

Karikho Kri
v.
Nuney Tayang and Another
(Civil Appeal No. 4615 of 2023)
09 April 2024
[Aniruddha Bose and Sanjay Kumar,* JJ.]

Issue for Consideration

In the year 2019, appellant-KK an independent candidate emerged victorious in Arunachal Pradesh Legislative Assembly from 44 Tezu (ST) Assembly Constituency. The issue arising for consideration is as to the validity of the High Court's findings that grounds u/s 100(1)(b), 100(1)(d)(i) and 100(1)(d)(iv) of the Representation of the People Act, 1951 were established, warranting invalidation of the election of KK.

Headnotes

Representation of the People Act, 1951 – ss. 100(1)(b), 100(1)(d)(i), 123 – Election – Filing of nomination – Submission of material particulars – Non-disclosure of three vehicles – High Court held non-disclosure of vehicles as corrupt practice – Correctness:

Held: The High Court was of opinion that appellant's failure to disclose the three vehicles (two scooty and van), that stood registered in the names of his dependent family members, amounted to a corrupt practice – The High Court assumed that the non-disclosure of a vehicle registered in the name of a candidate or his dependent family members was sufficient in itself to constitute undue influence – One scooty was in name of wife of the appellant, DW5 deposed that he had taken this vehicle as scrap and sold it to DW6 – DW6 confirmed the same – In relation to other two vehicles in question, there were actual documents of conveyance and also proof of the requisite forms prescribed under the Motor Vehicles Act, 1988 being duly filled in by wife and son of appellant – Form No. 29, relating to notice of ownership transfer of a vehicle by the registered owner, viz., the transferor, was issued in respect of each of these vehicles but despite the same, the transferees did not do the needful to get their own names registered as the owners – Once it is accepted that the three vehicles in question

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were either gifted or sold before the filing of the nomination by KK, the said vehicles cannot be considered to be still owned by KK's wife and son for purposes other than those covered by the Act of 1988 – However, the High Court did not take note of this distinguishing factor in the case on hand – The vehicles were not owned and possessed in praesenti by the dependent family members of KK at the time of the filing of his nomination – Non-disclosure of three vehicles cannot be held against KK – Such non-disclosure cannot be treated as an attempt on his part to unduly influence the voters, thereby inviting the wrath of Section 123(2) of the Act of 1951. [Paras 20,21,22,25,27,28]

Representation of the People Act, 1951 – Election – Filing of nomination – Non-disclosure of three vehicles – Vehicles sold/gifted – The High Court was of the opinion that, notwithstanding vehicles were sold/gifted, these vehicles continued to stand in the names of the dependent wife and son of KK – In consequence, upon considering the provisions of the Motor Vehicles Act, 1988 and the decision of the Supreme Court in Naveen Kumar v. Vijay Kumar and others [2018] 2 SCR 572, it was held that vehicles were owned by the dependent wife and son of KK but they were not disclosed in the Affidavit in Form No. 26 filed by him – Correctness:

Held: The High Court overlooked the fact that the above judgment (Naveen Kumar v. Vijay Kumar and others) was rendered in the context of and for the purposes of the Act of 1988 and not for general application – The judgment itself made it clear that despite the sale/transfer of the vehicle in question, a claimant or claimants should not be made to run from pillar to post to find out who was the owner of the vehicle as on the date of the accident, if the sale/transfer was not carried out in their books by the authorities concerned by registering the name of the subsequent owner, be it for whatever reason – Further, vehicles being goods, their sale would be covered by the provisions of the Sale of Goods Act, 1930, and the same make it clear that conveyance of ownership of the vehicle would stand concluded upon execution of the document of sale/transfer and registration of the new owner by the authorities concerned would be a post-sale event – Mere failure to get registered the name of the new owner of an already registered vehicle does not mean that the sale/gift transaction would stand invalidated and such a vehicle, despite being physically handed over to the new owner, cannot, by any stretch of imagination, be

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treated as still being in the possession and control of the former owner.[Paras 23, 27]

Representation of the People Act, 1951 – ss. 100(1)(b), 100(d) (i) – Election – Filing of nomination – Submission of material particulars – Non-submission of the ‘No Dues Certificate’ in respect of the Government accommodation occupied by appellant during his earlier tenure as an MLA was held against him – High Court held that his nomination was defective and in consequence, the acceptance by the Returning Officer was improper – Correctness:

Held: In the case on hand, it is not in dispute that there were no actual outstanding dues payable by KK in relation to the government accommodation occupied by him earlier – His failure in disclosing the fact that he had occupied such accommodation and in filing the ‘No Dues Certificate’ in that regard, with his nomination form, cannot be said to be a defect of any real import – More so, as he did submit the relevant documents of 2014 after an objection was raised before the Returning Officer – His explanation that he submitted such Certificates in the year 2014 when he stood for re-election as an MLA is logical and worthy of acceptance – The most important aspect to be noted is that there were no actual dues and the failure of KK to disclose that he had been in occupation of government accommodation during the years 2009 to 2014 cannot be treated as a defect that is of substantial character so as to taint his nomination and render its acceptance improper. [Para 42]

Representation of the People Act, 1951 – Election – Filing of nomination – Non-disclosure of taxes due – The High Court held that non-disclosure of the taxes due and payable by KK and his wife was a defect of substantial character and the same tainted his nomination:

Held: The failure on the part of KK to disclose the dues of municipal/property taxes payable by him and his wife, the same cannot be held to be a non-disclosure, inasmuch as he did disclose the particulars of such dues in one part of his Affidavit but did not do so in another part. [Para 49]

Representation of the People Act, 1951 – Election – Filing of nomination – Whether every defect in the nomination can straightforwardly be termed to be of such character as to render its acceptance improper:

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Held: Every defect in the nomination cannot straightaway be termed to be of such character as to render its acceptance improper and each case would have to turn on its own individual facts, insofar as that aspect is concerned – This Court has always drawn a distinction between non-disclosure of substantial issues as opposed to insubstantial issues, which may not impact one's candidature or the result of an election – The very fact that Section 36(4) of the Act of 1951 speaks of the Returning Officer not rejecting a nomination unless he is of the opinion that the defect is of a substantial nature demonstrates that this distinction must always be kept in mind and there is no absolute mandate that every non-disclosure, irrespective of its gravity and impact, would automatically amount to a defect of substantial nature, thereby materially affecting the result of the election or amounting to 'undue influence' so as to qualify as a corrupt practice. [Para 40]

Representation of the People Act, 1951 – Voter's right to know – Absolute or not:

Held: A blanket proposition that a candidate is required to lay his life out threadbare for examination by the electorate is not accepted – His 'right to privacy' would still survive as regards matters which are of no concern to the voter or are irrelevant to his candidature for public office – In that respect, non-disclosure of each and every asset owned by a candidate would not amount to a defect, much less, a defect of a substantial character – It is not necessary that a candidate declare every item of movable property that he or his dependent family members owns, unless the same is of such value as to constitute a sizeable asset in itself or reflect upon his candidature, in terms of his lifestyle, and require to be disclosed – Every case would have to turn on its own peculiarities and there can be no hard and fast or straitjacketed rule as to when the non-disclosure of a particular movable asset by a candidate would amount to a defect of a substantial character. [Para 44]

Representation of the People Act, 1951 – s.100(1)(d)(iv) – Election invalidation under:

Held: In the instant case, the High Court linked all the non-disclosures attributed to KK to s.100(1)(d)(i) of the Act of 1951 but ultimately concluded that his election stood invalidated u/s. 100(1) (d)(iv) thereof – There is no discussion whatsoever on what were the violations which qualified as non-compliance with the provisions of either the Constitution or the Act of 1951 or the rules and orders

