

# Shri Yumkham Erabot Singh vs Shri Okram Henry Singh Singh on 15 April, 2021

**Author: M.V. Muralidaran**

**Bench: M.V. Muralidaran**

Page 1 of 99

IN THE HIGH COURT OF MANIPUR  
AT IMPHAL

Election Petition No.2 of 2017

Shri Yumkham Erabot Singh, aged about 77 years, S/o  
(late) Y. Angangyaima Singh of Khurai Ahongei, P.O.  
Imphal & P.S. Porompat, Imphal East District,  
Manipur-795010.

..... Petitioner

- Versus -

1. Shri Okram Henry Singh Singh, aged about 32  
years, S/o(late) O. Lukhoi Singh of Mantripukhri,  
P.O. Mantripukhri & P.S. Heingang, Imphal East  
District, Manipur-795002.
2. Shri Rajkumar Priyobarta Singh, aged about 48  
years, S/o R.k. Maipaksana Singh of  
Nongmeibung Wangkheirakpam Leikai, P.O.  
Imphal and P.S. Porompat, Imphal East District,  
Manipur-795005.

...Respondents

BEFORE  
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Petitioner : Mr. HS Paonam, Sr. Advocate  
Mr. M. Gunedhor, Advocate

For the Respondents : Mr. P.S. Narasimha, Sr. Advocate,  
Mr. Lenin Hijam, Addl. AG  
Ms. N. Tejpriya, Advocate,  
Mr. R.K. Milan, Advocate.

Election Petition No.2 of 2017

Page 2 of 99

Date of hearing &  
Reserving judgment &  
Order : 17.03.2021  
Date of Judgment &  
Order : 15.04.2021

JUDGMENT & ORDER  
(CAV)

1. This Election Petition has been filed by the Petitioner under Section 100(1)(d)(i) and (iv) of the Representation of People Act, 1951 to declare that the election of the respondent No. 1 from 15-Wangkhei Assembly Constituency in the 11th Manipur Legislative Assembly Election 2017 is null and void and to declare the Petitioner as the Returned Candidate/duly elected members from 15-Wangkhei Assembly Constituency in the 11th Manipur Legislative Assembly Election 2017. Further, the Petitioner has also prayed for passing an Order for initiation of Criminal proceedings against the Respondent No. 1 under Section 125A and 127 of the Representation of People Act, 1951.

2. The case of the Petitioner is that in the last election to the 11th Manipur Legislative Assembly Election -2017 held on 4th March, 2017, the Petitioner was one of the contesting candidates from 15-Wangkhei Assembly Constituency being set up by the Bhartiya Janata Party (BJP for short). The Election Commission of India issued a Notification dated 07-02-2017 announcing the following programme for

the election to be held in the said 60 Assembly Constituencies including 15-Wangkhei A/C.

- |   |                        |
|---|------------------------|
| (a) The last date for filing nomination                           | - 15-02-2017           |
| (b) Date of Scrutiny of Nominations                               | -16-02-2016            |
| (c) Last date for withdrawal of<br>Nomination/candidate           | -18-02-2017            |
| (d) Date of Poll  | -04-03-2017            |
| (e) Date before which the election<br>was to be completed         | -15-03-2017            |
| (f) Poll hours from 7.00 a.m. to<br>3.30 p.m.on the date of poll. | -7.00 a.m. to 3.00 pm. |

3. The Petitioner and other Candidate including the Respondent No. 1 filed their nomination papers within the time specified and the nomination papers filed by 3(three) candidates were accepted by the R.O of 15-Wangkhei Assembly Constituency in which the petitioner is one of the candidates.

4. The Returning Officer of 15-Wangkhei Assembly Constituency published in the Official Gazette the list of the contesting candidates vide Notification dated 07-02-2017. The particulars of the contesting candidates were as under:

LIST OF CONTESTING CANDIDATES

Sl. No.	Name of Candidates	Address of Candidates	Party Affiliation	Symbol Alloted
------------	--------------------	--------------------------	----------------------	-------------------

1. Okram Henry Singh Mantripukhri, P.O. Indian Hand

Election Petition No.2 of 2017

Page 4 of 99

		Mantripukhri, P.S. Heingang, Imphal East, Manipur- 795002	National Congress	
2.	R.K. Priyobatra Singh	Nongmeibung Wangkheirakpam Leikai, P.S. Porompat, Imphal East, Manipur- 795005	All India Trinamool Congress	Flower and Grass
3.	Yumkham Erabot Singh	Khurai Ahongei, Imphal East, P.O. Lamlong, P.S. Porompat, Manipur-795010	Bharatiya Janata Party	Lotus

5. According to the Petitioner, the Respondent No. 1 filed his Affidavit dated 13/02/2017 in Form 26 filed along with the nomination paper before the Returning Officer for election to the 11th Manipur Legislative Assembly Election from 15-Wangkhei Assembly Constituency. According to the Petitioner, the Respondent No.1 had furnished information at Column 10 of his Affidavit dated 13/02/2017 in Form 26 that the Educational Qualification of the Respondent No.1 is "Passed XII from Manipur Public School, CBSE". The Column 10 provides for furnishing the 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. The Respondent No.1 had not provided the details of his highest educational qualification at Column 10 of the Affidavit filed along with his nomination paper for election to the 11th Manipur Legislative Assembly Election-2017 from 15-Wangkhei Assembly Constituency.

6. According to the Petitioner, in the Affidavit dated 09/02/2012 filed along with the nomination paper before the Returning Officer for election to the 10th Manipur Legislative Assembly Election from 15-Wangkhei Assembly Constituency, the Respondent No.1 had furnished his highest educational qualification under Column 9 of the Affidavit as B.A. from Punjab University. The Affidavit dated 13/02/2017 filed along with the Nomination paper for 11th Manipur Legislative Assembly Election, 2017, the Respondent No.1 had furnished his highest educational qualification under column 10 as passed XII from Manipur Public School.

7. It is stated that the Respondent No.1 deliberately misrepresented his Educational Qualification in the Affidavit filed along with the nomination paper before the Returning Officer of 15-Wangkhei A.C. for election to both 10th and 11th Manipur Legislative Assembly from 15-Wangkhei Assembly Constituency when he deliberately misrepresented his educational qualification as B.A. from Punjab University in the 10th Manipur Legislative Assembly Election and XII passed in the 11th Manipur Legislative Assembly Election, thereby creating a confusion

upon the mind of the innocent voters with regard to his educational qualification.

8. According to the Petitioner, there is a criminal case pending against the Respondent No.1 before the Court of Learned Chief Judicial Magistrate, Imphal West, Manipur being Cril. (C) Case No. 17 of 2017 (Asian Bulls Construction and Developers Pvt. Ltd. -Vs - Henry Okram Singh) filed under Section 138 of the Negotiable Instruments Act, 1881 and under Section 420 of the Indian Penal Code, 1860. The Criminal complaint was taken up against the Respondent No.1 and cognizance was taken under Section 138 of the Negotiable Instruments Act, 1881 on 10-02-2017, much before filing of the nomination paper by the Respondent No.1 which is on 13-02-2017.

9. In order to discharge the liability partly towards the Complainant company in Cril. (C) Case No. 17 of 2017 of an amount of Rs. 10,29,47,449/- (Rupees ten crores twenty nine lakhs forty seven thousand four hundred and forty nine) only as per the agreement dated 21-08-2013 and 18-11-2013 entered into between the complainant company and the Respondent No. 1 in the present petition, the Respondent No.1 (accused in Cril. (C) Case No.17 of 2017) issued a Cheque bearing No. 154423 dated 02-01-2017 for the amount of Rs. 10,00,000/(Rupees ten lakhs) only drawn at State Bank of India, High Court Complex, Chingmeirong, Manipur with the assurance that the

cheque shall be honoured as and when presented for encashment.

When the said Cheque bearing no. 5423 dated 02-01-2017 was presented to the concerned bank, the same was dishonoured by the bank with the endorsement as "Insufficient Funds". Thereafter, the complainant had sent a legal notice dated 07-01-2017 to the Respondent No.1/accused. When no reply come from the side of the Respondent No.1/accused, the complainant filed the said Cril (C) Case No.17 of 2017 before the Court of Learned Chief Judicial Magistrate, Imphal West for final adjudication.

10. The Court of Learned Chief Judicial Magistrate, Imphal West took cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 on 10.02.2017. However, at column 5(ii) of the Affidavit dated 13-02-2017 submitted by the Respondent No.1 to the Returning Officer of 15-Wangkhei A.C. along with his nomination paper, the Respondent No.1 is bound to provide details of cases which is/are pending against him in which cognizance has been taken by the court. The respondent no. 1, at column 5(ii) of the Affidavit had marked it as "NIL". The Respondent No.1 deliberately concealed the pendency of the Cril. (C) Case No.17 of 2017 before the Court of Learned Chief Judicial Magistrate/Imphal West. The Court of Learned Chief Judicial Magistrate, Imphal West had already took cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 on 10-02-

2017. The Respondent No.1 had filed his Affidavit along with the nomination paper before the Returning Officer for contesting in the 11 Manipur Legislative Assembly Election from 15-Wangkhei Assembly Constituency on 13-02-2017, much after the taking of cognizance by the Court of Learned Chief Judicial Magistrate / Imphal West in Cril. (C) Case No. 17 of 2017.

11. A Special Trial Case pertaining to Narcotics drugs has been pending before the Court of Learned Special Judge, ND & PS, Manipur at Imphal being Special Trial (CBI) No.27/2016/207/2016 (Ref: CBI Case No. RC 7/S/2013-Kol u/s 21/25A/29/32 NDPS Act and 120B, 420, 468, 471 & 506 IPC) in connection with FIR No. 11(1) 2013 SJM-PS, under Section 9-A/25-A/29 ND & PS Act, 1985 against the Respondent No.1, whereby the Respondent No.1 has been charged with illegally transporting contraband drugs including Robocoff Tablets, Baba Chewing Tobacco, Sea fied Tablets and Respifed Tablets in 7(seven) separate cartoon boxes from Kolkata to Imphal by Deccan Cargo on 12-02-2003. The orders dated 18-04-2016; 19-12-2016 and the subsequent orders dated 25-05-2016; 17-01-2017; 06-02-2017 and 06-03-2017 had been passed by the Learned Special Judge (ND & PS), Manipur in Cril Misc. Case No. 104/2016 /3/2017 as well as in the main case filed in the said ST Case, which order shows the pendency of the said ST Case and the stage of the case is charge consideration.



12. The Respondent No. 1 had filled up the information about the above said Special Trial (CBI) No. 27/2016/207/2016, Ref:- CBI Case No. RC 7/S/2013-Kol, u/s. 21/25A/29/32 NDPS Act and 120B, 420, 468,471 and 506 IPC in the affidavit at column no. (5) (i) which provides, "The following case(s) is/are pending against me in which charges have been framed by the court for an offence punishable with imprisonment for two years or more" without furnishing the case number of the said Special Trial and also filled up in column 5(i)(d) as charge has not been framed. The Respondent no. 1 has to furnish the stage of the Special Trial Case if the charge is not framed in the column 5(ii) which provides "the following case(s) is/are pending against me in which cognizance has been taken by the court (other than the cases mentioned in item (i) above)". The Respondent No. 1 has failed to furnish the detail information about the above said Special Trial in his affidavit and also has filled up the same in wrong column of his affidavit.

13. The Chief Election Agent of the Petitioner objected on the day of scrutiny and thereafter, the Petitioner submitted the objections dated 23-02-2017 and dated 25-02-2017 to the Chief Election Commissioner, Election Commission of India, the Chief Electoral Officer, Manipur and District Electoral Officer, Imphal East against the Respondent No.1 for filing false Affidavit concealing the material facts of pending cases stated above and prays for necessary actions for

disqualifying the Respondent no.1's candidature. However, no action was taken up against the respondent no.1 on the concealment of pending criminal cases in the Affidavit.

14. The Respondent no.1 has failed to file a proper affidavit prescribed under Article 173 of the Constitution of India inasmuch as the Respondent no.1 has concealed the pending of the above said complaint case being Cir. (C) Case No.17 of 2017 in his Affidavit at column 5(ii). Accordingly, the petitioner had filed the above representation/ objection dated 25-02-2017 for re-examination of the nomination paper of the Respondent No.1 and disqualify his candidature. However, the Returning Officer of 15-Wangkhei A/C had accepted the nomination of the respondent No.1 improperly and no action was taken latter on for disqualify his candidature.

