2026:AHC:241255

**A.F.R.**

**RESERVED ON 27.05.2026**
**DELIVERED ON 26.11.2026**

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**ELECTION PETITION No. - 2 of 2022**

Munshi Ram

…..Petitioner(s)

Versus

Om Kumar and 9 others

…..Respondent(s)

| | | |
|---|---|---|
| Counsel for Petitioner(s) | : | In Person, Manish Kumar Kesarwani, Munshi Ram (in Person), Narendra Kumar Pandey, Peeyush Kumar Shukla, Sudha Pandey |
| Counsel for Respondent(s) | : | Bharat Singh Pal, K.r. Singh, Pavan Kumar |

**Court No. - 45**

**HON'BLE SALIL KUMAR RAI, J.**

The Election Petition has been filed under Sections 80, 80-A/81 of the Representation of the People Act, 1951 (hereinafter referred to as the "Act, 1951"), challenging the election of Respondent No. 1. The relief sought is that the declaration of election in favour of Respondent No. 1 be set aside, his election be declared null and void, and in place of Respondent No. 1, the election petitioner be declared as the duly elected member of the U.P. State Legislative Assembly from the 21 – Nehtaur (Reserved – Scheduled Caste) Assembly Constituency. The petitioner also seeks verification and recounting of votes recorded in the Control Units of Polling Station Nos. 115, 170, 234, 44, 54, 180, 20, 91, 150,

179, 320, and 203, and also of the postal ballot papers in accordance with the law.

Notices were issued to Respondent Nos. 1 to 10. This court in its order dated 23.9.2022 noted that notices of the case had been served on the respondents. However, no one put in appearance on behalf of respondent nos. 2 to 10, therefore, the case proceeded *ex-parte* against the respondent nos. 2 to 10. However, Respondent No. 1 is represented by his counsel.

The election to elect a member of the U.P. State Legislative Assembly from the 21 – Nehtaur (Reserved) Assembly Constituency was notified on 21.01.2022 and was held in the Second Phase of the U.P. Vidhan Sabha General Election, 2022. The last date for filing nominations was 28.1.2022 and the nominations were to be scrutinized on 29.1.2022. The election petitioner and Respondent Nos. 1 to 10 filed their respective nomination papers. The election petitioner filed his nomination paper as a candidate of the Rashtriya Lok Dal, while Respondent No. 1 filed his nomination paper as a candidate of the Bharatiya Janata Party. The nomination papers were accepted, the polling was held on 14.02.2022 and the Result was declared on 10.03.2022 declaring Respondent No. 1 as elected. The Respondent No. 1 secured a total of 77,935 votes, while the petitioner obtained 77,677 votes. Respondent Nos. 2, 3, 4, 5, 6, 7, 8, 9, and 10 obtained 38,020, 1,343, 1,338, 401, 357, 451, 556, 331, and 448 votes, respectively. The margin of votes between the petitioner and Respondent No. 1 was 258 votes.

The election petition has been instituted contending that the Returning Officer improperly accepted the nomination papers of Respondent No. 1 (the elected candidate) and of Respondent Nos. 4, 5, 7, 9, and 10, which materially affected the result of the election. It is alleged in the election petition that in their affidavit in Form 26, the respondent no. 1,4,5,9 and 10 failed to make disclosures as sought and the affidavit in Form 26 was not in the requisite format as required by

the Supreme Court in its various judgments and by the Election Commission of India in the directions issued by it.

It is alleged that in his affidavit in Form 26, the Respondent no. 1, did not disclose his total income for the last five financial years and disclosed the total income only for the financial year 2021-2022 and left blank the Columns requiring disclosures of the previouis four financial years, i.e. the financial years 2017–18 to 2020–21. The respondent no. 1 also marked a cross ("X") instead of writing "Nil" or "Not Applicable" in the columns relating to the disclosure of PAN Number of the spouse and dependants, the financial year for which their last Income Tax return had been filed and their total income shown in income tax return for the last five financial years. The said details are sought in Paragraph 4 of Form 26. Consequently, he concealed material information regarding his and his wife's income for the last five financial years as required under the Conduct of Elections (Amendment) Rules, 2019. It is further stated that in his affidavit in Form 26, Respondent No. 1 had left blank Paragraph Nos. 5(i) and 5(ii) which required disclosure as to whether any criminal case was pending against him and also left blank Paragraph Nos. 6(i), 6(ii), and Paragraph No. 6-A of Part A, which required disclosures as to whether the candidate had been convicted in any criminal case and details regarding the convictions, if any, passed against the candidate, and thereby concealed material information relating to his criminal antecedents. Likewise, in Formats C-1 and C-2 attached to the affidavit which sought the details regarding the criminal antecedents of the candidate a cross mark was made, which was not in accordance with the directions of the Election Commission of India.