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framed thereunder, for the purposes of s.100(1)(d)(iv), and as to how the same materially affected the result of the election – For the election petitioner to succeed on such ground, viz., s.100 (1)(d) (iv), he has not only to plead and prove the breach but also show that the result of the election, insofar as it concerned the returned candidate, has been materially affected thereby – Though there are some general references to non-compliance with particular provisions of the Act of 1951 and the rules made thereunder, there are neither adequate pleadings nor proof to substantiate and satisfy the requirements of s.100(1)(d)(iv) of the Act of 1951 – Therefore, it is clear that NT (unsuccessful candidate) tied up the improper acceptance of KK nomination, relatable to s.100(1)(d)(i) of the Act of 1951, with the non-compliance relatable to s.100(1)(d)(iv) thereof and he did not sufficiently plead or prove a specific breach or how it materially affected the result of the election, in so far as it concerned the returned candidate, KK – It was not open to NT to link up separate issues and fail to plead in detail and adduce sufficient evidence in relation to the non-compliance that would attract s.100(1)(d)(iv) of the Act of 1951 – The finding of the High Court in that regard is equally bereft of rhyme and reason and cannot be sustained. [Paras 45, 46, 48]

Case Law Cited

Hari Vishnu Kamath v. Syed Ahmad Ishaque and others [[1955\] 1 SCR 1104](#)] : (1954) 2 SCC 881; *Association for Democratic Reforms and another v. Union of India and others* [[\[2024\] 3 SCR 417](#)] : WP (C) No. 880 of 2017, decided on 15.02.2024 – followed.

Naveen Kumar v. Vijay Kumar and others [[\[2018\] 2 SCR 572](#)] : (2018) 3 SCC 1; *Santosh Yadav v. Narendra Singh* [[\[2001\] Supp. 4 SCR 545](#)] : (2002) 1 SCC 160; *Harsh Kumar v. Bhagwan Sahai Rawat and others* (2003) 7 SCC 709; *Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala v. K.T.C. Automobiles* [[\[2016\] 1 SCR 994](#)] : (2016) 4 SCC 82; *Surendra Kumar Bhilave v. New India Assurance Co. Ltd.* [[\[2020\] 7 SCR 39](#)] : (2020) 18 SCC 224; *Kisan Shankar Kathore v. Arun Dattatray Sawant and others* [[\[2014\] 7 SCR 258](#)] : (2014) 14 SCC 162; *Vashist Narain Sharma v. Dev Chandra and others* [[\[1955\] 1 SCR 509](#)] : (1954) 2 SCC 32; *Kamta Prasad Upadhyaya v. Sarjoo Prasad Tiwari and others*

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(1969) 3 SCC 622; Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and others [2020] 7 SCR 180 : **(2020) 7 SCC 1; Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy and others [2018] 9 SCR 164 :** **(2018) 14 SCC 1; Resurgence India v. Election Commission of India and another [2013] 9 SCR 360 :** **(2014) 14 SCC 189; Union of India v. Association for Democratic Reforms and another [2002] 3 SCR 696 :** **(2002) 5 SCC 294; Lok Prahar through its General Secretary S.N. Shukla v. Union of India and others [2018] 2 SCR 892 :** **(2018) 4 SCC 699; S. Rukmini Madegowda v State Election Commission and others [2022] 12 SCR 1 :** **(2022) SCC OnLine SC 1218; Mairembam Prithviraj alias Prithviraj Singh v. Pukhrem Sharatchandra Singh [2016] 9 SCR 687 :** **(2017) 2 SCC 487; People's Union for Civil Liberties (PUCL) and another v. Union of India and another [2003] 2 SCR 1136 :** **(2003) 4 SCC 399; Sambhu Prasad Sharma v. Charandas Mahant [2012] 6 SCR 356 :** **(2012) 11 SCC 390; Mangani Lal Mandal v. Bishnu Deo Bhandari [2012] 1 SCR 527 :** **(2012) 3 SCC 314; L.R. Shivaramagowda and others v. T.M. Chandrashekhar (Dead) by LRs and others [1998] Supp. 3 SCR 241 :** **(1999) 1 SCC 666 – referred to.**

List of Acts

Representation of the People Act, 1951; Constitution of India.

List of Keywords

Election; Nomination; Disclosure of material particulars; Disclosure of vehicles; Ownership transfer of vehicle; Corrupt practice; Undue influence; Government accommodation; Non-due certificate; Defective nomination; Dues of municipal/property taxes; Improper acceptance; Election invalidation; Voter's right to know.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4615 of 2023
From the Judgment and Order dated 17.07.2023 of the Gauhati High Court at Itanagar Bench in Election Petition No. 01 (AP) of 2019

With

Civil Appeal No. 4716 of 2023

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C.A. Sundaram, Arunabh Chowdhury, Sr. Advs., Simranjeet Singh, Pulkit Gupta, Gautam Talukdar, Raushal Kumar, Ms. Apurbaa Dutta, Lovenish Jagdhane, Zafar Inayat, Amol Chitale, Mrs. Pragya Baghel, Mrs. Ranjeeta Rohatgi, Vishal Banshal, Karma Dorjee, Abhishek Roy, Dechen W Lachungpa, Advs. for the Appellant.

Dr. Sushil Balwada, Mrs. Pragya Baghel, Ms. Tatini Basu, Boboy Potsangbam, Gamso Billai, Kumar Shashank, Byrapaneni Suyodhan, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Judgment**

Sanjay Kumar, J

1. In the year 2019, Karikho Kri, an independent candidate, Dr. Mohesh Chai, candidate of the Bharatiya Janata Party, and Nuney Tayang, candidate of the Indian National Congress, contested the election to the Arunachal Pradesh Legislative Assembly from 44 Tezu (ST) Assembly Constituency. The election was held on 11.04.2019 and Karikho Kri emerged victorious with 7538 votes, while Dr. Mohesh Chai secured 7383 votes and Nuney Tayang secured 1088 votes.
2. Nuney Tayang filed Election Petition No. 01(AP) of 2019 before the Itanagar Bench of the High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh, seeking a declaration that the election of Karikho Kri was void on the grounds mentioned in Sections 100(1) (b), 100(1)(d)(i) and 100(1)(d)(iv) of the Representation of the People Act, 1951 (for brevity, 'the Act of 1951'). He also sought a consequential declaration that he stood duly elected from the said constituency.
3. By judgment and order dated 17.07.2023, a learned Judge of the Itanagar Bench of the High Court allowed the election petition in part, declaring the election of Karikho Kri void under Sections 100(1) (b), 100(1)(d)(i) and 100(1)(d)(iv) of the Act of 1951, but rejecting the prayer of Nuney Tayang to declare him duly elected, as he had not led any evidence to prove the allegations levelled by him against Dr. Mohesh Chai, the candidate with the second highest number of votes.