15. Poll of the election was held on 04-03-2017 as per schedule and counting was held on 11-03-2017 and the R.O. of 15-Wangkhei A/C published the final result in Form 20 according to the Final Result Sheet. The votes secured by each of the three contesting candidates were as under: -

SI.No.1	Okram Henry Singh (INC)	= 16753 votes
SI.No.2	Rajkumar Priyobarta Singh (AITC)	= 149 votes
SI.No.3	Yumkham Erabot Singh (BJP)	= 12417 votes

Accordingly, the Respondent No.1 has won the election and declared as elected candidate by a subsequent notification issued by the authority.

16. The Respondent No. 1 filed his Written Statement inter alia stating that the nomination papers filed by the 3 (three) Candidates including the Respondent No. 1 were accepted by the Returning Officer of 15-Wangkhei Assembly Constituency after scrutinizing the nomination papers. No complaint regarding this matter has been lodged by the Petitioner before the Returning Officer at the time of Scrutiny.

17. It is stated that the Respondent No. 1 has not concealed any material facts while submitting his nomination paper. Due to bonafide mistake and inadvertence on his part, the Respondent No. 1 had mentioned his educational qualification as B.A., Punjab University in the Affidavit filed along with the nomination paper in the 10th Manipur Legislative Assembly Election under the impression that if a person passed Class-Xll, his qualification should be written as B.A. However, at the time of filing the Affidavit along with the nomination paper in the 11th Manipur Legislative Assembly Election, 2017, the Respondent No. 1 came to know that he should mention Class-Xll instead of B.A. and as the Respondent No. 1 has mentioned Class-Xll. For mentioning B.A. in the educational qualification column in the last 10th Manipur Legislature

Assembly Election, the Respondent No.1 could not be penalized at this stage.

18. It is stated that on the date of filing nomination paper and Affidavit dated 13/02/2017 service of summons was not made in the case under Section 138, NI Act but it was served on 17/02/2017 only after filing of the Nomination Paper along with Affidavit dated 13/02/2017 by the Respondent No. 1 and the said case was settled on 01/04/2017.

19. It is stated that placement of the details in Column 5(i) instead of 5 (ii) is an inadvertent error. Even in Column 5 (i), it is stated that there was yet no framing of charges in the Case of pending before the Ld. Special Court (ND & PS) Manipur.

20. That, as the nomination paper of the Respondent No. 1 was accepted properly by the Returning Officer of 15-Wangkhei Assembly Constituency, the Authority has not considered the objections submitted by the Petitioner.

21. It is the case of the petitioner that the Petitioner filed his Replication in reply to the Written Statement made by the Respondent No. 1 and the Petitioner stated that the Respondent No. 1 has failed to disclose the material information(s) as per format in respect of the name of the Court, Case Number and date of order taking cognizance in Column No. 5(ii)(a) of the Affidavit and the Respondent No. 1 filled up as

"Nil" and also failed to disclose the material information(s) as per format of Column No. 5(ii)(b) i.e. the details of cases where the Court has taken cognizance, section(s) of the Act(s) and description of the offence(s) for which cognizance taken. In the above facts and circumstances, the Returning Officer of 15-Wangkhei Assembly Constituency had accepted: the nomination paper of the Respondent no. 1 improperly.

22. It is stated that furnishing of incorrect and incomplete information in the Affidavit filed along with the nomination paper in terms of the provisions under Section 33, 33-A of the R.P. Act, 1951 read with Article 173 of the Constitution of India deserves to be rejected under Section 36(2) of the R.P. Act, 1951 and that the election of such candidate to be declared as null and void. The Respondent No. 1 cannot get ride of such duty cast upon him by the statute on the ground that due to error, the Respondent No. 1 failed to disclose correct and incomplete information in his affidavit.

23. Upon consideration of the above pleadings, this Court framed the following issues on 31/07/2019:

"1. Whether the Returning Officer of 15-Wangkhei Assembly Constituency has accepted the nomination paper of the Respondent No.1 improperly or not?

2. Whether the Respondent No.7 through bonafide mistake and inadvertence has stated in para 5(i)

Election Petition No.2 of 2017

Page 14 of 99

regarding the pendency of case, date of taking cognizance etc. instead of mentioning the fact in para 5(ii) of the affidavit in format or not?

3. Whether mentioning of the facts regarding the name of the court, case no. and date of order taking cognizance etc. in para 5(i) instead of mentioning in para 5(ii), through bonafide mistake and inadvertence on the part of the Respondent No.1 may amount to concealment of material facts while swearing the Affidavit and this bonafide mistake has materially affected the results of the election or not?

4. Whether the petitioner is entitled for the cost of litigation"

24. Thereafter, this Court has framed the following three additional issues on 23/11/2020.

"5. Whether the petitioner proves that he is entitled to be declared as duly elected Returned Candidate from 15-Wangkhei Assembly Constituency for the 11th Manipur Legislative Assembly Election or not?

6. Whether the Affidavit in Form 26 prescribed by Rule 4A of the Conduct of Election Rules, 1961 is a statutory Format or not?

7. Whether the Affidavit in Form 26 dated 13.2.2017 of Respondent No.1 are to be filled up as per the prescribed Format as provided by the Rule 4A of the Conduct of Election Rules, 1961 and whether the said

Election Petition No.2 of 2017

Page 15 of 99

affidavit was as per the prescribed form or not? If not, what would be the effect or if not filled up as prescribed by Rule 4A of the Conduct of Election Rules, 1961, what

would be the effect?"

25. On the side of the Petitioner, the Petitioner examined himself as P.W. No. 1 and two electors/voters of the 15-Wangkhei A/C and his Chief Election Agent as P.W. Nos. 2, 3 and 4 respectively. In his support, the Petitioner marked 14 (fourteen) documents namely Exbt. P/ 1 to P/14 on 18/01/2021.

26. During the Cross-examination of the Petitioner on 22/01/2021, the Respondent No. 1 has objected the Exhibited documents at Exbt.-P/1, P/2, P/3, P/4. P/5, P/6, P/8, P/9, P/10 & P/11 (partly) on allegation that these are the Xerox copies. However, later on, the Respondent No. 1 has withdrawn his objection to the documents at Exbt.-P/1, P/2, P/3, P/4. P/5, P/6, P/8, P/9, P/10 & P/11 (partly).

27. On the side of the Respondent No. 1, the Respondent No. 1 examined himself as D.W. No. 1 and two documents namely Exbt. R/ 1 to R/2 have been marked and no other witnesses were examined.

28. Election of the Respondent No. 1 is assailed in this Election Petition under Section 100(1)(d)(i) & (iv) of Representation of People Act, 1951 mainly on three grounds viz. (i) Non-compliance of the statutory format of Affidavit provided by the Statute by filling in wrong

Election Petition No.2 of 2017

Page 16 of 99

Column, (ii) improper acceptance of nomination and (ii) Non-compliance of the Instruction/Order issued by the Election Commission that

Respondent No. 1 should truly and fully disclose his educational qualification and pending criminal cases.

29. Before we proceed to deal with the issues, it may be necessary to refer to relevant provisions of the Representation of People Act, 1951 (hereinafter referred to as "RP Act") and the Rules framed there under. Sections 81(3) and 86 of the RP Act reads thus:

"81. Presentation of petitions.

(1) .....

(2) .....

(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. Trial of election petitions. - (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.

Explanation:- An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

(2) .....

(7) .....

Election Petition No.2 of 2017

Page 17 of 99

30. In the instant case, it is not the case of the Respondent No. 1 that the Petitioner has not attested the copy of the election petition to be the true copy of the original petition as required under Section 81(3)



of the RP Act. On the other hand, the Petitioner has complied with the Provisions of Section 81(3) of the RP Act.

31. In the instant case, as agreed by the parties, this Court has taken the Issues Nos. 2 and 3 together as the said Issues are co-related to each other and the same can be decided jointly.

ISSUE NO. 2:-

Whether the Respondent No.1 through bonafide mistake and inadvertence has stated in para 5(i) regarding the pendency of case, date of taking cognizance etc. instead of mentioning the fact in para 5(ii) of the affidavit in format or not?

ISSUE NO. 3 :-

Whether mentioning of the facts regarding the name of the Court, case no. and date of order taking cognizance etc. in para 5(i) instead of mentioning in para 5(ii), through bonafide mistake and inadvertence on the part of the Respondent No.1 may amount to concealment of material facts while swearing the Affidavit and this bonafide mistake has materially affected the results of the election or not?

Election Petition No.2 of 2017

Page 18 of 99

32. Accordingly, the Learned Senior Counsel Mr. H.S. Paonam for the petitioner and Mr. P.S. Narasimha, Learned Senior counsel for Respondent No. 1 were proceeded to submit their argument. The Ld. Counsel for the Petitioner submitted that as per the Black's Law Dictionary, the word "Bonafide" means "made in good faith, without fraud or deceit" and the words "mistake" means "an error, misconception or misunderstanding".

33. The Learned Senior Counsel Mr. H.S. Paonam further submitted that the Respondent No. 1 intentionally filled up his Criminal pending case in Column No. 5 (i) instead of filling in Column No. 5(ii) of his Affidavit dated 13/02/2017. In this regard, the Ld. Sr. Counsel has drawn the attention of this Court that the Respondent No. 1 stated in his Examination-in-Chief dated 15/02/2021 in Para Nos. 5 and 6 that:

"5. That, a bonafide mistake and inadvertence has been occurred on my part for not re-checking the prescribed affidavit filed up by some of my workers who were trying to help me in my nomination paper of 10th Manipur Legislative Assembly election with regards to my education qualification for the 10th Manipur Legislative Assembly for the term 2012 to 2017. The bonafide error stated above might have been by some of my workers who were trying to help me while filing up my affidavit of 10th Manipur Legislative Assembly Election, under the presumed that I might have completed my B.A. from Punjab University as I was studying Graduation at D.A.V. College, at Chandigarh

Election Petition No.2 of 2017

Page 19 of 99

but I could not complete my Graduation though I completed B.A. First Year in April, 2003 from D.A.V. College under Punjab University. However, when I realized the mistake that crept in the nomination papers for the previous 10th Manipur Legislative Assembly, I have personally prepared and filled-up all the required information of myself to the best of my knowledge and belief in the nomination paper as well as the prescribed affidavit dated 13th Feb., 2017 by myself Assembly Constituency so as to avoid any such mistake/error and the same was later on computerised by my staff.

6. That, after filling up the said nomination papers and affidavit for the 11th Manipur Legislative Assembly to the best of my knowledge I went to the oath Commissioner and there after I was identified by an Advocate who was present at that time of my swearing of the said affidavit dated 13th Feb., 2017."

34. The Learned Senior Counsel further submitted that due to bonafide mistake and inadvertence, the Respondent No. 1 filled up his educational qualification as B.A. from Punjab University instead of filling as Class-XII passed from Manipur Public School, CBSE. If the Respondent No. 1's statement is correct then the Respondent No. 1 filled up every Column of the prescribed Affidavit Form 26 after knowing the contents/essence of the every Column of the prescribed Affidavit and the Respondent No. 1 already stated in his statement that the

Election Petition No.2 of 2017

Page 20 of 99

Respondent No. 1 filled up the Affidavit dated 13/02/2017 after due care and attention.

35. Accordingly, the Respondent No. 1 cannot take two stands to defence his case as in one time, the Respondent No. 1 stated that due to bonafide mistake occurred in the 10<sup>th</sup> Manipur Legislative Assembly Election, 2012, he corrected his Educational qualification in the 11<sup>th</sup> Manipur Legislative Assembly Election, 2017 and another stand is that due to bonafide mistake, the Respondent No. 1 filled up in Column No. 5 (i) instead of filling up at Column No. 5 (ii) of the Affidavit Format.

36. As such, if the Respondent No. 1's statement is wrong then the Respondent No. 1 has furnished wrong educational qualification in his Affidavit. If the Respondent No. 1's statement is correct then Respondent No. 1 has intentionally filled up the Criminal Case pending

against him in Column No. 5(i) instead of filling in Column No. 5 (ii) of the Affidavit dated 13/02/2017 as the Respondent No. 1 did not want to disclose the Drugs smuggling case where he involved as a main accused.