It has been further alleged that similarly, Respondent No. 10 had put a cross mark instead of writing "Nil" or "Not Applicable" in Paragraph Nos. 3, 4, 5, 6, 6-A, 7 (i) to 7(ix), 8(i) to 8(ix), 9, and 10 of the affidavit in Form 26. Further, Respondent Nos. 4 and 5 either left blank or entered Cross marks instead of "Nil" or "Not Applicable" in Paragraph Nos. 3, 4 5, 6, 6-A, 7, 8 and Part- B of the affidavit in Form

26. Respondent no. 9 had not signed each page of the affidavit in Form 26 and only the last page bearing the date was signed by him, which violated the directions of the Supreme Court and instructions of the Election Commission of India. The affidavit in Form 26 of Respondent No. 7 does not bear his signature on any page, including the last page, and the e-Stamp annexed with the affidavit was also left unsigned. It is alleged in the election petition that the votes cast in favour of Respondent Nos. 4, 5, 7, 9, and 10 were votes of the election petitioner, and had their nomination papers been rejected by the Returning Officer, the election petitioner would have obtained those votes, thereby securing a majority of valid votes.

It has been averred that the nomination papers of Respondent Nos. 1, 4, 5, 7, 9, and 10 were liable to be rejected; thus, the Returning Officer improperly accepted their nomination papers, which materially affected the election.

The other grounds raised in the election petition are that the counting staff deployed for counting the votes recorded in the Control Units, VVPAT, Postal Ballot papers, and ETPBS committed irregularities that materially affected the result of the election. It is alleged that the District Election Officer failed to prepare the counting arena in accordance with the layout plan provided by the Election Commission of India. The arrangements were such that the counting agents of the candidates could not properly observe the counting, leaving them with no option except to note down whatever the Counting Supervisor dictated.

It is further alleged that the votes polled through Electronically Transmitted Postal Ballots (ETPBS) were counted without scanning the QR codes and without following Rule 54-A of the Conduct of Elections Rules, 1961 (hereafter referred as Rules 1961) as as well as the Instructions and guidelines in the "Handbook for Returning Officers" published by the Election Commission of India (hereafter referred as Instructions). The petitioner also alleges irregularities committed by the

counting staff during the counting of postal ballots. Specifically, many postal ballots were counted even though the envelopes did not contain Form 13-A. It is alleged that, because of these irregularities, the result of the election was materially affected regarding Respondent No. 1.

Another ground raised by the petitioner is that the counting of VVPAT IDs of voting machines whose Control Units were non-operational was manipulated to reduce the votes of the election petitioner and increase the votes of Respondent No. 1. This was allegedly done by illegally mixing the votes of the election petitioner with those of the returned candidate and the Respondent No. 2, which materially affected the election result given the narrow margin of votes between the petitioner and Respondent No. 1.

On the basis of these pleadings, the election petitioner has prayed for the reliefs noted above.

Respondent No. 1 filed his written statement denying the allegations made in the election petition. The respondent no. 1 denies any irregularity in the counting of votes and asserted that the votes recorded in favour of the respective candidates correctly reflected the actual votes received by them. It is stated that the he had disclosed all his assets, liabilities and criminal antecedents in his affidavit in Form 26. The Returning Officer, after examining the nomination papers and the accompanying documents, issued a checklist acknowledging their receipt. The checklist contained a tick mark indicating that the affidavit was complete and the nomination paper was in order. The Returning Officer neither pointed out any deficiency nor required him to furnish any additional information concerning his assets or liabilities. Respondent No. 1 denies having concealed any asset or liability and states that the petitioner had not identified any particular asset or liability omitted by the respondent from his affidavit or alleged that the contents of the affidavit had influenced the voters so as to materially affect the election result. He accordingly denies that his nomination paper had been improperly accepted. Respondent No. 1 also denies that the