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4. Aggrieved thereby, Karikho Kri filed Civil Appeal No. 4615 of 2023 before this Court and Nuney Tayang filed Civil Appeal No. 4716 of 2023. These appeals were filed under Section 116A of the Act of 1951
5. While ordering notice in both the appeals on 31.07.2023, in exercise of power under Section 116B(2) of the Act of 1951, this Court directed that an election should not be held for the subject Constituency which was represented by Karikho Kri and permitted him to enjoy all the privileges as a Member of the House and of the constituted committees but restrained him from casting his vote on the floor of the House or in any of the committees wherein he participated as an MLA.
6. Thereafter, during the course of the hearing of these appeals, Karikho Kri filed I.A. No. 73161 of 2024, as a fresh schedule for election to the Legislative Assembly of the State of Arunachal Pradesh was notified on 16.03.2024 and he wished to contest in the election that is proposed to be held on 19.04.2024. He sought leave to contest as a candidate in the upcoming assembly election in the State of Arunachal Pradesh during the pendency of this appeal. By order dated 20.03.2024, this Court opined that a strong *prima facie* case had been made out by him and, in the light of the said fact, stayed the operation of the impugned judgment. This Court also made it clear that any steps taken by Karikho Kri in view of the stay order would be subject to the final decision that would be taken upon conclusion of the hearing of these appeals.
7. In his election petition, Nuney Tayang claimed that the nomination submitted by Karikho Kri was improperly accepted by the Returning Officer, Tezu, as he did not disclose material particulars in his Affidavit filed in Form No.26 appended to the Conduct of Elections Rules, 1961. The High Court framed nine issues for determination in the election petition and ultimately held against Karikho Kri on Issue Nos. 1 (in part), 4, 5, 6 (in part), 7 and 8. Issue No.9 pertained to the relief claimed by Nuney Tayang. The relevant 'Issues' read as under:
 1. Whether there has been a non-disclosure of ownership of Hero Honda CD Dawn Motorcycle owned by the returned candidate, Shri Karikho Kri bearing registration No. AR-11-2446; Kinetic Zing Scooty owned by the wife of the returned candidate, Smti. Bagilu Kri bearing registration No.

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AR-11-4474; Van, Maruti Omni Ambulance owned by the wife of the returned candidate, Smti. Bagilu Kri bearing registration No. AR-11A-3100 and TVS Star City Motorcycle owned by Shri Goshinso Kri, the son of the returned candidate Shri Karikho Kri bearing registration No. AR- 11-6581, as is required to be disclosed under Clause 7(vi) of the Conduct of Election Rules, 1961, rendering the nomination of the returned candidate invalid?

4. Whether there has been a non-submission of no dues certificate with regard to Electricity Charges required to be submitted under Clause 8(ii)(b) of Form No. 26 of the Conduct of Election Rules, 1961, as the respondent No. 1 was in occupation of MLA Cottage No. 1 at 'E' Sector, Itanagar, from the year, 2009- 2014, while the respondent No. 1 was an MLA of Tezu (ST) Assembly Constituency during the year, 2009-2014?
5. Whether the statements made by the respondent No. 1 about the liability of himself and his wife in respect of Municipal Tax, Property Tax, due and grand total of all govt. dues against Serial No. 6 & 8 of the table in Para-8(A) of the affidavit in Form No. 26 appended to the nomination paper of the respondent No. 1 has rendered the nomination of respondent No. 1, defective?
6. Whether the non-disclosure of assets both movable and immovable belonging to the respondent No. 1, his wife, his mother and his two sons in the affidavit in Form No. 26 appended to the nomination paper amounted to commission of corrupt practice of undue influence within the meaning of Section 123(2) of the Representation of the People Act, 1951?
7. Whether the election of respondent No. 1 to the 44- Tezu(ST) Assembly Constituency is liable to be declared void under Section 100(1)(d)(i) of the Representation of the People Act, 1951?

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8. Whether the nature of non-disclosure alleged by the Election petitioner is of a substantial nature effecting the election of the returned candidate/respondent No. 1?
9. What consequential relief the petitioner is entitled to, if any?’
8. Nuney Tayang examined 7 witnesses, including himself as PW7. Karikho Kri examined 39 witnesses, including himself as DW1A. Dr. Mohesh Chai did not choose to contest the case before the High Court, despite service of notice. Before us, however, he is duly represented by learned counsel and also filed his replies in both the appeals.
9. The High Court held against Karikho Kri on Issue No 1, in relation to three out of the four vehicles, viz., the Kinetic Zing Scooty bearing No. AR-11/4474 and the Maruti Omni Van bearing No. AR-11A/3100, both registered in the name of Bagilu Kri, his wife, and the TVS Star City Motorcycle bearing No. AR-11/6851, registered in the name of Goshinso Kri, his second son. The High Court was of the opinion that, notwithstanding the sale of the Kinetic Zing Scooty bearing No. AR-11/4474 in 2009 and the Maruti Omni Van bearing No. AR-11A/3100 in the year 2017 and the gifting of the TVS Star City Motorcycle bearing No. AR-11/6851 in 2014, these vehicles continued to stand in the names of Bagilu Kri and Goshinso Kri, the dependent wife and son of Karikho Kri, on the relevant date. Upon considering the provisions of the Motor Vehicles Act, 1988 (for brevity, ‘the Act of 1988’) and the decision of this Court in *Naveen Kumar vs. Vijay Kumar and others*¹, the High Court concluded that the person in whose name the motor vehicle stood registered should be treated as the owner thereof. In consequence, it was held that, as on the date of presentation of his nomination on 22.03.2019 and its scrutiny on 26.03.2019, the above three vehicles were owned by the dependent wife and son of Karikho Kri but they were not disclosed in the Affidavit in Form No. 26 filed by him.
10. On Issue No. 4 with regard to non-submission of a ‘No Dues Certificate’ in the context of electricity and water charges, etc., that was required to be submitted under Clause 8(ii)(B) of Form No. 26,

¹ [2018] 2 SCR 572 : (2018) 3 SCC 1

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the High Court noted that Karikho Kri had occupied government accommodation in MLA Cottage No.1 at 'E' Sector, Itanagar, from 2009 to 2014, as the MLA of Tezu (ST) Assembly Constituency during those years. According to Karikho Kri, he lost the election in 2014 and vacated the said accommodation. He claimed that when he filed his nomination for the Assembly Election in 2014, he obtained a 'No Dues Certificate' after clearing the dues and submitted it. As there were no outstanding dues thereafter and he did not occupy government accommodation, he stated that he did not disclose the same. As Karikho Kri admitted such non-disclosure in his Affidavit in Form No. 26, the High Court held against him on this count.

11. As regards Issue No. 5, pertaining to the liability of Karikho Kri and his wife in respect of their dues of municipal and property taxes, the High Court found that Karikho Kri had disclosed the taxes due and payable by him and his wife in one part of the Affidavit in Form No.26 submitted by him, but failed to do so in another part thereof. He disclosed the dues in Part A, Clause 8 (vi) and (viii), but failed to disclose it in Clause 9 in Part B. Though the High Court held against Karikho Kri even on this count, Mr. Arunabh Chowdhury, learned senior counsel, appearing for Nuney Tayang, fairly stated that he would not be pressing this ground as there was disclosure of the dues at least in one part of the Affidavit in Form No. 26.
12. As regards Issue No. 6, i.e., whether non-disclosure of the three vehicles, registered in the names of his dependent wife and second son, by Karikho Kri in his Affidavit in Form No. 26 amounted to commission of a corrupt practice as per Section 123(2) of the Act of 1951, the High Court referred to case law and held that such non-disclosure amounted to a corrupt practice within the meaning of Section 123(2) of the Act of 1951.
13. The High Court then considered Issue No. 7, i.e., whether the election of Karikho Kri was liable to be declared void under Section 100(1) (d)(i) of the Act of 1951 and opined that when the nomination of the returned candidate was shown to have been improperly accepted by the Returning Officer, there is no necessity to further prove that the election was 'materially affected'. As the High Court was of the opinion that the nomination of Karikho Kri had, in fact, been improperly accepted by the Returning Officer, Tezu, his election was held liable to be declared void under Section 100(1)(d)(i) of the Act of 1951.