37. The Learned Senior Counsel for the petitioner also submitted that whatever filled up by the Respondent No. 1 in Column No. 5(i) is not relevant with the Drug Case pending against him and moreover, before the filling the Affidavit dated 13/02/2017, the Respondent No. 1 was well aware about every proceeding of the Special

Election Petition No.2 of 2017

Page 21 of 99

Trial (CBI) No. 27 of 2016/207/2016 as after the Chargesheet was submitted by the CBI before the Learned Special Court (ND & PS), Manipur, the Respondent No. 1 filed an application praying for proceeding U/S 319 Cr.P.C. against other persons appearing to be guilty of the Offence. While the hearing of the said application filed by the Respondent No. 1 was going on, the Respondent No. 1 filed his. Nomination paper along with false Affidavit dated 13/02/2017 for the 11<sup>th</sup> Manipur Legislative Assembly Election held in the year 2017. The Respondent No. 1 was well aware that the Charges were not framed due to the hearing of the application filed by the Respondent No. 1.

38. It is submitted that issue No. 3 could not be considered with the present Case because the Respondent No. 1 never mentioned Case

number in his Affidavit dated 13/02/2017 which is also admitted by the Respondent No. 1 in his statement on 16/02/2021. In this regard, the Respondent No. 1 answered as "Yes, I have not mentioned" in reply to the question i.e. "Q. 18 Is it true that you have not mentioned the Special Trial(CBI) No. 27 of 2016/207/2016 in the Para No. 5(i)(a) of your Affidavit dated 13/02/2017".

39. Accordingly, there is no bonafide mistake and inadvertence on the part of the Respondent No.1 in filling up of Column No. 5(i) of the Affidavit dated 13/02/2017. It is an intentional act of the Respondent No. 1 that the Respondent No. 1 never like to disclose his involvement in a

Election Petition No.2 of 2017

Page 22 of 99

Drug smuggling Case before his Electors/Voters in the Election of 11 th Manipur Legislative Assembly Election 2017.

40. In regard to the Issue Nos. 2 and 3, the Learned Senior Counsel Mr. P.S. Narasimha for the Respondent No. 1 submitted that the only surviving issue is regarding the filling in the inadvertent error in entering the date concerning the NDPS Case pending against the Respondent No. 1 herein in Column 5 (i) instead of Column 5(ii).

41. The Learned Senior Counsel for the Respondent No. 1 further submitted that a bare perusal of the Affidavit would demonstrate that the details of the case are completely disclosed including the fact that charges were yet to be framed. Nothing has been suppressed by the

Respondent No. 1 regarding the pendency of the Case.

42. The Learned Senior Counsel for the Respondent No.1 further submitted that the defect alleged by the Petitioner is merely an improper filling in wrong Column due to in-advertence. It is not a case of suppression or absolute non-compliance. It is not of a substantial character having any effect on the elections and the Returning Officer rightly accepted the nomination of the Respondent No. 1.

43. On perusal of the Examination-in-Chief dated 15/02/2021 of the Respondent No. 1, this Court deemed that the Respondent No. 1 filled up his Affidavit dated 13/02/2017 after due care and attention due

Election Petition No.2 of 2017

Page 23 of 99

to the mistake occurred in the 10th Manipur Legislative Assembly Election, 2012. On perusal of the Exbt-P/11 (Colly), this Court found that the Charge Sheet bearing No. 6/16 dated 16/04/2016 was submitted before the Learned Special Court (NDPS), Manipur on 18/04/2016. Thereafter, the Respondent No. 1 furnished bail bond and surety bond on 25/05/2016 and on 19/12/2016, the Respondent No. 1 filed a Cril. Misc. Case No. 104/2016/3/2017 (Ref.: S.T. (CBI) No. 27/2016/207/2016 under Section 319 Cr.P.C. against other persons appearing to be guilty of the offence. On perusal of the Exbt.P/11(Colly), this Court found that the election of the 11th Manipur Legislative Assembly Election, 2017 was held while the said Cril. Misc. Case No. 104/2016/3/2017 was pending and the Charge Sheet was not yet framed and this Court also found that

the Respondent No. 1 has well aware of every proceeding about the pending of NDPS Case.

44. On further perusal of the Exbt.P/7 which is the Affidavit dated 13/02/2017 of the Respondent No.1 this Court found that the Respondent No. 1 failed to disclose the details of the Criminal Case pending against him as provided in Column No. 5 (i) particularly Special Trial Case No. FIR No. Short description of the offence (s) for which charged etc. and as such, it is not case of filling in wrong Column but also it is the clear case of non-disclosure of the details and complete information as per the Format provided by the Statute.

Election Petition No.2 of 2017

Page 24 of 99

45. The Respondent No. 1 has prepared and filled up his Affidavit dated 13/02/2017 with the full knowledge of the contents of each and every para of the Affidavit. As such, the Respondent No. 1 has knowledge of the Column No. 5 (i) specially "in which charges have been framed by the court". Having knowledge of the content of the Column No. 5(i)(d), i.e. "Courts which framed the charges ", the Respondent No. 1 filled up the Column No. 5 (i)(d) as "Charge has not been framed".

46. In view of the statement of the Respondent No. 1 where the Respondent No. 1 admitted that he filled-up all the required information of himself to the best of his knowledge and belief in the nomination paper

as well as the prescribed affidavit dated 13th Feb., 2017 by himself for the Assembly Constituency so as to avoid any such mistake/error, this Court finds that there is no bonafide mistake and inadvertence in filling up of his Affidavit and the Respondent No. 1 intentionally filled up the incomplete information in Column No. 5 (i) instead of filling at Column No. 5 (ii) of the Affidavit dated 13/02/2017 and Issue Nos. 2 & 3 are answered accordingly.

47. The following two issues were framed as Additional Issues which are interlinked with each other and as agreed by both parties, this Court has taken up jointly:

Election Petition No.2 of 2017

Page 25 of 99

"Whether the Affidavit in Form 26 prescribed by Rule 4A of the Conduct of Election Rules, 1961 is a statutory Format or not?"

"Whether the Affidavit in Form 26 dated 13.2.2017 of Respondent No.1 are to be filled up as per the prescribed Format as provided by the Rule 4A of the Conduct of Election Rules, 1961 and whether the said affidavit was as per the prescribed form or not? If not, what would be the effect or if not filled up as prescribed by Rule 4A of the Conduct of Election Rules, 1961, what would be the effect?"

48. The Learned Senior Counsel for the Petitioner submitted that as per the Affidavit Format in Form 26, the Column No. 4 provides that:

(4) Details of Permanent Account Number (PAN) and status of filing of income Tax return:

Sl. No.	Names	PAN	The financial year for which the last income tax shown in income	Total income
---------	-------	-----	--	--------------



return has been filed tax return (in Rupees)

1. Self
2. Spouse
3. Dependent-1
4. Dependent-2
5. Dependent-3

Election Petition No.2 of 2017

Page 26 of 99

49. While furnishing the information, the Respondent No. 1 failed to give the name of his spouse and Dependents in his Affidavit dated 13/02/2017 in Form 26 which is exhibited at Exbt. P/7 and this is also admitted by the Respondent No. 1 while giving his statement on 16/02/2021. On 16/02/2021 during his Cross-Examination, the Respondent No. 1 answered as "Yes, I do agree" in reply to "Q. 7 Do you agree that at the time of filing the nomination paper of the 11 th Manipur Legislative Assembly Election held in the year 2017, you already had your wife and children?" and "Q.9. Is it true that you did not mention the name of your spouse and children in the Column No. 4 of the Form -26 Affidavit dated 13/02/2017 at Exhibit P/7 at Page No. 22 of the MC (El. PEtn.) No. 1 of 2019?"

50. It is further submitted that as per the Affidavit Format in Form 26, the Column No. 5(i) provides that :

"5 (i). The following case(s) is/are pending against me in

which charges have been framed by the court for an offence punishable with imprisonment for two years or more

- (a) Case/First information Report No./Nos. together with complete details of concerned Police Station/District/State.
- (b) Section(s) of the concerned Act(s) and short description of the offences for which charged.

Election Petition No.2 of 2017

Page 27 of 99

- (c) Name of the Court, Case No. and date of Order taking cognizance
- (d) Court(s) which framed
- (e) Date(s) on which the charge(s) was/were framed
- (f) Whether all or any of the proceedings(s) have been stayed by any Court (s) of competent jurisdiction.

As per the statutory Format, the candidate has to furnish the information as provided in the relevant column or row of the Affidavit Form 26 Format and as per the Para No. 5 (i), a candidate has to furnish the details of the pending cases against him in which charges have been framed by the court for an offence punishable with imprisonment for two years or more.

51. The Learned Senior Counsel Mr. H.S. Paonam submitted that as per law, voters have a paramount right to know the detail antecedents including the criminal records of the candidates contesting in an election. While dealing with various shortcomings plaguing the Indian electoral system and to stem the tide of criminalization of Indian politics, very important issues arose before the Hon'ble Court about the

right of the voter to know of the relevant particulars of the candidates, as ultimately it is the voters who decide the fate of the candidates who will periodically exercise the political power. These issues had also engaged the Law Commission of India which in its 178th Report had proposed certain changes under Rule 4 of the Conduct of Election Rules, 1961 for

Election Petition No.2 of 2017

Page 28 of 99

providing certain information. The matter was first considered before the High Court of Delhi which took the view that the changes proposed for providing information by amending the relevant provisions of the Conduct of Electoral Rules, 1961 was within the domain of the legislature and it was for the parliament to make necessary amendments in the RP Act, 1951 and the relevant Rules. However, the High Court also made a very significant direction holding that a citizen of this Country has a fundamental right to receive information regarding the criminal activities of a candidate of the parliament or the Lok Sabha or the Legislative Assemblies so as to make his choice effective and meaningful and accordingly directed the Election Commission of India to secure to voters the following information of each of the candidates:

1. Whether the candidate is accused of any offence(s) punishable with imprisonment. If so the details thereof.
2. Assets possessed by a candidate, his or her spouse and dependent relations.
3. Facts giving insight into the candidate's competence, capacity and suitability for acting as a parliamentarian or a legislator including details of his/her educational qualifications.

4. Information which the Election Commission considers necessary for judging the capacity and capability of the political party fielding the candidate for election to parliament or the state Legislature.

Election Petition No.2 of 2017

Page 29 of 99

52. The aforesaid directions were challenged by the Union of India before the Hon'ble Supreme Court. The Hon'ble Supreme Court in Union of India -Vs- Assn. for Democratic Reforms, (2002)5 SCC 294 elaborately discussed the various issues including the right of the citizen to know about the candidates contesting election.

53. It has been held by the Hon'ble Supreme Court of India in Union of India -Vs- Association for Democratic Reforms and another in (2002) 5 SCC 294 that Freedom of Speech and expression which is a fundamental right of each and every citizen under Article 19(1)(a) includes casting of votes by the voters as voters speak: out or express by casting votes and that for this Purpose, information about the candidate to be selected is a must. In the circumstances, the Judgment of the Hon'ble Supreme Court of India held as follows:

"22. xxxxx For health of democracy and fair election, whether the disclosure of assets by a candidate, his/her qualification and particulars regarding involvement in criminal cases are necessary for informing voters, may be illiterate, so that they can decide intelligently, whom to vote? In our opinion, the decision of even illiterate voter, if properly educated and informed about the contesting candidate, would be based on his own relevant criteria of selecting a candidate. In democracy, periodical elections are conducted for having efficient governance for the

country and for the benefit of citizens -- voters. In a

Election Petition No.2 of 2017

Page 30 of 99

democratic form of government, voters are of utmost importance. They have right to elect or re-elect on the basis of the antecedents and past performance of the candidate. He has choice of deciding whether holding of educational qualification or holding of property is relevant for electing or re-electing a person to be his representative. Voter has to decide whether he should cast vote in favour of a candidate who is involved in criminal case. For maintaining purity of elections and healthy democracy, voters are required to be educated and well informed about the contesting candidates. Such information would include assets held by the candidate, his qualification including educational qualification and antecedents of his life including whether he was involved in a criminal case and if the case is decided--its result, if pending-- whether charge is framed or cognizance is taken by the Court? There is no necessity of suppressing the relevant facts from the voters."

