there is no good reason for excluding the pending cases in which cognizance has been taken by the Court from the ambit of disclosure.

(9) The Election Commission has to issue revised instructions to ensure implementation of Section 33-A subject to what is laid down in this judgment regarding the cases in which cognizance has been taken. The Election Commission's orders related to disclosure of assets and liabilities will still hold good and continue to be operative. However, direction 4 of para 14 insofar as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not be enforced."

Dharmadhikari, J. has agreed with the aforesaid conclusions "(6) and (9)".

Thus, the Apex Court showed its satisfaction on Section 33(A) of the RP Act. However, Section 33(B) was held to be unconstitutional, null and void.

(21) Thus, on the basis of newly inserted Section 33(A) and the judgment of PUCL (supra), it is clear that the candidate is not required to disclose about the cases in which he is acquitted. Speaking for the Bench, Venkatarama Reddi, J., opined that as regards past criminal record, what Parliament has provided for is fairly adequate (Para 117). So far private complaint of Chhaviram is concerned, the complaint and order-sheets of the Court filed with the election petition show that no notices have been issued in the said proceedings to the respondent No. 5. The Court has not even taken cognizance of the matter. Thus, in absence of knowledge about the said complaint to respondent No.5, the question of its disclosure does not arise. In 2006 (2) JLJ 54 [Umang Singhar v. Chhattar Singh and others], this Court considered Section 33(A) aforesaid and opined as under:-

"From a bare perusal of provisions contained in this section, it is clear that a prospective candidate is not required to disclose particulars of the criminal case in which he has been acquitted or discharged. The Constitutional validity of section 33-A has been upheld. (2003) 4 SCC 399 followed."

Point relating to nondisclosure of assets and liabilities:-

(22) This point is also no more res integra. After the judgment of PUCL (supra), the election commission passed the order dated 27.03.2003 (Annexure R-5/d). Paras 16 and 17 read as under:-

"16. Now, therefore, the Election Commission, in pursuance of the above referred order dated 13th March, 2003, of the Hon'ble Supreme Court and in exercise of the powers, conferred on it by Article 324 of the Constitution, of superintendence, direction and control, inter alia, of conduct of elections to Parliament and State Legislatures, hereby issues, in supersession of its earlier order dated 28th June, 2002, its revised directions as follows:-

(1) Every candidate at the time of filing his nomination paper for any election to the Council of States, House of the People, Legislative Assembly of a State or 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-1 to this order.

(2) The said affidavit by each candidate shall be duly sworn before a Magistrate of the First class or a Notary Public or a Commissioner of Oaths appointed by the High Court of the State concerned.

(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 nominations for such non-furnishing of the affidavit.

(4) The information so furnished by each candidate in the aforesaid affidavit shall be disseminated by the respective returning officers by displaying a copy of the affidavit on the notice board of his office and also by making the copies thereof available freely and liberally to all other candidates and the representatives of the print and electronic media.

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

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 in Annexure - 1 hereto referred to in para 16(1) above, the candidate shall have to comply with all the other requirements as spelt out in the Representation of the People Act, 2002, and the conduct of Elections Rules, 1961, as amended by the Conduct of Elections (Amendment) Rules, 2002."

(23) A Division Bench of this Court in 2010 (2) MPLJ 149 [Kashinath Sharma and another Vs. Chief Election Commissioner and others], considered the impact of the subsequent order of election commission dated 27.03.2003 and opined as under:-

"12. It is thus, clear that as per the orders passed by the Election Commission on 27-3-2003, the Returning Officer could not have rejected the nomination paper of the respondent No. 6 on the ground that he had furnished wrong information or suppressed material information with regard to his assets in the declaration filed along with the nomination paper. We cannot also set aside the orders passed by the Returning Officer accepting the nomination paper of the respondent No. 6 on the ground that the Returning Officer should have rejected the same in view of the directions of the Supreme Court in Peoples Union for Civil Liberties (PUCL) and others vs. Union of India and others (supra), discussed above."