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14. On Issue No. 8 - as to whether the non-disclosures by Karikho Kri were of a substantial nature affecting his election, the High Court observed that disclosure of information as per Form No. 26 of the Conduct of Election Rules, 1961, was fundamental to the concept of free and fair elections and, therefore, the solemnity thereof could not be ridiculed by offering incomplete information or suppressing material information, resulting in disinformation and misinformation to the voters.
15. Coming to Issue No. 9, i.e., as to what consequential relief Nuney Tayang would be entitled to, if any, the High Court noted that Nuney Tayang had secured the least number of votes out of the three candidates and though he made allegations to the effect that Dr. Mohesh Chai had failed to disclose the properties belonging to his mother in his Affidavit in Form No. 26, the High Court found that Nuney Tayang had failed to lead any evidence in proof of this statement and, as such, there was no material to hold that Dr. Mohesh Chai's mother was even his dependent. On that basis, the High Court held that no judgment could be pronounced against Dr. Mohesh Chai, solely on the basis of the pleadings and allegations made by Nuney Tayang in his election petition. In consequence, Nuney Tayang was held disentitled to relief by way of a declaration that he had been duly elected from 44 Tezu (ST) Assembly Constituency.
16. It is well-settled that the success of a winning candidate at an election should not be lightly interfered with (See *Santosh Yadav vs. Narender Singh*² and *Harsh Kumar vs. Bhagwan Sahai Rawat and others*³). The issue before us presently is as to the validity of the High Court's findings that the grounds under Sections 100(1)(b), 100(1)(d)(i) and 100(1)(d)(iv) of the Act of 1951 were established, warranting invalidation of the election of Karikho Kri. Further, the finding of the High Court on Issue No. 6, that Karikho Kri committed a 'corrupt practice' within the meaning of Section 123(2) of the Act of 1951 also requires to be examined.
17. Section 33 of the Act of 1951 deals with 'presentation of nomination papers and the requirements for a valid nomination'. Scrutiny of such nominations is undertaken by the Returning Officers under Section 36 of the Act of 1951. To the extent relevant, Section 36 reads as under:

2 [2001] Supp. 4 SCR 545 : (2002) 1 SCC 160

3 (2003) 7 SCC 709

Digital Supreme Court Reports**'36. Scrutiny of nomination:-**

- ‘1. On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorised in writing by each candidate but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.
2. The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:—

(a) or

(b) or

(c)

3.....

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

5.

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

7.

8. Immediately after all the nomination papers have been scrutinized and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board.

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18. In terms of Section 36(4) above, a Returning Officer is under a mandate not to reject a nomination paper for a defect unless it is of substantial character. Significantly, Nuney Tayang raised objections to the candidature of Karikho Kri by way of his written representation dated 26.03.2019. Therein, he raised the issue of non-submission of a 'No Dues Certificate' in respect of the government accommodation occupied by Karikho Kri during his tenure as an MLA from 2009 to 2014. He also raised the issue of non-disclosure of the vehicles, mentioned in Issue No. 1. By his reply dated 26.03.2019, Karikho Kri informed the Returning Officer, Tezu, that the vehicles, *viz.*, the Kinetic Zing Scooty and the Maruti Omni Van standing in the name of his wife had already been disposed of as was the TVS Star City Motorcycle standing in the name of his dependent second son, which had been gifted away. As regards the non-submission of a 'No Dues Certificate', Karikho Kri asserted that there were no outstanding dues against any government accommodation in his name. Karikho Kri submitted documents with his explanation, including those pertaining to the transfer of the vehicles in question as well as the 'No Dues Certificates' of 2014. Thereafter, Karikho Kri filed before the High Court, Certificates issued in 2019 by the Bharat Sanchar Nigam Limited; the Department of Power, Government of Arunachal Pradesh; and the Legislative Assembly Secretariat, Arunachal Pradesh, confirming that there were no outstanding dues. In effect and in fact, there were no dues payable by Karikho Kri in relation to the Government accommodation occupied by him earlier.
19. In any event, it appears that the Returning Officer concerned, being satisfied with the explanation and documents submitted by Karikho Kri, accepted his nomination. No doubt, this preliminary exercise on the part of the Returning Officer did not preclude the Election Tribunal, *viz.*, the High Court, from examining as to whether the acceptance of Karikho Kri's nomination was improper and, in consequence, whether it would have an impact on his election under the relevant provisions of the Act of 1951. Section 100(1) thereof enumerates the grounds on which an election can be invalidated. To the extent relevant, it 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—

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(a); 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

(c)....; or

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

- (i) by the improper acceptance of 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.'

20. The High Court held against Karikho Kri not only under Sections 100(1)(d)(i) and (iv) but also under Section 100(1)(b) of the Act of 1951, as it was of the opinion that his failure to disclose the three vehicles, that still stood registered in the names of his dependent family members, amounted to a corrupt practice. Insofar as Section 100(1)(b) of the Act of 1951 is concerned, the requirement thereof for the purpose of invalidating the election of the returned candidate is that the High Court must form an opinion that a 'corrupt practice' was committed by the returned candidate or his election agent or any other person with the consent of the returned candidate or his election agent. Section 123 of the Act of 1951 inclusively defines 'corrupt practices', by stating that what have been enumerated thereunder shall be deemed to be corrupt practices for the purposes of the Act of 1951. Insofar as the present case is concerned, Section 123(2) of the Act of 1951 is of relevance. This provision reads as under:

Karikho Kri v. Nuney Tayang and Another**'123. Corrupt practices.—**

The following shall be deemed to be corrupt practices for the purposes of this Act:—

.....

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:

.....'

21. The High Court opined that non-disclosure of the Kinetic Zing Scooty and the Maruti Omni Van that had belonged to Bagilu Kri and the TVS Star City Motorcycle that had belonged to Goshinso Kri, the dependent wife and son of Krikho Kri, was sufficient in itself to constitute ‘undue influence’, thereby attracting Section 123(2) of the Act of 1951. However, what is of significance is that the High Court did not doubt that these vehicles had been sold or gifted long before the submission of the nomination by Karikho Kri in 2019. This is clear from the observations in Para 13 (xiii) of the judgment, wherein the High Court observed: ‘....at the time of presentation of nomination paper of respondent No. 1, and on the date of scrutiny of the nomination paper on 26.03.2019, notwithstanding the aforesaid vehicles were gifted/sold to other persons by Smti. Bagilu Kri, wife of respondent No. 1 as well as Shri. Goshinso Kri, son of respondent No. 1; it has now become imperative to decide as to who was the owner of the aforesaid vehicles at the time presentation of the nomination paper by the respondent No. 1, and on the date of scrutiny of the nomination paper on 26.03.2019’. This finding of the High Court has attained finality as Nuney Tayang did not choose to challenge the same before this Court.
22. Though it appears that the three vehicles in question still remained registered in the names of the wife and son of Karikho Kri, the question that arises is as to whether non-disclosure of such vehicles justified the attributing of a corrupt practice to Karikho Kri and the negating of his election on that ground. The High Court assumed that the non-disclosure of a vehicle registered in the name of a candidate or his dependent family members was sufficient in itself to constitute

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undue influence. In this context, the High Court placed reliance on the provisions of the Act of 1988 and the decision of this Court in Naveen Kumar (*supra*). Section 2(30) of the Act of 1988 defines the owner of a vehicle as under:

‘“owner” means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement;’