54. This provision under Section 33A of the Representation of Peoples Act, 1951 has also been upheld by the Hon'ble Supreme Court of India in People's Union for Civil Liberties (2003) 4 SCC 399, wherein it has further been held that a candidate is to file an affidavit duly sworn as prescribed under Rule 4A of the Conduct of Elections Rules, 1961 as provided under Section 33 and 33A of the Representation of the People Act, 1951 along with the nomination paper.

Election Petition No.2 of 2017

Page 31 of 99

55. At the same time, the purpose of filing affidavit along with

the Nomination Paper has exhaustively been discussed by the Hon'ble Supreme Court of India in Resurgence India -Vs- Election Commission of India and Another (2014) 14 SCC 189 and it has been held at Para No. 29 of the Judgment on 13-09-2013 as follows: -

"29. What emerges from the above discussion can be summarised in the form of the following directions:

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

29.2. The ultimate purpose of filing of affidavit along with the nomination paper is 'to effectuate the fundamental right of the citizens under Article 19(1)(a) of the Constitution of India. The citizens are supposed to have the necessary information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information.

29.3. Filing of affidavit with blank particulars will render the affidavit nugatory.

Election Petition No.2 of 2017

Page 32 of 99

29.4. It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the "right to know" of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. We do comprehend that the power of the Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice

itself is prejudiced.

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

29.6. The candidate must take the minimum effort to explicitly remark as "NIL" or "Not Applicable" or "Not known" in the columns and not to leave the particulars blank.

29.7. Filing of affidavit with blanks will be directly hit by Section 125-A(i) of the RP Act. However, as the nomination paper itself is rejected by the Returning Officer, we find no reason why the candidate must be again penalized for the same act by prosecuting him/her."

Election Petition No.2 of 2017

Page 33 of 99

56. The Hon'ble Supreme Court of India in Satish Ukey vs. Devendra Gangadharrao Fadnavis & Anr. (2019) 9 SCC has discussed about the Right to information in Para No. 10 as follows:

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

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).

Election Petition No.2 of 2017

Page 34 of 99

(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".

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

12. The aforesaid discrepancy was addressed by the Supreme Court of India, in the case of People's Union for Civil Liberties (PUCL) and Ors. v. Union of India (UOI) and Ors.(2003) 4 SCC 399 in the said case, this Court had examined the import of Sections 33-A and 33-B of the 1951 Act [as inserted in the 1951 Act through the amendment in 2002 (Supra)] vis-à-vis the directions issued by the Apex Court in the case of Association for Democratic Reforms (Supra) and held as under (opinion of M.B. Shah, J. is quoted. The Opinion of P. Venkatarama Reddi and D.M. Dharmadhikari, JJ. on the point is one of concurrence):

"IV. Right to information with reference to specific aspects



114. I shall now discuss the specifics of the problem. With a view to promote the right to information, this Court gave certain directives to the Election Commission which, as I have already clarified, were ad hoc in nature. The Election Commission was directed to call for details from the contesting candidates broadly on three points, namely, (i) criminal record, (ii) assets and liabilities, and (iii) educational qualification. The Third Amendment to the RP Act which was preceded by an ordinance provided for disclosure of information. How far the Third Amendment to the Representation of the People Act, 2002 safeguards the right of information which is a part of the guaranteed right under Article 19(1)(a), is the question to be considered now with specific reference to each of the three points spelt out in the judgment of this Court in Assn. for Democratic Reforms case.

IV. (1) Criminal background and pending criminal cases against candidates-Section 33-A of the RP (Third Amendment) Act

115. As regards the first aspect, namely, criminal record, the directives in Assn. for Democratic Reforms case are twofold. (SCC p. 322, para 48)

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

(2) Prior to six months of filing of nomination, whether the candidate is an accused in any pending case, of any offence punishable with imprisonment for two years or

more, and in which charge is framed or cognizance is taken by the court of law."

As regards the second directive, Parliament has substantially proceeded on the same lines and made it obligatory for the candidate to furnish information as to whether he is accused of any offence punishable with

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

Election Petition No.2 of 2017

Page 37 of 99

information accessible to the voters/citizens, in addition to what is provided for in clause (i) of Section 33A."

Further, the Court held in Para No. 14 that:

".....123. Finally, the summary of conclusions : (1) ..... (2) .....

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

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

14. Eventually, the following direction was issued by the Court to the Election Commission of India:

"123 (9) The Election Commission has to issue revised instructions to ensure implementation of Section 33-A

Election Petition No.2 of 2017

Page 38 of 99

subject to what is laid down in this judgment regarding the cases in which cognizance has been taken...."

57. Further, the Hon'ble Supreme Court of India in the same Judgment to find out the true meaning and purport of the following phrases found in Section 125-A of the 1951 Act.

- (a) fails to furnish information relating to sub-section (1) of Section 33-A;
- (b) conceals any information;
- (c) in his nomination paper delivered under Sub-section (1) of Section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33-A.

The Hon'ble Supreme Court of India also held as follows:

"17. To find out the true meaning and purport of the aforesaid phrases, the crucial question that has to be answered is whether the word 'information' as mentioned in Section 33-A of the 1951 Act means only such information as mentioned in clause (i) and (ii) of Section 33-A(1) or whether along with the said information a candidate is also required to furnish such other information as required under the Act or the Rules made thereunder. The consequential question that would arise is whether in the affidavit required to be filed under sub-section (2) of Section 33-A information is to be given as required in terms

of the affidavit which is prescribed by Form-26 of the 1967 Rules or such information is confined to what is required to be submitted under Section 33-A (1) (i) and (ii). It is at this stage that Rule 4A of the 1961 Rules would require to be noticed.

Election Petition No.2 of 2017

Page 39 of 99

Rule 4-A which was inserted by S.O.935(E), dated 3.9.2002 with effect from 3.9.2002 is in the following terms.

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

18. Form 26 is the prescribed form of affidavit to be filed by a candidate along with his nomination papers as required under Section 33A (2) of the 1951 Act. The said affidavit in the prescribed form reads as hereunder:

"FORM 26  
(See rule 4A)

Affidavit to be filed by the candidate alongwith nomination paper before the returning officer for election to ..... (name of the House) from ..... constituency (Name of the Constituency)

PART-A  
X--X--X

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

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

Election Petition No.2 of 2017

Page 40 of 99

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

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

(ii) The following case(s) is /are pending against me in which cognizance has been taken by the court other than the cases mentioned in item (i) above:-

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

Election Petition No.2 of 2017

Page 41 of 99

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

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

In the following case, I have been convicted and sentenced to

imprisonment by a court of law:

(a) The Details of cases, section(s) of the concerned Act(s) and description of the offence(s) for which convicted

(b) Name of the Court, Case No. and date of order(s):

(c) Punishment imposed

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

X-X-X

#### PART-B

(11) ABSTRACT OF THE DETAILS GIVEN IN (1) TO (10) OF PART-A:

(i) Total number of pending cases where charges have been.

Election Petition No.2 of 2017

Page 42 of 99

5. framed by the Court for offences punishable with imprisonment for two years or more

(ii) Total number of pending cases where the court(s) have taken cognizance (other than the cases mentioned in item (i)above)

#### VERIFICATION

I, the deponent, above named, do hereby verify and declare that the contents of this affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing

material has been concealed therefrom. I further declare that:-

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

xxxx

DEPONENT

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

19. It may be noticed here that Form-26 was substituted by S.O. 1732 (E) dated 1.8.2012 with effect from 1.8.2012.

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

Election Petition No.2 of 2017

Page 43 of 99

entry (5)(ii) mandates disclosure of information by the contesting candidate regarding cases that are pending against him in which cognizance has been taken by the Court.

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

22. The above can leave no element of doubt that, subsequent to the substitution of Form 26 in 2012, the new Form 26 (as in vogue at the time of the elections in 2014), mandates the disclosure of information by the contesting candidate of not only case(s) in which charges have been framed but also case(s) in which cognizance has been taken by the Court.

23. The position is made further clear by the letters written by the Election Commission of India to the Chief Electoral Officer of all the States and the Union Territories. A reading of the said letters would go to show that a contesting candidate is mandated to furnish information concerning the cases in which a Competent Court has taken cognizance along with the cases in

which charges have been framed. The said letters also make it clear that the affidavit mentioned in Section 33-A(2) of the 1951 Act is prescribed in Form-26 and that any false declaration or concealment of information in the said affidavit will attract the provisions of Section 125-A of the 1951 Act. The letters in this regard are dated 24.8.2012, 26.9.2012 and 26.4.2014, relevant portions of which are extracted below:

Election Petition No.2 of 2017

Page 44 of 99

23.1 Letter dated 24-08-2012:

"1. Sub:- Affidavit to be filed by candidates with their nomination paper-modification of format regarding.

The candidates at elections to the Parliament and the State Legislatures hitherto were required to file two affidavits: one, in Form-26 appended to Conduct of Elections Rules, 1961 and the other, in the Form prescribed by the Commission, vide its Order No. 3/ER/2003 dt. 27-03-2003, as subsequently modified by the letter of even number dt. 25-02-2011. In the affidavits, the candidates are required to declare information about their criminal background, if any, assets, liabilities and educational qualifications.

2. On a proposal moved by the Commission for amalgamating the two affidavits into one format, the Govt. has amended Form 26 so as to include in it all the information that was sought in the two separate affidavits. The Ministry of Law and Justice have notified the revised format 26 in the Gazette of India on 01-08-2012. A copy of the said notification dated 1st August, 2012 is enclosed herewith.

3. In view of the amendment to Form-26, all candidates shall, hereafter, file only one affidavit in the revised Form 26 notified on 01-08-2012 (at elections to the Parliament and State Legislatures). The requirements to be followed while filing the affidavit have been mentioned in the notes given at the end of the format.....

Election Petition No.2 of 2017

Page 45 of 99



5. You are requested to furnish a copy of this letter along with the copy of the enclosed notification to every political party (including registered unrecognized parties) having headquarters in your State/UT, including the State Units of recognized National and State political parties."[Emphasis is Ours]."

23.2. Letter dt. 26-09-2012:

"Sub: Affidavit to be filed by the candidates with their nomination paper-regarding.....

2. Item 5 of Part A and Part B of the revised Form 26 relates to information regarding criminal antecedents to be furnished by the candidates. It is clarified that in item (5)(ii) of the said Part A & Part B of Form-26, the details of all pending cases in which cognizance has been taken by the Court, irrespective of the quantum of punishment or framing of charges will have to be disclosed by the candidate. This may be brought to the notice of all candidates when they file their nomination at all future general/bye-elections in the State..."

23.3 Letter dt. 26-04-2014:

"Sub: Filing of false affidavit in Form-26.reg.  
Sir/Madam,

You are aware that the format of affidavit in Form-26 appended to the Conduct of Election Rules, 1961, was amended with effect from 0108-2012. Now the candidates are required to make declarations about assets and liabilities including that of spouse and dependants, candidate's criminal antecedents and educational qualifications, in the affidavit in Form 26. The concealing of

Election Petition No.2 of 2017

Page 46 of 99

information in the affidavit in Form 26 will attract the provisions of Section 125A. Under Section 125A, furnishing of any false information or concealing of information in the affidavit in Form 26 is an electoral offence punishable with imprisonment upto six months, or with fine or both.

2. Prior to amendment to Form 26 in August 2012, the affidavit regarding declaration about assets, liabilities, criminal antecedents and educational qualification was

given in the format prescribed by the Commission. In the case of complaints about false statement in the said affidavit, the Commission, vide its circular letter No. 3/ER/2004, dated 2/6/2004, had clarified that if complaints were filed before the Returning Officer raising the issue of false declaration in the affidavit and if the RO was prima facie satisfied about the merits of the complaint, then the RO was to file a complaint before the competent Court under Section 177 of IPC read with Section 195 of Cr.P.C.

3. Now that the affidavit is in Form 26 under Section 33A of the R.P. Act, 1951, making false declaration/concealing of information in the affidavit would be covered under Section 125A of the Act. Under Section 125A, there is no stipulation that complaints under the 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."