(24) Thus, in the light of the judgment in PUCL (supra) and revised order of election commission dated 27.03.2003, it cannot be said that nomination should have been rejected for non-disclosure of assets and liabilities. The same view is taken by various High Courts. The Madras High Court in Election Petition No. 08/2009 (S.P.K. Dhamodhar Vs. Narayanasamy and another) opined that in

absence of sufficient material to impute knowledge of criminal complaint on the respondent, material facts and material particulars to support the allegations are not established. Election petition was dismissed. Kerala High Court in 2007 (1) KLT 228 [Mani C. Kappan Vs. K.M. Mani] opined that the revised order of Election Commission dated 27.03.2003 was issued clarifying that the earlier direction of election commission in so far as verification of assets is concerned, is not enforceable. In Para 16, it was held that the plea of election petitioner that respondent had not disclosed about the assets, is no ground to set aside the election and election petition does not, therefore, disclose any cause of action to be tried. The same view is taken by the Kerala High Court in Election Petition No. 04/2009 [R. Unnikrishna Pillai Vs. Anto Antony Punnathaniyil]. The Rajasthan High Court in Election Petition No. 02/2009 [Neeraj Dangi Vs. Jagsi Ram and others] considered the relevant provisions and revised order of election commission dated 27.03.2003. Rajasthan High Court also opined as under:-

"Irresistible and obvious conclusion, deducible from the above para 17 of the order dated 27.3.2003 is, that as required by Order 7 Rule 11, assuming that the returned candidate did not furnish correct information, or furnished wrong information, and suppressed material information, with regard to immovable properties, still the direction regarding rejection of nomination paper, on that ground, was not enforceable. That being the position, it cannot be said, that either the nomination paper was improperly accepted, or that, there was any non-compliance with the provisions of Constitution, or of the Act, or the Rules, or orders made thereunder, so as to make out any of the grounds, under Section 100(1)(d)(i) or (iv)."

(25) The application filed under Order 7 Rule 11 was allowed and election petition was dismissed by the Rajasthan High Court.

Bombay High Court in Election Petition No. 16/2009 [Narayan Gunaji Sawant Vs. Deepak Vasant Kesarkar] opined that assuming that there are any lacuna / infirmities in the affidavit, the same cannot be said to be of a substantial nature so as to unseat a returned candidate. The judgment of Single Bench was considered wherein it was opined that filing of false affidavit would at the highest tantamount to an offence under Section 125-A of the said Act, but, cannot be a ground for the purposes of disqualification of the candidate under Section 100(1)(d)(i) and (iv). (26) In the light of aforesaid legal position, it is clear that the alleged suppression in the affidavit regarding assets and liabilities does not provide any triable cause of action.

(27) In I.As. No. 2952/2014 and 3224/2014, it is contended that the mandatory requirements of Section 81(3) of the RP Act is not followed by the petitioner in as much as the copy of election petition served on the respondent No. 5 does not contain the signature of the petitioner. His signatures are not there in the annexures. To elaborate, it is argued that the signatures of the petitioner must be there in the copy in original whereas in the copy received by respondent No. 5, the photocopy of the signature of the petitioner are mentioned. It is argued by Shri Anil Mishra that the Registry has shown its satisfaction at the time of filing of election petition by making and endorsement and hence, there is no defect. (28) In the opinion of this Court, in Sharif-Ud-Din (supra), the Apex Court opined that Section 81(3) is mandatory and the defects are not curable. Para

20 reads as under:-

"We are, therefore, of the view that the requirement that every copy of the election petition which is intended for service on the respondent should be attested by the petitioner under his own signature is a mandatory requirement and the non-compliance with that requirement should result in the dismissal of the petition as provided in section 94 of the Act. The High Court was, therefore, right in dismissing the petition on the above ground."

This view is consistently followed by various High Courts in the cases reported in AIR 1964 Patna 26 [Sant Prasad Singh Vs. Dasu Sinha]; AIR 1984 Delhi 280 [Gopal Prasad Shastri Vs. Mrs. Archana Kumar and others]; AIR 1987 Allahabad 51 [Shitla Prasad Sonkar Vs. Arun Kumar Nehru and others]; AIR 1998 Calcutta 162 [Sharif Hossain alias Dalim Master Vs. Kalimuddin Shams and others] and AIR 2000 Bombay 362 [Narendra Bhikahi Darade Vs. Kalyanrao Jaywantrao Patil and others]. (29) A Division Bench of this Court in 2011 (2) JLJ 234 (Sanjay v. Shri Lal and others) considered the pari materia provision of Rule 3 (2) of Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 and opined that non-compliance of mandatory provision of Rule 3 results into dismissal of the petition. Another Division Bench in 2014 (1) MPWN 14 [Kalu Ram Vs. State] dismissed the election petition because of the said defect. For this reason also, the present election petition is liable to be dismissed. In view of this order passed on aforesaid IAs, the objection raised by Shri D.K. Katore, Advocate, about the impleadment of election commission is not dealt with. This question will remain open to be decided in an appropriate case. (30) As analyzed above, there is no triable cause of action in the election petition. In addition, the election petition is liable to be dismissed for non-compliance of Section 81(3) of the RP Act. Accordingly, IAs No. 2952/2014, 2953/2014 and 3224/2014 are allowed. Election petition is dismissed.

(Sujoy Paul) Judge (abhi)