In Naveen Kumar (*supra*), a 3-Judge Bench of this Court was dealing with the issue as to who would be the owner of an offending vehicle in the context of the Act of 1988 when a claim arises from an accident involving the said vehicle. ‘Owner’, as defined under Section 2(30) of the Act of 1988, was considered and it was opined that the person in whose name a vehicle stands registered would be the owner of the vehicle for the purposes of the Act. Reference was made to Section 50 of the Act of 1988, which deals with transfer of ownership, and to various earlier decisions in that regard and it was observed thus:

‘13. The consistent thread of reasoning which emerges from the above decisions is that in view of the definition of the expression “owner” in Section 2(30), it is the person in whose name the motor vehicle stands registered who, for the purposes of the Act, would be treated as the “owner”.....In a situation such as the present where the registered owner has purported to transfer the vehicle but continues to be reflected in the records of the Registering Authority as the owner of the vehicle, he would not stand absolved of liability. Parliament has consciously introduced the definition of the expression “owner” in Section 2(30), making a departure from the provisions of Section 2(19) in the earlier 1939 Act. The principle underlying the provisions of Section 2(30) is that the victim of a motor accident or, in the case of a death, the legal heirs of the deceased victim should not be left in a state of uncertainty. A claimant for compensation ought not to be burdened with following a trail of successive transfers, which are not registered

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with the Registering Authority. To hold otherwise would be to defeat the salutary object and purpose of the Act. Hence, the interpretation to be placed must facilitate the fulfilment of the object of the law. In the present case, the first respondent was the “owner” of the vehicle involved in the accident within the meaning of Section 2(30). The liability to pay compensation stands fastened upon him. Admittedly, the vehicle was uninsured.’

(emphasis is ours)

23. Notably, the High Court overlooked the fact that the above judgment was rendered in the context of and for the purposes of the Act of 1988 and not for general application. The judgment itself made it clear that despite the sale/transfer of the vehicle in question, a claimant or claimants should not be made to run from pillar to post to find out who was the owner of the vehicle as on the date of the accident, if the sale/transfer was not carried out in their books by the authorities concerned by registering the name of the subsequent owner, be it for whatever reason. Further, vehicles being goods, their sale would be covered by the provisions of the Sale of Goods Act, 1930 (for brevity, ‘the Act of 1930’), and the same make it clear that conveyance of ownership of the vehicle would stand concluded upon execution of the document of sale/transfer and registration of the new owner by the authorities concerned would be a post-sale event. Section 2(7) of the Act of 1930 defines goods, *inter alia*, to mean every kind of movable property, other than actionable claims and money. Chapter III of the Act of 1930 is titled ‘Effects of the Contract’ and ‘Transfer of property as between seller and buyer’. Section 18 therein states that where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained. Section 19, however, states that the property passes when intended to pass and elaborates that, where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
24. In *Commissioner of Commercial Taxes, Thiruvananthapuram, Kerala vs. K.T.C. Automobiles*⁴, this Court observed that registration

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of a motor vehicle is a post-sale event but the question would arise as to when the property in the motor vehicle actually passed to the buyer. That was a case involving the first sale of a motor vehicle by the dealer to the first owner and is, therefore, distinguishable from the subsequent sale of a vehicle, as in the case on hand. It was observed therein that registration of a motor vehicle is a post-sale event but only after obtaining valid registration under the Act of 1988, a purchaser would get entitlement to use the vehicle in a public place. It was observed that the purchaser, as an owner under the Act of 1988, was obliged to obtain the certificate of registration, which alone would entitle him to enjoy the possession of the vehicle by using it in public places after meeting the other statutory obligations of insurance, etc. This Court rejected the contention that motor vehicles would be 'unascertained goods' till their engine number or chassis number is entered in the Certificate of Registration, as the sale invoice itself would disclose such particulars, so that the owner of the vehicle may apply for registration of that specific vehicle in his name. However, owing to the statutory provisions governing motor vehicles, this Court held that an intending owner or buyer of a motor vehicle cannot ascertain the particulars of the vehicle for appropriating it to the contract of sale till its possession is handed over to him after observing the requirements of the Act of 1988 and the rules framed thereunder and such possession can be given only at the registration office immediately preceding the registration. Owing to the aforestated legal position, this Court held that, prior to getting possession of the motor vehicle, the intending purchaser/owner would not have a claim over any 'ascertained motor vehicle'. The observations in this judgment would, however, have to be understood in the context of the first sale of a vehicle by the dealer, i.e., where such vehicle has no registration whatsoever as opposed to the subsequent sale of a registered vehicle.

25. Presently, insofar as the Scooty bearing No. AR-11/4474 is concerned, it stood in the name of Bagilu Kri but Md. Nizammudin (DW5) deposed that he had taken this vehicle as scrap and sold it as such to Promod Prasad (DW6). In turn, Promod Prasad (DW6) confirmed that he bought the Scooty as scrap from Md. Nizammudin (DW5). During their cross-examination, nothing was elicited from these witnesses to doubt their claims. However, letter dated 20.09.2019 addressed by the District Transport Officer, Lohit District, Tezu,

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to Bagilu Kri, manifests that the registration of the Scooty in her name stood cancelled only at that time. The taxes in respect of this Scooty were paid till 26.03.2022, as borne out by Treasury Challan No. 4806 dated 30.08.2019. Though much was argued about this payment of taxes and the fact that the receipt was issued in the name of Bagilu Kri, we are not inclined to give any weightage to it. The payment was made after the filing of the election petition and any person could have done so. The receipt therefor would automatically be generated in the name of the registered owner. We may also note that in relation to the other two vehicles in question, there were actual documents of conveyance and also proof of the requisite forms prescribed under the Act of 1988 being duly filled in and issued by Bagilu Kri and Goshinso Kri. Form No. 29, relating to notice of ownership transfer of a vehicle by the registered owner, *viz.*, the transferor, was issued in respect of each of these vehicles but despite the same, the transferees did not do the needful to get their own names registered as the owners.

26. In Surendra Kumar Bhilawe vs. New India Assurance Co. Ltd.⁵, the issue before this Court was as to whether an insurance company would be liable to cover the claim arising out of an accident on the ground that the vehicle was sold to another long before the date of the accident but the insured continued to be the registered owner of the vehicle. Referring to the judgment of this Court in Naveen Kumar (*supra*), it was observed that the policy of insurance was a comprehensive policy which covered third-party risks as well and, therefore, the insurer could not repudiate one part of the policy with regard to reimbursing the owner for losses when it could not evade liability to third parties under the same contract of insurance. In view of the definition of 'owner' in Section 2(30) of the Act of 1988, this Court observed that the registered owner of the truck, on the date of the accident, was the insured and, therefore, the insurer could not avoid its liability for the losses suffered by the owner, on the ground of transfer of ownership. This Court held that it is difficult to accept that a person who transferred the ownership of a goods vehicle, on receipt of consideration, would not report the transfer or apply for transfer of registration and thereby continue to incur the risks and liabilities of ownership of the said vehicle under the provisions of law,

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including the Act of 1988. This Court further observed that it is equally incredible that an owner of a vehicle who has paid consideration to acquire it would not insist on transfer of the permit and thereby expose himself to the penal consequences of operating a goods vehicle without a valid permit. This Court, accordingly, held that the registered owner continues to remain the owner and when the vehicle is insured in the name of such registered owner, the insurer would remain liable notwithstanding the transfer. This judgment is clearly inapplicable to the case on hand as it dealt with the liability of an insurer in the event of an accident involving the vehicle. Further, as already noted, the vehicles in question were transferred and the requisite forms, insofar as the transferor was concerned, were filled up and issued but it was the transferees who failed to get the vehicles transferred in their own names.