Election Petition No.2 of 2017

Page 47 of 99

24. A cumulative reading of Section 33-A of the 1951 Act and Rule 4A of the 1967 Rules and Form-26 along with the letters dated 24.8.2012 26.9.2012 and 26.4.2014, in our considered view, make it amply clear that the information to be furnished under Section 33-A of the 1951 Act includes not only information mentioned in clauses (i) and (ii) of Section 33-A(1), but also information, that the candidate is required to furnish, under the Act or the Rules made thereunder and such information should be furnished in Form 26, which includes information concerning cases in which a competent Court has taken cognizance (Entry 5(ii) of Form 26). This is apart from and in addition to cases in which charges have been framed for an offence punishable with imprisonment for two years or more or cases in which conviction has been recorded and sentence of imprisonment for a period of one year or more has been imposed (Entries 5(i) and 6 of Form 26 respectively).  
.....

26. Our view as above is in consonance with a similar view expressed by this Court in paragraph 75 of the report in Krishnamoorthy v. Sivakumar and others (2015) 3 SCC 467 Para 75 of the report in Krishnamoorthy (supra) reads as under:

"75. On a perusal of the aforesaid format, it is clear as crystal that the details of certain categories of the offences in respect of which cognizance has been taken or charges have been framed must be given/furnished. This Rule is in consonance with Section 33-A of the 1951 Act. Section 33(1) Election Petition No.2 of 2017 envisages that information has to be given in accordance with the Rules. This is in addition to the information to be provided as per Sections 33(1)(i) and (ii). The affidavit that is required to be filed by the candidate stipulates mentioning of cases pending against the candidate in which charges have been framed by the Court for the offences punishable with imprisonment for two years or more and also the cases which are pending against him in which cognizance has been taken by the court other than the cases which have been mentioned in clause (5)(i) of Form 26. Apart from the aforesaid, clause (6) of Form 26 deals with conviction."

58. The Learned Senior Counsel for the Petitioner submitted that from the Judgment of Hon'ble Supreme Court of India cited above, it is clear that the various Provisions of the Representation of Peoples Act, 1951 and Rules thereof in the interest of a free and fair election, a healthy democracy and in protecting the fundamental right of its citizens have mandated the disclosure of all Information as proscribed by the statutory Form 26 Affidavit and any candidate does not have right to deviate for his/her personal gain.

59. The Respondent No.1 ought to have disclosed the details information where the Respondent No. 1 is involved in the Criminal Case as per format provided by the statutory Rules. However, in the present Case, the Respondent No.1 despite having full knowledge of the Special Election Petition No.2 of 2017 Trial Case where no charge has been framed against him, the Respondent No. 1 failed to disclose in proper place and also details of information of Criminal Cases pending against him and details of his Educational Qualification as provided by the statutory Rules which is in complete violation of the provisions in the Representation of Peoples Act, 1951 and rules thereof.

60. In regard to the above mentioned two Issues, the Learned Senior Counsel for the Respondent No. 1 submitted that an Election Petition is a statutory action which is solely and completely governed by the Representation of Peoples' Act, 1951.

"8. .... Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principle of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it....."

61. The Learned Senior Counsel Mr. P.S. Narasimha further submitted that non compliance of Section 33A is not a ground to reject the nomination papers under Section 36 and Section 36(2) of the RP Election Petition No.2 of 2017 Act, 1951. A perusal of the Section would demonstrate that the sole grounds on which the nomination can be rejected are that the candidate was disqualified, or

there was a non-compliance of Section 33 and 34 or the signature on the papers is not genuine. Pertinently, the non-

compliance of Section 33A is not fatal to the nomination papers. At the same time, the Hon'ble Supreme Court has carved exceptions only to the extent that only when affidavit is blank can the returning Officer reject the nomination, and this power of returning Officer must be used sparingly and or when there is non-disclosure of criminal antecedents pertaining to heinous or serious offences. In support of his contentions, the Learned Senior Counsel referred the following cases :-

I. Resurgence India -Vs- Election Commission of India, (2014)14 SCC 189 (Para 29)  
"29. What emerges from the above discussion can be summarized in the form of the following directions:

29.1. The voter has the elementary right to know full particulars of a candidate who is to represent him in 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.

29.2. The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right Election Petition No.2 of 2017 of the citizens under Article 19(1)(a) of the Constitution of India. The citizens are supposed to have the necessary information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information.

29.3. Filing of affidavit with blank particulars will render the affidavit nugatory.

29.4. It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the "right to know" of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. We do comprehend that the power of Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced.

29.5. We clarify to the extent that Para 73 of People's Union for Civil Liberties case [(2003) 4 SCC 399] will not come in the way of the Returning Officer to reject the nomination paper when affidavit is filed with blank particulars.

29.6. The candidate must take the minimum effort to explicitly remark as 'NIL' or 'Not Applicable' or 'Not known' in the columns and not to leave the particulars blank.

29.7. Filing of affidavit with blanks will be directly hit by Section 125-A(i) of the RP Act. However, as the nomination Election Petition No.2 of 2017 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.

30. The Writ Petition is disposed of with the above directions."

II. Krishnamoorthy -Vs- Sivakumar, (2015) 3 SCC 467 (Para 94) "94. In view of the above, we would like to sum up our conclusions:

94.1. Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative.

94.2. When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right.

94.3. Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.

94.4. As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(b) of the 1951 Act.

94.5. The question whether it materially affects the election or not will not arise in a case of this nature.

#### Election Petition No.2 of 2017

95. Before parting with the case, we must put on record our unreserved appreciation for the valuable assistance rendered by Mr. Harish N. Salve, learned senior counsel and Mr. Maninder Singh, learned Additional Solicitor General for Union of India.

96. Ex consequenti, the appeal, being sans substance, stands dismissed with costs, which is assessed at Rs.50,000/-."

62. On perusal of the pleading of both parties, it is an admitted fact that the Respondent No. 1 failed to comply Section 33 A of the RP Act, 1951 read Rule 4A of the Conduct of Elections Rules, 1961 in regard to the filling of the required information as per the Form 26 format.

In addition the Case Laws cited by the Petitioner, the High Court of Delhi has also held in Jaspal Singh & Anr. -Vs- O.P. Babbar & Anr., 2008 (101) DRJ 283 that "11. Let me begin with the history leading to the insertion of Section 33A in the R.P. Act, 1951 with a consequential amendment by inserting Rule 4A in the Conduct of Elections Rules, 1961 accompanied by insertion of Form No. 26 in the Conduct of Elections Rules, 1961.

12. In its 170th report, the Law Commission had made a recommendation to make suitable amendments in the R.P. Act, 1957. The Law Commission had noted a subversion in the Indian Electoral System by criminalization thereof. Since neither the Union Government nor the Union Parliament was taking cognizance of the report filed by the Law Commission, the Association of Democratic Reforms Election Petition No.2 of 2017 filed a writ petition in the Delhi High Court for direction to the respondents impleaded in the writ petition to implement the recommendations made by the Law Commission in its 170th Report and to make necessary changes under Rule.4 of the Conduct of Election Rules, 1961. It was pointed out that Law Commission of India had, at the request of Government of India, undertaken comprehensive study of the measures required to expedite hearing of election petitions and to have a thorough review of the Representation of the People Act, 1951 so as to make the electoral process more fair, transparent and equitable and to reduce the distortions and evils that had crept into the Indian electoral system and to identify the areas where the legal provisions required strengthening and improvement. It was pointed out that Law Commission has made recommendation for debarring a candidate from contesting an election if charges have been framed against him by a Court in respect of certain offences and necessity for a candidate seeking to contest election to furnish details regarding criminal cases if any, pending against him. It was also suggested that true and correct statement of assets owned by the candidate his/her spouse and dependent relations should also be disclosed. Reference was also made to the report of the Vohra Commission which had also recommended on the similar lines as the Law Commission. It was contended that despite the Reports of the Law Commission and Vohra Committee, successive Governments have failed to take any action and, therefore, petition was filed for implementation of the said reports and for a direction to the Election Commission to make Election Petition No.2 of 2017 mandatory for every candidate to provide information by amending Forms 2-A to 2-E prescribed under the Conduct of Election Rules, 1967.

13. After hearing the parties, the Delhi High Court by judgment and order dated 2nd November, 2000 held that it is the function of the Parliament to make necessary amendments in the Representation of the People Act, 1951 or the Election Rules and, therefore the Court cannot Pass any order, as prayed, for amending the Act or the Rules.

14. However, the Delhi High Court considered whether or not an elector, a citizen of the country, has a fundamental right to receive the information regarding the criminal activities of a candidate to the Lok Sabha or Legislative Assembly for making an estimate for himself as to whether the person who is contesting the election has a background making him worthy of his vote, by peeping into the past of the candidate. After considering the relevant submissions and the reports as well as the say of Election Commission, the Delhi High Court held that for making a right choice, it is essential that the past of the candidate should not be kept in the dark as it is not in the interest of the democracy and well-being of the country. The Court directed the Election Commission to secure to the voters

the following information pertaining to each of the candidates contesting election to the Parliament and to the State Legislative:

I. Whether the candidate is accused of any offence(s) punishable with imprisonment?  
If so, the details there of.

Election Petition No.2 of 2017 II. Assets possessed by a candidate, his or her spouse and dependent relations?

III. Facts giving insight to candidate's competence, capacity and suitability for acting as parliamentarian or legislator including details of his/her educational qualifications;

IV. Information which the election commission considers necessary for judging the capacity and capability of the political party fielding the candidate for election to Parliament or the State Legislature.

15. Accordingly, directions were issued by the Delhi High Court to the Election Commission to issue administrative instructions/guidelines to give effect to its decision.

16. Aggrieved by the said judgment and order dated 2.11.2000 passed by the Delhi High Court, Union of India and Indian National Congress preferred an appeal before the Hon'ble Supreme Court. Further, People's Union for Civil Liberties filed writ petition under Article 32 of the Constitution praying that writ, order or direction be issued to the respondents- (a) to bring in such measures which provide for declaration of assets by the candidate for the elections and for such mandatory declaration every year during the tenure as an elected representative as MP/MLA;

(b) to bring in such measures which provide for declaration by the candidate contesting election whether any charge in respect of any offence has been framed against him/her, and (c) to frame such guidelines under Article 141 of the Constitution by taking into considering 170th Report of Law Commission of India.

17. The challenge to the decision of the Delhi High Court was repelled by the Hon'ble Supreme Court in the decision reported as Union of India v. Association of Democratic Reforms & Anr., 11 (2002) SLT 490= 2002 5 SCC 294 . The Hon'ble Supreme Court posed the question: whether in a nation wedded to republican and democratic form of Government, where election as a Member of Parliament or as a Member of a Legislative Assembly is of utmost importance for governance of the country, do voters have a right to know the relevant particulars of the candidates before casting their votes. Further connected question considered by the Hon'ble Supreme Court was whether the High Court had jurisdiction under Article 226 of the Constitution of India to issue directions to the Election Commission to frame appropriate guidelines in this regard.

18. On behalf of Union of India it was argued that till suitable amendments are made in the Representation of People's Act, 1951 and the Conduct of Elections Rules, 1961, the High Court

should not have given any direction to the Election Commission. Reference was made to various provisions of the Representation of People Act, 1951 and it was submitted that an elaborate procedure is prescribed under the Act for presentation of nomination paper and requirements for a valid nomination. That it is for the political parties to decide whether such amendments should be brought and carried out in the Act and the Rules. That as the Act or the Rules nowhere disqualify a candidate for non-

Election Petition No.2 of 2017 disclosure of the assets or pending charge in a criminal case and, therefore, directions given by the High Court would be of no consequence and such directions ought not to have been issued.

19. Supplementing the aforesaid submission Indian National Congress argued that the Constituent Assembly had discussed and negated requirement of educational qualification and possession of the assets to contest election. That similarly prescribing of proper qualification for the candidates to contest election was also negated by the Constituent Assembly. That therefore furnishing of information regarding assets and educational qualification of a candidate is not at all relevant for contesting election and even for casting votes. That a delicate balance is required to be maintained with regard to the jurisdiction of the Parliament and that of Courts and once the Parliament has not amended the Act or the Rules despite the recommendation made by the Law Commission or the report submitted by the Vohra Committee, there was no question of giving any direction by the High Court to the Election Commission.

20. The Election Commission supported the order of the High Court in so far it issued directions pertaining to pending criminal cases, assets and educational qualifications.

21. After noting the respective contentions of the parties, Hon'ble Supreme Court posed following two questions to be answered::

Election Petition No.2 of 2017 I. Whether Election Commission is empowered to issue directions as ordered by the High Court?