27. Mere failure to get registered the name of the new owner of an already registered vehicle does not mean that the sale/gift transaction would stand invalidated and such a vehicle, despite being physically handed over to the new owner, cannot, by any stretch of imagination, be treated as still being in the possession and control of the former owner. Once it is accepted that the three vehicles in question were either gifted or sold before the filing of the nomination by Karikho Kri, the said vehicles cannot be considered to be still owned by Karikho Kri's wife and son for purposes other than those covered by the Act of 1988. However, the High Court did not take note of this distinguishing factor in the case on hand. In *Kisan Shankar Kathore vs. Arun Dattatray Sawant and others*⁶, the vehicle, details of which had been suppressed by the returned candidate, was actually owned and possessed by his wife and such suppression was, accordingly, held against him. Presently, the High Court itself concluded that the three vehicles in question were transferred, be it by way of sale or gift. The vehicles were, therefore, not owned and possessed *in praesenti* by the dependent family members of Karikho Kri at the time of the filing of his nomination. This point of distinction was completely lost sight of by the High Court but, in our considered opinion, it made all the difference.
28. Therefore, non-disclosure of the three vehicles in question could not be held against Karikho Kri in the light of the aforesated analysis.

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Such non-disclosure cannot, by any stretch of imagination, be treated as an attempt on his part to unduly influence the voters, thereby inviting the wrath of Section 123(2) of the Act of 1951. We may note that Karikho Kri had declared the value of the movable assets of his dependent family members and himself as ₹8,41,87,815/. The value of the three vehicles in question, by comparison, would be a mere minuscule of this figure. In any event, suppression of the value of these three vehicles would have no impact on the declaration of wealth by Karikho Kri and such non-disclosure could not be said to amount to ‘undue influence’.

29. Coming to the next ground, if the acceptance of a nomination is found to be improper and it materially affects the result of the election in so far as the returned candidate is concerned, Section 100(1)(d)(i) of the Act of 1951 would come into play. It would be appropriate and apposite at this stage for us to take note of precedential law on this point. In *Vashist Narain Sharma vs. Dev Chandra and others*⁷, a 3-Judge Bench of this Court noted that the burden of proving that the improper acceptance of a nomination has materially affected the result of an election would arise in one of three ways: (i) where the candidate whose nomination was improperly accepted had secured less votes than the difference between the returned candidate and the candidate securing the next highest number of votes, (ii) where the person referred to above secured more votes, or (iii) where the person whose nomination has been improperly accepted is the returned candidate himself. It was held that in the first case the result of the election would not be materially affected because if all the wasted votes were added to the votes of the candidate securing the next highest votes, it would make no difference to the result and the returned candidate would retain the seat. However, in the other two cases, the result may be materially affected and insofar as the third case is concerned, it may be readily conceded that such would be the conclusion.
30. In *Hari Vishnu Kamath vs. Syed Ahmad Ishaque and others*⁸, a Constitution Bench of 7 Judges considered the scope of enquiry under Section 100(1)(d) of the Act of 1951. It was observed that the

7 [1955] 1 SCR 509 : (1954) 2 SCC 32

8 [1955] 1 SCR 1104 (1954) 2 SCC 881

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said provision required, before an order setting aside an election could be made, that two conditions be satisfied. It must, firstly, be shown that there has been improper reception or refusal of a vote or reception of any vote which is void, or non-compliance with the provisions of the Constitution or the Act of 1951, or any rules or orders made thereunder, relating to the election or any mistake in the use of the prescribed form and it must further be shown that, as a consequence thereof, the result of the election has been materially affected. The Bench observed that the two conditions are cumulative and must both be established. It was further observed that the burden of establishing them is on the person who seeks to have the election set aside. Reference was also made to Vashist Narain (*supra*).

31. In ***Kamta Prasad Upadhyaya vs. Sarjoo Prasad Tiwari and others***⁹, another 3-Judge Bench of this Court affirmed the legal position settled by Vashist Narain (*supra*). Again, in ***Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and others***¹⁰, a 3-Judge Bench of this Court affirmed the view taken in Vashist Narain (*supra*) that, where a person whose nomination has been improperly accepted is the returned candidate himself, it may be readily conceded that the conclusion has to be that the result of the election was ‘materially affected’ without their being any necessity to plead and prove the same.
32. In ***Madiraju Venkata Ramana Raju vs. Peddireddigari Ramachandra Reddy and others***¹¹, another 3-Judge Bench of this Court affirmed that if there are more than two candidates and if the nomination of one of the defeated candidates has been improperly accepted, a question might arise as to whether the result of the election of the returned candidate has been materially affected by such improper reception but that would not be so in the case of challenge to the election of the returned candidate himself on the ground of improper acceptance of his nomination.
33. *Ergo*, if acceptance of the nomination of the returned candidate is shown to be improper, it would automatically mean that the same materially affected the result of the election and nothing more needs

9 (1969) 3 SCC 622

10 [2020] 7 SCR 180 : (2020) 7 SCC 1

11 [2018] 9 SCR 164 : (2018) 14 SCC 1

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to be pleaded or proved. However, whether acceptance of the nomination of Karikho Kri was actually improper is the main issue that requires to be addressed by us.

- 34.** We may also take note of curial wisdom on the issue as to what would be the defects that would taint a nomination to the extent of rendering its acceptance improper. In *Resurgence India vs. Election Commission of India and another*¹², a 3-Judge Bench of this Court observed that if the Election Commission accepts nomination papers in spite of blank particulars therein, it would directly violate the fundamental right of the citizen to know the criminal antecedents, assets, liabilities and educational qualifications of the candidate. It was observed that accepting an affidavit with such blanks would rescind the verdict in *Union of India vs. Association for Democratic Reforms and another*¹³. In effect, the Bench held that filing of an affidavit with blank particulars would render the affidavit nugatory. In *Kisan Shankar Kathore* (*supra*), the issue before this Court was whether non-disclosure of certain government dues in the nomination would amount to a material lapse impacting the election of the returned candidate. On facts, this Court found that the non-disclosure of electricity and municipal dues was not a serious lapse as there was a dispute raised in the context thereof. Having said so, this Court clarified that it would depend upon the facts and circumstances of each case as to whether such non-disclosure would amount to a material lapse or not. This Court, however, found that there were, in fact, material lapses by the returned candidate, inasmuch as he had failed to disclose the bungalow standing in the name of his wife and also a vehicle owned by her. Further, he had also failed to disclose his interest/share in a partnership firm which amounted to a very serious and major lapse. The observations of this Court, in the context of improper acceptance of his nomination, are of relevance:

‘43. When the information is given by a candidate in the affidavit filed along with the nomination paper and objections are raised thereto questioning the correctness of the information or alleging that there is non-disclosure of certain important information, it may not be possible

12 [2013] 9 SCR 360 : (2014) 14 SCC 189

13 [2002] 3 SCR 696 : (2002) 5 SCC 294

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for the Returning Officer at that time to conduct a detailed examination. Summary enquiry may not suffice. The present case is itself an example which loudly demonstrates this. At the same time, it would not be possible for the Returning Officer to reject the nomination for want of verification about the allegations made by the objector. In such a case, when ultimately it is proved that it was a case of non-disclosure and either the affidavit was false or it did not contain complete information leading to suppression, it can be held at that stage that the nomination was improperly accepted. Ms Meenakshi Arora, learned Senior Counsel appearing for the Election Commission, rightly argued that such an enquiry can be only at a later stage and the appropriate stage would be in an election petition as in the instant case, when the election is challenged. The grounds stated in Section 36(2) are those which can be examined there and then and on that basis the Returning Officer would be in a position to reject the nomination. Likewise, where the blanks are left in an affidavit, nomination can be rejected there and then. In other cases where detailed enquiry is needed, it would depend upon the outcome thereof, in an election petition, as to whether the nomination was properly accepted or it was a case of improper acceptance. Once it is found that it was a case of improper acceptance, as there was misinformation or suppression of material information, one can state that question of rejection in such a case was only deferred to a later date. When the Court gives such a finding, which would have resulted in rejection, the effect would be same, namely, such a candidate was not entitled to contest and the election is void. Otherwise, it would be an anomalous situation that even when criminal proceedings under Section 125-A 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.'

35. In *Lok Prahar through its General Secretary S.N. Shukla vs. Union of India and others*¹⁴, this Court observed that non-disclosure

14 [2018] 2 SCR 892 (2018) 4 SCC 699

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of assets and sources of income of candidates and their associates would constitute a corrupt practice falling under the heading ‘undue influence’, as defined under Section 123 (2) of the Act of 1951. In ***S. Rukmini Madegowda vs. State Election Commission and others***¹⁵, a 3-Judge Bench of this Court observed that a false declaration with regard to the assets of a candidate, his/her spouse or dependents, would constitute a corrupt practice irrespective of its impact on the election of the candidate as it may be presumed that a false declaration would impact the election.

36. In ***Mairembam Prithviraj alias Prithviraj Singh vs. Pukhrem Sharatchandra Singh***¹⁶, this Court noted that there is a difference between improper acceptance of the nomination of a returned candidate as opposed to improper acceptance of the nomination of any other candidate. It was observed that a mere finding that there has been an improper acceptance of a nomination would not be sufficient for a declaration that the election is void under Section 100(1)(d)(i) and there has to be further pleading and proof that the result of the election of the returned candidate was materially affected, but there would be no necessity of any such proof in the event of the nomination of the returned candidate being declared as having been improperly accepted, especially in a case where there are only two candidates in the fray.
37. In ***Association for Democratic Reforms and another vs. Union of India and others***¹⁷, a Constitution Bench affirmed that, in terms of the earlier judgments in ***Association for Democratic Reforms and another*** (*supra*) ***and People’s Union for Civil Liberties (PUCL) and another vs. Union of India and another***¹⁸, the right of voters to information, which is traceable to Article 19(1)(a) of the Constitution, is built upon the jurisprudence that information which furthers democratic participation must be provided to citizens and voters have a right to information which would enable them to cast their votes rationally and intelligently because voting is one of the foremost forms of democratic participation. It was further observed

15 [2022] 12 SCR 1 : (2022) SCC OnLine SC 1218

16 [2016] 9 SCR 687 : (2017) 2 SCC 487

17 [2024] 3 SCR 417 : W.P. (C) No. 880 of 2017, decided on 15.02.2024

18 [2003] 2 SCR 1136 : (2003) 4 SCC 399

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that voters have a right to the disclosure of information which is ‘essential’ for choosing the candidate for whom a vote should be cast.

38. In his Affidavit in Form No. 26, Karikho Kri was required to state as to whether he had been in occupation of accommodation provided by the Government at any time during the last 10 years before the date of notification of the current election and, if so, he was to furnish a declaration to the effect that there were no dues payable in respect of the said accommodation in relation to rent, electricity charges, water charges and telephone charges. Karikho Kri, however, failed to disclose the fact that he had been in occupation of government accommodation during his tenure as an MLA between 2009 and 2014. He stated ‘Not applicable’. However, with regard to the declaration as to there being no dues, he mentioned the date ‘22.03.2019’ and stated that the dues in respect of rent, electricity charges, water charges and telephone charges were ‘Nil’. After Nuney Tayang raised an objection to his candidature on this ground, Karikho Kri filed the requisite ‘No Due Certificates’ of 2014.
39. However, the High Court was of the opinion that the failure of Karikho Kri to disclose the factum of his occupying government accommodation from 2009 to 2014 and his failure to submit the ‘No Dues Certificate’ in relation to such government accommodation was sufficient, in itself, to infer that his nomination was defective and, in consequence, the acceptance thereof by the Returning Officer, Tezu, was improper.
40. Having considered the issue, we are of the firm view that every defect in the nomination cannot straightaway be termed to be of such character as to render its acceptance improper and each case would have to turn on its own individual facts, insofar as that aspect is concerned. The case law on the subject also manifests that this Court has always drawn a distinction between non-disclosure of substantial issues as opposed to insubstantial issues, which may not impact one’s candidature or the result of an election. The very fact that Section 36(4) of the Act of 1951 speaks of the Returning Officer not rejecting a nomination unless he is of the opinion that the defect is of a substantial nature demonstrates that this distinction must always be kept in mind and there is no absolute mandate that every non-disclosure, irrespective of its gravity and impact, would automatically amount to a defect of substantial nature, thereby

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materially affecting the result of the election or amounting to ‘undue influence’ so as to qualify as a corrupt practice.

41. The decision of this Court in *Kisan Shankar Kathore* (*supra*), also demonstrates this principle, as this Court undertook examination of several individual defects in the nomination of the returned candidate and found that some of them were actually insubstantial in character. This Court noted that two facets required consideration – Whether there is substantial compliance in disclosing requisite information in the affidavits filed along with the nomination and whether non-disclosure of information on identified aspects materially affected the result of the election. This Court observed, on facts, that non-disclosure of the electricity dues in that case was not a serious lapse, despite the fact that there were dues outstanding, as there was a *bonafide* dispute about the same. Similar was the observation in relation to non-disclosure of municipal dues, where there was a genuine dispute as to re-valuation and re-assessment for the purpose of tax assessment. Earlier, in *Sambhu Prasad Sharma vs. Charandas Mahant*¹⁹, this Court observed that the form of the nomination paper is not considered sacrosanct and what is to be seen is whether there is substantial compliance with the requirement as to form and every departure from the prescribed format cannot, therefore, be made a ground for the rejection of the nomination paper.
42. In the case on hand, it is not in dispute that there were no actual outstanding dues payable by Karikho Kri in relation to the government accommodation occupied by him earlier. His failure in disclosing the fact that he had occupied such accommodation and in filing the ‘No Dues Certificate’ in that regard, with his nomination form, cannot be said to be a defect of any real import. More so, as he did submit the relevant documents of 2014 after Nuney Tayang raised an objection before the Returning Officer. His explanation that he submitted such Certificates in the year 2014 when he stood for re-election as an MLA is logical and worthy of acceptance. The most important aspect to be noted is that there were no actual dues and the failure of Karikho Kri to disclose that he had been in occupation of government accommodation during the years 2009 to 2014 cannot

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be treated as a defect that is of substantial character so as to taint his nomination and render its acceptance improper.