II. Whether a voter - a citizen of this country-has right to get relevant information, such as, assets, qualification and involvement in offence for being educated and informed for judging the suitability of a candidate contesting election as MP or MLA?

22. After noting the case laws on the subject, Hon'ble Supreme Court answered the afore-noted two questions as under:

"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 the 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. 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 Election Petition No.2 of 2017 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 Commission can fill the vacuum till there is legislation on the subject. In Kanhiya Lal Omar's case, the Court construed the expressions "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 may have to follow and it maybe 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 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 (supra), 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 affidavit a candidate is required to disclose the assets held by him at the time of Election Petition No.2 of 2017 election, 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. Ashwini 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 voters may not elect lawbreakers as lawmakers 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 reelection. 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 natural right flowing from the concept of democracy. At this stage, we would refer to Articles 19(1) and 19(2) of the International Covenant of Civil and Political Rights which is as under:

"(i) Everyone shall have the right to hold opinions without interference.

Election Petition No.2 of 2017

(ii) 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. Cumulative reading of 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 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 lawbreakers as law-makers."

23. So holding, Hon'ble Supreme Court held that the directions issued by the High Court were neither unjustified nor beyond its jurisdiction. However, Hon'ble Supreme Court modified the directions issued by the Delhi High Court as follows:-

Election Petition No.2 of 2017 "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 there of.

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

(4) Liabilities, if any, particularly whether there are any over dues of any public financial institution or Government dues.

(5) The educational qualifications of the candidate."

#### Election Petition No.2 of 2017

24. After the Hon'ble Supreme Court rendered its opinion on 2.5.2002, the representation of the People (3rd Amendment) Act, 2002 was promulgated. Simultaneously Rule 4A was inserted in the Conduct of Elections Rules, 1961 as also Form No. 26 prescribing the affidavit required to be filed by a candidate along with the nomination paper was introduced in the Rules.

25. Section 33A as also Section 33B as also Section 125A was introduced in the R.P. Act. 1951.

26. While amending the statute, the Legislature did not give full effect to complete directions issued by the Hon'ble Supreme Court in its decision reported as Ill (2002) SLT 490= 2002 5 SCC 294, HOI v. Association for Democratic Reforms & Am. This led to another round of litigation where vires of Section 33 of the RP. Act, 1951 was challenged.

27. The challenge succeeded. Section 33B of the R.P. Act, 1951 was Struck down.

28. The said decision of the Hon'ble Supreme Court is reported as Il (2003) SLT 694= 2003 (4) SCC 399, People's Union for Civil Liberties &Anr. v. UOI & Anr.

29. Relevant for the purpose of the instant dispute is a reference to an office order issued by Election Commission being order No. 3ER/2002/JS-II/Vol.-III dated 28.6.2002. The aforesaid direction was issued by the Election Commission in implementation of the decision of the Delhi High Court.

Election Petition No.2 of 2017 "Furnishing of any wrong or incomplete information or suppression of any material information by any candidate in or from the said affidavit may also result in the rejection of his nomination paper where such wrong or incomplete information or suppression of material information is considered by the Returning Officer to be a defect of substantial character, apart from inviting penal consequences under the Indian Penal Code for furnishing wrong information to a public servant or suppression of material facts before him:

Provided that only such information shall be considered to be wrong or incomplete or amounting to suppression of material information as is capable of easy verification by the Returning Officer by reference to documentary proof adduced before him the summary inquiry conducted by him at the time scrutiny of nominations under

Section 36(2) of the Representation of the People Act, 1951, and only the information so verified shall be taken into account by him for further consideration of the question whether the same is a defect of substantial character."

31. Though not a subject matter of a direct challenge before the Hon'ble Supreme Court, taking note of the order dated 28.6.2002, in para 73 of its report in the decision reported as *People's Union for Civil Liberties & Anr. v. UOI & Anr.* (supra), Their Lordships of the Hon'ble Supreme Court opined as under:

Election Petition No.2 of 2017 "73. While no exception can be taken to the insistence of affidavit with regard to the matter specified in the judgment in *Assn. for Democratic Reforms* case the direction to reject the nomination paper for furnishing wrong information or concealing material information and providing for a summary inquiry at the time of scrutiny of the nominations, cannot be justified. In the case of assets and liabilities, it would be very difficult for the Returning Officer to consider the truth or otherwise of the details furnished with reference to the "documentary proof". Very often, in such matters the documentary proof may not be clinching and the candidate concerned may be handicapped to rebut the allegation then and there. If sufficient time is provided, he may be able to produce proof to contradict the objector's version. It is true that the aforesaid directions issued by the Election Commission are not under challenge but at the same time prima facie it appears that the Election Commission is required to revise its instructions in the light of directions issued in *Assn. for Democratic Reforms* case and as provided under the Representation of the People Act and its Third Amendment,"

32. A Statute is an edict of the Legislature and the conventional way of interpreting or construing a statute is to seek the 'intention' of its maker. A statute is to be construed Election Petition No.2 of 2017 according "to the intent of those who make it" and "the duty of the judicature is to act upon the true intention of the Legislature - the mens or sententia legis".

33. The intention of the Legislature assimilates two aspects; in one aspect it carries the concept of 'meaning' i.e. what the words mean and in another aspect, it conveys the concept of 'purpose and object' or the reason and spirit pervading through the Statute. The process of construing intention of the Legislature therefore combines both literal and purposive approaches.

34. The tussle between the literal and purposive approaches is well highlighted in the following observations of Lord Millet:

"No draftsmen can envisage all the circumstances which may possibly arise. From time-to-time, therefore, events occur which are within the plain words of the statute yet are outside its evident purpose and vice versa.

This is the battle ground on which are fought the battle between the literal constructionists and the purposive constructionists."

['Construing Statutes' (1999) 20 Statute Law Review, 107]

35. In the decision reported as *Lehigh Valley Coal Co. v Yensavage*, 218 Fed 547, Justice Learned Hand observed as under:

Election Petition No.2 of 2017 "Statutes should not be construed as theorems of Euclid but with some imagination of the purposes which lie behind them."

36. To the same effect are the following observations of Justice Frankfurter which were noted with approval by the Hon'ble Supreme Court in the decision reported as *United Bank of India, Calcutta v. Abhijit Tea Co.*, VI (2000) SLT 651= AIR 2000 SC 2957 :

"Legislation has an 'aim, it seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government. That aim, that policy is not drawn, like nitrogen, out of the air; it is evidenced in the language of the statute, as read in the light of other external manifestations of purpose" ('Some Reflections on the Reading of Statutes' 47 Columbia LR 527).

37. In the decision reported as *R (On the application of Quintavalle) v. Secretary*, (2003) All ER113 Lord Bingham observed as under:

"Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish or effect some improvement in the national life. The Court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of a statute as a whole and Election Petition No.2 of 2017 statute as a whole should be read in the historical context of the situation which led to its enactment."

38. In the decision reported as *Reserve Bank of India v. Peerless General Finance & Investment Co.*, (1987)1 SCC 424 it was observed as under:

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the

statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation.

39. Importance of 'purposive interpretation' was highlighted by the Hon'ble Supreme Court in the decision reported as *Organo Chemical Industries & Am. v. Union of India*, AIR 1979 SC 1803. In said decision, it was observed as under:

Election Petition No.2 of 2017 "Each word, phrase or sentence is to be considered in the light of general purpose of the Act itself. A bare mechanical interpretation of the words devoid of concept or purpose will reduce most of legislation to futility. It is a salutary rule, well established, that the intention of the Legislature must be found by reading the statute as a whole."

40. In the decision reported as *Seaford Court Estates Ltd. v. Asher*, [1949] 2 All. E.R. 155 at 164, Lord Denning L.J. observed:

"When a defect appears, a Judge cannot simply fold his hands and blame the draftsman, He must set to work on the constructive task of finding the intention of Parliament... and then he must supplement the written word so as to give 'force and life' to the intention of the Legislature.... A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they should have straightened it out? He must then do as they would have done, A Judge must not alter the material of which the Act is woven but he can and should iron out the creases."

41. As observed as by Hon'ble Justice Krishna Iyer in the decision reported as *Chairman, Board of Mining Examination & Chief Inspector of Mines v. Ramjee*, AIR 1977 SC 965 to be literal in meaning is to see the skin and miss the soul. The judicial key to construction is the composite perception of the 'deha' and 'dehi' of the provision.

Election Petition No.2 of 2017

42. Noting that the literal interpretation would lead to an anomalous situation, the Hon'ble Supreme Court in under- noted judgments preferred purposive interpretation over literal interpretation while interpreting a statute / provision:

I. *Union of India & Ors. v. Filip Tiago De Gama of Vadem Vasco De Gama*, 1990 1 SCC 277.

II. *State Bank of Travancore v. Mohammed Mohammed Khan*, AIR 1981 SC 1744.

III. *Surjit Singh Kalra v. Union of India*, (1991) 2 SCC

- IV. Directorate of Enforcement v. Deepak Mahajan & Anr., AIR 1999 SC 1775.
- V. Hameedia Hardware Stores v. B. Mohan Lai, (1998) 2 SCC 513.
- VI. O.S. Singh v. Union of India, (1996) 7 SCC 37.
- VII. Union of India v. Hansoli Devi, V (2002) SLT 224= 2002 7 SCC 273

43. Keeping in view the legislative history leading to the incorporation of Section 33A of the R.P. Act, 1951, Rule 4A of the Conduct of Elections Rules, 1961 and Form 26 to the said Rules, it is apparent that the declaration required (with contents) under Section 33A is mandatory as said information has been held to be the right to know of each voter. Indeed in the decision reported as UOI v. Association of Democratic Reforms & Anr. (supra), it was held that right to get information in democracy is recognized all throughout Election Petition No.2 of 2017 and it is natural right flowing from the concept of democracy. It was further held that Article 19(I)(a) of the Constitution provides for freedom of speech and expression and that voter's speech or expression in case of election would include casting of votes, that is to say, voters speak or express by casting votes and for this purpose the information about the candidates is a must.

44. The use of the word "shall" in Section 33A of the R.P. Act, 1951 also guides to the mandatory character of the legislative provision.

45. To construe Section 33A of the R.P. Act, 1951 in any other manner would run contrary to the ratio of the decision of the Hon'ble Supreme Court in decision reported as UOI v. Association Democratic Reforms & Anr supra).

46. It is true that it was desirable to amend Section 36 of the R.P. Act, 1951 when Section 33A was inserted in the statute book and expressly provide for a rejection of a nomination paper which did not comply with Section 33A.

But the problem at hand can be looked at from another angle.

47. A nomination paper is a nomination paper properly so called when it complies with the requirements of Sections 33 and 33A of the R.P. Act, 1951. A nomination paper not in compliance thereof is a nomination paper improperly so called. It is no nomination paper in the eyes of law. Right to be a candidate at an election commences by filing a nomination paper, which has to be as per law.

Election Petition No.2 of 2017

48. Where a statute prescribes the manner in which an act can be performed, the act can be performed in the manner prescribed and in no other way....."

63. In view of the settled principle of laws, it is not acceptable that the noncompliance of Section 33A is not fatal to the nomination papers. Accordingly, this Court held that the Affidavit in Form 26 prescribed by Rule 4A of the Conduct of Election Rules, 1961 is a statutory Format and the Respondent No. 1 failed to fill up his Affidavit dated 13/02/2017 in Form 26 and consequently, his nomination paper is liable to be rejected.

64. In respect of the issue No. I is :

"Whether the Returning Officer of 15-Wangkhei Assembly Constituency has accepted the nomination paper of the Respondent No.1 improperly or not?"

The Learned Senior Counsel for the Petitioner submitted that the Returning Officer ought to have rejected the Nomination paper of the Respondent No. 1 as he failed to disclose the material facts in his Affidavit dated 13/02/2017. The Nomination Paper of the Respondent No. 1 was improperly accepted by the Returning Officer as it is admitted facts that the Respondent No. 1 failed to disclose the name of his Spouse and dependents, details of Criminal Cases pending against him and his educational qualification. As such, election of the Respondent Election Petition No.2 of 2017 No. 1 is liable to be declared as null and void. Moreover, filing of false affidavit falls within the meaning of defect of substantial character.

65. As submitted by the Learned Senior Counsel for the Petitioner that the Uttarkhand High Court in Bhupendra Singh -Vs-

State of Uttarkhand and others in the related W.P.(C) No. 1394 of 2014, held on 27-06-2014 that furnishing of incorrect or incomplete information in his nomination paper would be of substantial character in terms of the Notification dated 24-02-2003 issued by the Election Commission of India. The relevant paras are as follows.

"Perusal of notification issued by the State Election Commission dated 24 22003 would reveal that State Election Commission has issued instructions to the effect that if any candidate is found guilty of furnishing incorrect or incomplete information or concealment of any important information, his nomination paper shall be rejected provided Election/Returning Officer finds that such incomplete or concealed information is of the substantial character. Instructions further provide that candidate who has furnished incorrect /incomplete information or has concealed an important information may also be prosecuted under the provisions of Indian Penal Code over and above the rejection of his nomination.



Word 'substantial character' as used in the Notification dated 24.02.2003 and in Sub-rule (2) of Rule 18 has its own importance.

Election Petition No.2 of 2017 Dictionary meaning of word 'substantial' means of considerable importance.

Language of Notification dated 24.02.2003 also provides that candidate, who has furnished incorrect or incomplete information or has concealed important information, may also be prosecuted under the provisions of Indian Penal Code. Therefore, in my considered opinion only such incomplete or incorrect (vague or ambiguous) information or concealment of such information would be of substantial character, which falls within the definition of 'false evidence' for which prosecution under IPC is permissible. There is another aspect of the matter. Word 'substantial character' can be understood to mean which can adversely affect the election or which may render the candidate disqualified to contest the election."

66. In *Resurgence India v. Election Commission of India* AIR 2014 SC 344, the Hon'ble Supreme Court of India held as follows:

"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.

Election Petition No.2 of 2017

23) xxxxxx Para 73 of the aforesaid judgment nowhere contemplates a Situation where it bars the Returning Officer to reject the nomination paper on account of filing affidavit with particulars left blank. Therefore, we hereby clarify that the above said paragraph will not come in the way of the Returning Officer to reject the nomination paper if the said affidavit is filed with blank columns. 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, if he desires that his nomination paper be accepted by the Returning Officer.

27) What emerges from the above discussion can be summarized in the form of following directions:

(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."

67. The Learned Senior Counsel further submitted that acceptance and rejection of nomination is governed solely by Section 36 RP Act, 1951. Section 36(4) of the RP Act, 1951 envisages that the Returning Officer shall not reject nomination papers on the ground of Election Petition No.2 of 2017 defects which are not of a substantial character. In other words, there is substantial compliance of Section 33A read with Section 36 of the Representation of the People Act, 1951. It is now settled law that the nomination of a Candidate must be accepted if there is substantial compliance and the defect is not of a substantial character.

68. In my view, this Court has to decide the case where the detail enquiry is needed and in this regard, the Hon'ble Supreme Court of India held in Para No. 38 of the Kisan Shankar Kathore -V- Arun Dattatray Sawant and Others (2014)14 SCC 162 that :

"38. .... 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....."

69. The main contention of the Petitioner in the present Election Petition is that the Respondent No. 1 failed to disclose the details of Criminal pending case, his educational qualification and name of spouse and his dependents.

Election Petition No.2 of 2017

70. Furnishing of incorrect and incomplete information about the Special Trial, his educational qualification, pending Criminal Case No. 17 of 2017 in the Affidavit filed along with the nomination paper in terms of the provisions under Section 33, 33-A of the RP. Act, 1951 read with Article 173 of the Constitution of India deserves to be rejected on the ground of improper acceptance. As such, the above issue is decided accordingly.

71. This Court has taken the following Issues together as the said Issues are co-related to each other and the same can be decided jointly.

"Whether the petitioner proves that he is entitled to be declared as duly elected Returned Candidate from 15- Wangkhei Assembly Constituency for the 11th Manipur Legislative Assembly Election or not?"

"4. Whether the petitioner is entitled for the cost of litigation"

72. The Learned Senior Counsel for the petitioner submitted that the Hon'ble Supreme Court of India in a subsequent case in *Kisan Shankar Kathore -V-Arun Dattatray Sawant and Others* (2014)<sup>14</sup> SCC 162 decided on 09-05-2014 held that in case of non-disclosure of material information required and withholding of material information or concealment of material informations in the affidavit filed along with the nomination paper in the Election to Parliament/Assemblies, the election Election Petition No.2 of 2017 of such candidate has to be set aside. Relevant paras of the Judgment are reproduced below:

"38. .... 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. .... 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."

73. The Learned Sr. Counsel for the Petitioner submitted as per the Column No. 5(i)(b) of the prescribed Affidavit, all candidate has to fill up the following information i.e. "Section(s) of the concerned Act(s) and short description of the offences for which charged." In this Column No. 5(i)(b), the Respondent No. 1 has furnished the information as "21, 25A, 29, 32 of ND & PS Act, 1985 and 120B, 420, 468, 471 and 506 of IPC."

and it is not disputed that the Respondent No. 1 failed to disclose the Election Petition No.2 of 2017 information regarding "short description of the offences for which charged."

The description of the Sections where the Respondent No. 1 has been charged are:

Section 21 of ND & PS Act, 1985 Punishment for contravention in relation to manufactured drugs and preparations Section 25A of ND & PS Act, 1985 Punishment for contravention of orders made under Section 9A.

Section 29 of ND & PS Act, 1985 Punishment for abetment and criminal conspiracy.

Section 32 of ND & PS Act, 1985 Punishment for offence for which no punishment is provided.

Section 120B of IPC Punishment of criminal conspiracy Section 420 of IPC Cheating and dishonestly inducing delivery of property.

Section 468 of IPC Forgery for purpose of cheating Section 471 of IPC Using as genuine a forged document or electronic record.

Section 506 of IPC Punishment for criminal intimidation.

Election Petition No.2 of 2017

74. In the ND & PS Case, onus to disprove the charges of the prosecution lies to the accused which is different from the other Criminal Cases and as such, it should be presumed that the Respondent No. 1 has involved in the ND & PS Case until and unless it is disproved after the trial. If the Respondent No. 1 disclosed the said "short description of the offences for which charged" in his Affidavit dated 13/02/2017, the Respondent No. 1 would not have any chance to win the election.

75. As per the Column No. 5(i)(d) of the prescribed Affidavit, all candidates has to fill up the following information i.e. "Court(s) which charge framed." The Respondent No. 1 has furnished as "Charge has not been framed" which means that the Respondent No. 1 has well aware that charge has not been framed but in contrary, the Respondent No. 4 intentional with full knowledge filled up in Column No. 5(i) where specifically mentioned for filling the "case(s) is/are pending against me in which charges have been framed by the court for an offence punishable with imprisonment for two years or more".

76. As per the Para No. 10 of the prescribed Affidavit, all candidate has to furnish the information regarding the educational qualification with 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.

Election Petition No.2 of 2017

77. It is not disputed that the Respondent No. 1 in the Affidavit dated 13/02/2017 in Form 26 has furnished as "Passed XII from Manipur Public School, CBSE". Accordingly, it is admitted fact that the Respondent No. 1 did not furnish "year in which the course was completed".

78. During the Cross-Examination of the Respondent No. 1 by the Learned Counsel for the Petitioner, the Respondent No. 1 answered as "A. Yes, it is true as I was not asked" in reply to the question. i.e. "Is it true that you have not mentioned the year in which your course was completed".

79. In the Affidavit dated 09/02/2012 of the Respondent No. 1 filed along with the nomination paper before the Returning Officer for election to the 10th Manipur Legislative Assembly Election from 15- Wangkhei Assembly Constituency, the Respondent No.1 had furnished his highest educational qualification under Para/Column No. 9 of the Affidavit as "B.A. from Punjab University". The Affidavit dated 13/02/2017 filed along with the Nomination paper for 11th Manipur Legislative Assembly Election, 2017, the Respondent No.1 had furnished his highest educational qualification under Para/Column No. 10 as passed XII from Manipur Public School.

80. It is further submitted, that in Krishnamoorthy v.

Sivakumar and others (2015) 3 SCC 46, the Hon'ble Supreme Court of Election Petition No.2 of 2017 India held that in cases of non-disclosure of pending cases amounting to 'undue influence', the election is to be declared' as null and void, and the question whether it materially affects the election or not will not arise. An abstract of the judgement is reproduced below:

"55. The purpose of referring to the same is to remind one that the right to contest in an election is a plain and simple statutory right and the election of an elected candidate can only be declared null and void regard being had to the grounds provided in the statutory enactment. And the ground of 'undue influence' is a part of corrupt practice.

56. Section 100 of the 1951 Act provides for grounds for declaring election to be void. Section 100(1) which is relevant for the present purpose 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) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or Election Petition No.2 of 2017

(c) that any nomination has been improperly rejected;

or

(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected-

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

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(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."

57. As is clear from the provision, if the corrupt practice is proven, the Election Tribunal or the High Court is bound to declare the election of the returned candidate to be void. The said view has been laid down in *M. Narayan Rao V. G. Venkata Reddy & Others* (1977) 1 SCC 771 and *Harminder Singh Jassi*(supra).

58. At this juncture, it is necessary to elucidate on one essential aspect. Section 100(1)(d)(ii) stipulates that where the High Court is of the opinion that the result of the election has been materially affected by any corrupt practice, committed in the interest of the returned candidate by an agent, other than his Election Petition No.2 of 2017 election agent, the High Court shall declare the election of the returned candidate to be void. This stands in contra distinction to Section 100(1)(b) which provides that election of a returned candidate shall be declared to be void if corrupt practice has been committed by a returned candidate or his election agent or by any other person with his consent or with the consent of the returned candidate or his election agent. Thus, if the corrupt practice is proven on the foundation of Section 100(1)(b), the High Court is not to advert to the facet whether result of the election has been materially affected, which has to be necessarily recorded as a finding of a fact for the purpose of Section 100(1)(d)(ii).

XXXXX

61. The distinction between the two provisions, 'as has been explained by this Court is of immense significance. If the corrupt practice, as envisaged under Section 100(1)(b) is established, the election has to be declared void. No other condition is attached to it....."

XXXXXX

86. In view of the above, we would like to sum up our conclusions:

d. As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non- disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(b) of the 1951 Act.

Election Petition No.2 of 2017 e. The question whether it materially affects the election or not will not arise in a case of this nature."

81. The Learned Senior Counsel submitted that the question as to whether filing of incomplete affidavit along with his Nomination Paper materially affected the election of the returned candidate for setting aside his election under Section 100(1)(d) of the R.P. Act, 1951 has been sufficiently discussed in *Kishan Shankar Kathore -Vs- Arun Dattatray Sawant* before the Hon'ble Bombay High Court and it has been-held

in-Para 137 of the Judgement as follows:

"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."

82. In the instant Case, the legal duty cast upon the Respondent No. 1 is to disclose detailed of his spouse's and Dependents' name, details of the criminal antecedent i.e. regarding Criminal pending Cases, details of his educational qualification in his Affidavit dated 13/02/2017 in Form 26 but for reasons best known to him Election Petition No.2 of 2017 failed to disclose the said information. Non-disclosure of the material information of the Respondent No. 1 amounts to violation of the Representation of Peoples Act, 1951 and rules thereof, and hence his election is fit to be declared as null and void as per Section 100(1)(b), 100(1)(d)(i) and 100(1)(d)(iv).

83. In Krishnamoorthy -Vs- Sivakumar & Ors (2015) 3 SCC 46, the issue before the Hon'ble Supreme Court of India was whether non-disclosure of criminal antecedents by a candidate in his affidavit amounts to corrupt practice under Section 260 of Tamil Nadu Panchayats Act {which is similar to section 123(2) of RPA}. The Hon'ble Apex Court ruled that the voter's right to know the candidate who represents him in Parliament is an integral part of his freedom of speech and expression, guaranteed under the Constitution. Suppressing information about any criminal antecedents creates an impediment to the free exercise of the right to freedom of speech and expression.