43. The High Court opined that the nomination of Karikho Kri was improperly accepted by the Returning Officer as he had failed to disclose the three vehicles in question, which continued to be registered in the name of his dependent family members. Non-submission of the 'No Dues Certificate' in respect of the government accommodation occupied by him during his earlier tenure as an MLA was also held to weigh against him. Lastly, the High Court held that non-disclosure of the taxes due and payable by Karikho Kri and his wife was a defect of substantial character and the same tainted his nomination. In consequence, the High Court concluded that the acceptance of Karikho Kri's nomination by the Returning Officer was improper and as he was the returned candidate, the question of pleading and proving that such improper acceptance of his nomination materially affected the result of the election did not arise.
44. Though it has been strenuously contended before us that the voter's 'right to know' is absolute and a candidate contesting the election must be forthright about all his particulars, we are not inclined to accept the blanket proposition that a candidate is required to lay his life out threadbare for examination by the electorate. His 'right to privacy' would still survive as regards matters which are of no concern to the voter or are irrelevant to his candidature for public office. In that respect, non-disclosure of each and every asset owned by a candidate would not amount to a defect, much less, a defect of a substantial character. It is not necessary that a candidate declare every item of movable property that he or his dependent family members owns, such as, clothing, shoes, crockery, stationery and furniture, etc., unless the same is of such value as to constitute a sizeable asset in itself or reflect upon his candidature, in terms of his lifestyle, and require to be disclosed. Every case would have to turn on its own peculiarities and there can be no hard and fast or straitjacketed rule as to when the non-disclosure of a particular movable asset by a candidate would amount to a defect of a substantial character. For example, a candidate and his family who own several high-priced watches, which would aggregate to a huge figure in terms of monetary value, would obviously have to disclose the same as they constitute an asset of high value and also reflect upon his lavish lifestyle. Suppression of the same would constitute 'undue influence' upon the voter as that

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relevant information about the candidate is being kept away from the voter. However, if a candidate and his family members each own a simple watch, which is not highly priced, suppression of the value of such watches may not amount to a defect at all. Each case would, therefore, have to be judged on its own facts.

45. So far as the ground under Section 100(1)(d)(iv) of the Act of 1951 is concerned, the provision requires that the established non-compliance with the provisions of the Constitution or the Act of 1951 or any rules or orders made thereunder necessarily has to be shown to have materially affected the result of the election insofar as it concerns the returned candidate. Significantly, the High Court linked all the non-disclosures attributed to Karikho Kri to Section 100(1)(d)(i) of the Act of 1951 but ultimately concluded that his election stood invalidated under Section 100(1)(d)(iv) thereof. Surprisingly, there is no discussion whatsoever on what were the violations which qualified as non-compliance with the provisions of either the Constitution or the Act of 1951 or the rules and orders framed thereunder, for the purposes of Section 100(1)(d)(iv), and as to how the same materially affected the result of the election.
46. In *Mangani Lal Mandal vs. Bishnu Deo Bhandari*²⁰, this Court held that where a returned candidate is alleged to be guilty of non-compliance with the provisions of the Constitution or the Act of 1951 or any rules or orders made thereunder and his election is sought to be declared void on that ground, it is essential for the election petitioner to aver, by pleading material facts, that the result of the election insofar as it concerned the returned candidate has been materially affected by such breach or non-observance. It was further held that it is only on the basis of such pleading and proof that the Court would be in a position to form an opinion and record a finding that such breach or non-compliance has materially affected the result of the election before election of the returned candidate could be declared void. It was further observed that mere non-compliance or breach of the Constitution or the statutory provisions, as stated above, would not result in invalidating the election of the returned candidate under Section 100 (1)(d)(iv) as the *sine qua non* for declaring the election of a returned candidate to be void on that ground under clause (iv) of Section 100 (1)(d) is further

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proof of the fact that such breach or non-observance has resulted in materially affecting the election of the returned candidate. For the election petitioner to succeed on such ground, viz., Section 100 (1) (d)(iv), he has not only to plead and prove the breach but also show that the result of the election, insofar as it concerned the returned candidate, has been materially affected thereby.

47. In L.R. Shivaramagowda and others vs. T.M. Chandrashekhar (Dead) by LRs and others²¹, a 3-Judge Bench of this Court pointed out that in order to declare an election void under Section 100(1) (d)(iv) of the Act of 1951, it is absolutely necessary for the election petitioner to plead that the result of the election, insofar as it concerned the returned candidate, has been materially affected by the alleged non-compliance with the provisions of the Constitution or the Act of 1951 or the rules or orders made thereunder and the failure to plead such material facts would be fatal to the election petition.
48. However, perusal of the election petition filed by Nuney Tayang reflects that the only statement made by him in this regard is in Paragraph 21 and it reads as follows:

‘.....Hence, his nomination papers suffer from substantial and material defects. As such, the result of the election, insofar as the respondent No.1 is concerned, is materially affected by the improper acceptance of his nomination as well as by the non-compliance with the provisions of the Representation of the People Act, 1951 and the rules and orders made thereunder, including Section 33(1) of the Representation of the People Act, 1951, Rule 4A of the Conduct of Election Rules, 1961 and the orders made thereunder.....’

Again, in his ‘Ground No. (ii)’, Nuney Tayang stated as under:

‘.....As such, the nomination papers of the respondent Nos. 1 and 2 were improperly accepted by the Returning Officer and the result of the election in question, insofar as it concerns the respondent No.1 the return candidate, as well as the respondent No.2, has been materially affected by such improper acceptance of their nominations.....’

21 [1998] Supp. 3 SCR 241 : (1999) 1 SCC 666

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Though there are some general references to non-compliance with particular provisions of the Act of 1951 and the rules made thereunder, we do not find adequate pleadings or proof to substantiate and satisfy the requirements of Section 100(1)(d)(iv) of the Act of 1951. Therefore, it is clear that Nuney Tayang tied up the improper acceptance of Karikho Kri's nomination, relatable to Section 100(1)(d)(i) of the Act of 1951, with the non-compliance relatable to Section 100(1)(d)(iv) thereof and he did not sufficiently plead or prove a specific breach or how it materially affected the result of the election, in so far as it concerned the returned candidate, Karikho Kri. It was not open to Nuney Tayang to link up separate issues and fail to plead in detail and adduce sufficient evidence in relation to the non-compliance that would attract Section 100(1)(d)(iv) of the Act of 1951. The finding of the High Court in that regard is equally bereft of rhyme and reason and cannot be sustained.

49. As regards the failure on the part of Karikho Kri to disclose the dues of municipal/property taxes payable by him and his wife, the same cannot be held to be a non-disclosure at all, inasmuch as he did disclose the particulars of such dues in one part of his Affidavit but did not do so in another part. In any event, as Mr. Arunabh Chowdhury, learned senior counsel, fairly stated that he would not be pressing this ground, we need not labour further upon this point.
50. On the above analysis, we hold that the High Court was in error in concluding that sufficient grounds were made out under Sections 100(1)(b), 100(1)(d)(i) and 100(1)(d)(iv) of the Act of 1951 to invalidate the election of Karikho Kri and, further, in holding that non-disclosure of the three vehicles, that still remained registered in the names of his wife and son as on the date of filing of his nomination, amounted to a 'corrupt practice' under Section 123(2) of the Act of 1951. In consequence, we find no necessity to independently deal with Civil Appeal No. 4716 of 2023 filed by Nuney Tayang, in the context of denial of relief to him by the High Court, or the issues raised by Dr. Mohesh Chai in the replies filed by him.
51. In the result, Civil Appeal No. 4615 of 2023 filed by Karikho Kri is allowed, setting aside the Judgment and Order dated 17.07.2023 passed by the Itanagar Bench of the High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh in Election Petition No.01(AP) of 2019. In consequence, the election of Karikho Kri as the returned

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candidate from 44 Tezu (ST) Assembly Constituency of the State of Arunachal Pradesh is upheld.

As a corollary, Civil Appeal No. 4716 of 2023, filed by Nuney Tayang, shall stand dismissed.

Pending applications in both the appeals, if any, shall also stand disposed of.

This decision shall be intimated to the Election Commission of India and to the Chairman of the Legislative Assembly of the State of Arunachal Pradesh forthwith, as required by Section 116C(2) of the Act of 1951.

An authenticated copy of this judgment shall be sent to the Election Commission of India forthwith.

Parties shall bear their own costs.

Headnotes prepared by: Ankit Gyan

Result of the case:
Appeals disposed of.