Therefore, nondisclosure amounts to an undue influence and corrupt practice under Section 123(2) of RPA. Relevant portions of the Judgment is reproduced below:

"74. Having stated about the need for vibrant and healthy democracy, we think it appropriate to refer to the distinction between disqualification to contest an election and the concept or conception of corrupt practice inhered in the words "undue influence". ..... But the question is when Election Petition No.2 of 2017 an election petition is filed before an Election Tribunal or the High Court, as the case may be, questioning the election on the ground of practicing corrupt practice by the elected candidate on the foundation that he has not fully disclosed the criminal cases pending against him, as required under the Act and the Rules and the affidavit that has been filed before the Returning Officer is false and reflects total suppression, whether such a ground would be sustainable on the foundation of undue influence. We may give an example at this stage. A candidate filing his nomination paper while giving information swears an affidavit and produces before the Returning Officer stating that he has been involved in a case under Section 354 IPC and does not say anything else though cognizance has been taken or charges have been framed for the

offences under Prevention of Corruption Act, 1988 or offences pertaining to rape, murder, dacoity, smuggling, land grabbing, local enactments like MCOCA, U.P. Goonda Act, embezzlement, attempt to murder or any other offence which may come within the compartment of serious or heinous offences or corruption or moral turpitude. It is apt to note here that when a FIR is filed a person filling a nomination paper may not be aware of lodgement of the FIR but when cognizance is taken or charge is framed, he is definitely aware of the said situation. It is within his special knowledge. If the offences are not disclosed in entirety, the electorate remain in total darkness about such information. It can be stated with certitude that this can definitely be called antecedents for the limited purpose, that is, disclosure of information to be chosen as a representative to an elected body.

#### Election Petition No.2 of 2017

75. The sanctity of the electoral process imperatively commands that each candidate owes and is under an obligation that a fair election is held. Undue influence should not be employed to enervate and shatter free exercise of choice and selection. No candidate is entitled to destroy the sacredness of election by indulging in undue influence. The basic concept of "undue influence" relating to an election is voluntary interference or attempt to interfere with the free exercise of electoral right. The voluntary act also encompasses attempts to interfere with the free exercise of the electoral right. This Court, as noticed earlier, has opined that legitimate canvassing would not amount to undue influence; and that there is a distinction between "undue influence" and "proper influence". The former is totally unacceptable as it impinges upon the voter's right to choose and affects the free exercise of the right to vote. At this juncture, we are obliged to say that this Court in certain decisions, as has been noticed earlier, laid down what would constitute "undue influence". The said pronouncements were before the recent decisions in PUCL(supra), PUCL (NOTA) (supra) and Association of Democratic Reforms(supra) and other authorities pertaining to corruption were delivered. That apart, the statutory provision contained in Sections 33, 33A and Rules have been incorporated.

76. In this backdrop, we have to appreciate the spectrum of "undue influence". In PUCL(supra) Venkattarama Reddi, J. has stated thus:

"Freedom of voting as distinct from right to vote is thus a species of freedom of Election Petition No.2 of 2017 expression and therefore carries with it the auxiliary and complementary rights such as right to secure information about the candidate which are conducive to the freedom".

77. In Patangrao Kadam v. Prithviraj Sayajirao Yadav Deshmukh(2001) 3 SCC 594, the Court observed that:



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

78. From the aforesaid, it is that free exercise of any electoral right is paramount. If there is any direct or indirect interference or attempt to interfere on the part of the candidate, it amounts to undue influence. Free exercise of the electoral right after the recent pronouncements of this Court and the amendment of the provisions are to be perceived regard being had to the purity of election and probity in public life which have their hallowedness. A voter is entitled to have an informed choice. A voter who is not satisfied with any of the candidates, as has been held in People's Union for Civil Liberties (NOTA case), can opt not to vote for any candidate. The requirement of a disclosure, especially the criminal antecedents, enables a voter to have an informed and instructed choice. If a voter is denied of the acquaintance to the information and deprived of the condition to be apprised of the entire gamut of criminal antecedents relating to heinous or serious offences or offence of corruption or moral turpitude, the exercise of Election Petition No.2 of 2017 electoral right would not be an advised one. He will be exercising his franchisee with the misinformed mind. That apart, his fundamental right to know also gets nullified. The attempt has to be perceived as creating an impediment in the mind of a voter, who is expected to vote to make a free, informed and advised choice. The same is sought to be scuttled at the very commencement. It is well settled in law that election covers the entire process from the issue of the notification till the declaration of the result. This position has been clearly settled in Hari Vishnu Kamath V. Ahmad Ishaque and others AIR 1955 SC 233, Election Commission of India V. Shivaji (1988) 1 SCC 277 and V.S. Achuthanandan V. P.J. Francis and Another (1999) 3 SCC 737. We have also culled out the principle that corrupt practice can take place prior to voting. The factum of non-disclosure of the requisite information as regards the criminal antecedents, as has been stated hereinabove is a stage prior to voting.

XXXXXXX

83. The purpose of referring to the instructions of the Election Commission is that the affidavit sworn by the candidate has to be put in public domain so that the electorate can know. If they know the half truth, as submits Mr. Salve, it is more dangerous, for the electorate are denied of the information which is within the special knowledge of the candidate. When something within special knowledge is not disclosed, it tantamounts to fraud, as has been held in S.P. Chengalvaraya Naidu (Dead) By LRs V. Jagannath (Dead) By LRs & Others (1994) 1 SCC 1. While Election Petition No.2 of 2017 filing the nomination form, if the requisite information, as has been highlighted by us, relating to criminal antecedents, are not given, indubitably, there is an attempt to suppress, effort to misguide and keep the people in dark. This attempt undeniably and undisputedly is undue influence and, therefore, amounts to corrupt practice. It is necessary to clarify here that if a candidate gives all the particulars and despite that he secures the votes that will be an informed, advised and free exercise of right by the electorate. That is why there is a distinction between a disqualification and the corrupt practice. In an election petition, the election. petitioner is required to assert about the cases in which the successful candidate is involved as per the rules and how there has been non-disclosure in the affidavit. Once that is established, it would amount to corrupt practice. We repeat at the cost of repetition, it has to be determined in an election petition by the Election Tribunal.

86. In view of the above, we would like to sum up our conclusions:

(a) Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative.

(b) When there is non-disclosure of the offences pertaining to the areas Election Petition No.2 of 2017 mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right.

(c) Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.

(d) As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(b) of the 1957 Act.

(e) The question whether it materially affects the election or not will not arise in a case of this nature."

84. The Hon'ble Supreme Court of India in Lok Prahari v.

Union of India & Ors, (2018) 4 SCC 699, wherein the Hon'ble Supreme Court followed the Krishnamoorthy Judgment. It held that non-disclosure of information relating to source of income and assets by candidates and Election Petition No.2 of 2017 their associates, is a corrupt practice. The Hon'ble Apex Court laid emphasis on the following paragraph from Krishnamoorthy:

"While filing the nomination form, if the requisite information, as has been highlighted by us, relating to criminal antecedents, is not given, indubitably, there is an attempt to suppress, effort to misguide and keep the people in dark. This attempt undeniably and undisputedly is undue influence and, therefore, amounts to corrupt practice."

85. Section 84 of the Representation of People Act, 1951 provides that "84. Relief that may be claimed by the Petitioner- A petitioner may, in addition to claiming a declaration that election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected".

Section 98 of the Representation of People Act, 1951 provides that "at the conclusion of the trial of an election petition, the High Court shall make an order-

(a) Dismissing the election petition; or

(b) Declaring the election of all or any of the returned candidates to be void; or

(c) Declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected."

Election Petition No.2 of 2017 Section 101 of the Representation of People Act, 1951 provides that: "if any person who has lodged a petition has, in addition to calling in question the election of the returned candidate, claimed a declaration that he himself or any other candidate has been duly elected and the High Court is of opinion-

a. that in fact the Petitioner or such other candidate received a majority of the valid votes; or b. that but for the votes obtained by the returned candidate by corrupt practices the Petitioner or such other candidate would have obtained a majority of the valid votes."

86. In the present Case, the Respondent No. 1 failed to disclose the name of his spouse and his dependents, pending Criminal Cases and educational qualification. As such, non-disclosure of such information would constitute a corrupt practice falling under heading 'undue influence' as defined under Section 123(2) of the RP Act, 1951.

87. The Hon'ble Supreme Court of India in AIR 1969 SC 447 = 1969 SCR (1) 395, Konappa Rudrappa Nagouda -Vs- Vishwanath Reddy & Anr. held that:

"14. We are satisfied that this appeal must succeed and the appeal is therefore allowed, the election of the first respondent is declared void. In this view of the matter, the votes cast in favour of the first respondent must be treated as thrown away. As there was no other contesting candidate we declare the appellant (election petitioner) Election Petition No.2 of 2017 elected to the seat from the Yadagiri constituency. The first respondent shall bear the costs of the appellant throughout".

88. The Hon'ble Supreme Court of India in 2020 SCC Online SC 89, Chandeshwar Saw -Vs- Brij Bhushan Prasad & Ors. Held that:

"20. Accordingly, this appeal succeeds. The impugned judgment and order is set aside. Instead, the election case being E.C. No. 08/2016 filed by the appellant before the Election Tribunal is allowed. A declaration is issued under Section 140 of the Act that the election of respondent No. 7 as returned candidate is set aside being invalid, and instead we declare the appellant/election petitioner as having been duly elected having secured highest votes amongst the contesting candidates and 95 more valid votes than that of respondent No. 7 in the subject election".

89. Further, the Hon'ble Telungana High Court has held in Mopuragundu Thippeswamy -Vs- K. Eranna Ananthapur, 2018 SCC Online Hyd 413 on 27/11/2018 in Election Petition No. 32 of 2014

that:

"Issue No. 4:

102. The petitioner clearly pleaded in the Election Petition to declare the election of the first respondent as null and void, and declare him as elected candidate. In order to appreciate the contention of the petitioner, it is not out of place to extract hereunder Section 84 of the R.P. Act.

Election Petition No.2 of 2017

84. Relief that may be claimed by the petitioner:- A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.

103. Section 84 enables the petitioner to seek a declaration to declare him as elected candidate in case the election of the returning candidate was declared as void. The relief sought by the petitioner falls within the ambit of Section 84 of the R.P. Act.

104. As observed earlier, the first respondent got 76,601 votes and the petitioner got 61,965 votes. The first respondent was declared as elected Member of 275- Madakasira Legislative Assembly Constituency with a majority of 14,636 votes. Among all the candidates contested, the petitioner secured highest votes after the first respondent. Consequent upon the findings on Additional Issue, the petitioner is entitled to be declared as elected Member of 275-Madakasira Legislative Assembly Constituency. Accordingly, issue No. 4 is answered in favour of the petitioner and against the first respondent.

Issue No. 5:

105. In the result, the Election Petition is allowed, setting aside the election of the first respondent as Member of 275- Madakasira Legislative Assembly Constituency in the General Elections held in the month of May, 2014 and declaring the petitioner as duly elected Member of 275- Election Petition No.2 of 2017 Madakasira Legislative Assembly Constituency. Both the parties are directed to bear their own costs. Miscellaneous petitions, if any pending in the Election Petition, shall stand closed".

90. It has been pointed out by the learned Senior counsel for the Petitioner that as against the Judgment of the Andhra Pradesh High Court in 2018 SCC OnLine Hyd 413, the respondent K.Eranna, preferred Civil Appeal No.11908 of 2018 before the Hon'ble Supreme Court and by the order dated 12.12.2018, the Civil Appeal No.11908 of 2018 stands dismissed and he has also produced the judgment of the Hon'ble Supreme Court. Thus, judgment of the Andhra Pradesh in K. Erranna (supra) is squarely applies to the case on hand.

91. Moreover, the alleged crime committed by the Respondent No. 1 is relating with the smuggling of Narcotic Drugs which is one of the heinous crime against the society and the acts committed by the Respondent No. 1 amounts to corrupt practice within the meaning of "Undue Influence" which is provided by the Section 123 (2) of the RP, Act, 1951 and whatever votes obtained by the Respondent No. 1 through undue influence are deemed to be wastes or invalid. As such, these two issues are answered in favour of the Petitioner.

92. In the result,

a) the Election petition is allowed by declaring the election of the Respondent No. 1 as Member of 15- Election Petition No.2 of 2017 Wangkhei Assembly Constituency in the 11th Manipur Legislative Assembly as null and void;

- b) this Court declared that the petitioner is duly elected as a member of 15-Wangkhei Assembly Constituency;
- c) both the parties are directed to bear their own cost.

JUDGE

FR/NFR

Sushil

Yumk Digitally signed  
by Yumkham  
Rother

ham Date:  
2021.04.15

Rother 12:55:26  
+05'30'

Election Petition No.2 of 2017