nomination papers of Respondent Nos. 4, 5, 7, 9 and 10 had been improperly accepted or that their acceptance had materially affected the election result. He disputes the petitioner's claim that, had their nomination papers been rejected, the votes polled by those candidates would have gone to the petitioner. Regarding the counting of votes, Respondent No. 1 states that the counting hall provided a clear view of the counting process and that no grievance concerning the venue or objection to the counting was raised at any stage. He asserts that the Control Units were clearly visible during counting and that there was no discrepancy between the votes counted and the final result sheets. He denied the allegations of manipulation or mixing of ballots and states that the counting was conducted fairly and without objection. He further contends that the election petition did not disclose the material facts necessary to support the grounds raised and was, therefore, liable to be dismissed.

On the pleadings of the parties, the following issues were framed for adjudication:

(a) *Whether the affidavit in Form 26 filed by the Returned Candidate, i.e., Defendant/Respondent No. 1, Om Kumar, was defective, and for that reason his nomination paper was improperly accepted by the Returning Officer of 21-Nehtaur (Reserved) Assembly Constituency, District Bijnor, which materially affected the result of the election?*

*(b) Whether the affidavits in Form 26 filed by Rishi Pal, Alok Kumar, Omkar Singh, Vishal Kumar, and Dilavar Singh (Defendant/Respondent Nos. 10, 4, 5, 9, and 7, respectively) were defective, and, whether their nomination papers were improperly accepted by the Returning Officer of 21-Nehtaur (Reserved) Assembly Constituency, District Bijnor, and whether such improper acceptance materially affected the result of the election?*

*(c) Whether the Returning Officer, Assistant Returning Officer, and counting staff deployed for counting the votes recorded in the Control Units, VVPAT, Postal Ballot Papers, and ETPBS committed irregularities that materially affected the result of the election?*

*(d) Whether the VVPAT slips relating to the votes of the election petitioner at Polling Booth Nos. 44, 54, 180, and*

*234 of 21-Nehtaur (Reserved) Assembly Constituency, District Bijnor, were mixed up in the bundles of the Returned Candidate and the BSP candidate Priya Singh by the counting staff, materially affecting the result of the election?*

*(e) What relief, if any, is the plaintiff entitled to?*

Both parties filed their documentary evidence and adduced oral evidence in support of their respective cases.

The petitioner produced and filed the following documents to prove his case:-

| Sl.N. | Nature of the document | Proved by |
|---|---|---|
| 1 | A certified copy of the election schedule. | Admitted by respondent no. 1. |
| 2 | Form 7A<br>A certified copy of list of contesting candidates. | Admitted by respondent no. 1. |
| 3 | A certified copy of the nomination paper of respondent no. 1 in Form 2B and the affidavit in Form – 26. | Admitted by respondent no. 1. |
| 4 | A certified copy of the nomination paper of respondent no. 10 in Form 2B and the affidavit in Form – 26. | Proved by PW-1 |
| 5 | A certified copy of the nomination paper of respondent no. 4 in Form 2B and the affidavit in Form – 26. | Proved by PW-1 |
| 6 | A certified copy of the nomination paper of respondent no. 5 in Form 2B and the affidavit in Form – 26. | Proved by PW-1 |
| 7 | A certified copy of the nomination paper of respondent no. 9 in Form 2B and the affidavit in Form – 26. | Proved by PW-1 |
| 8 | A certified copy of the nomination paper of respondent no. 7 in Form 2B and the affidavit in Form – 26. | Proved by PW-1 |

| | | |
|---|---|---|
| 9 | A certified copy of final result-sheets. | Admitted by respondent no. 1. |
| 10 | A certified copy of receipt of nomination paper. | Admitted by respondent no. 1. |
| 11 | A certified copy of check list of documents in connection with filing of nomination of petitioner. | Proved by PW-1 |
| 12 | A certified copy of polling stations / polling booths of 21-Nehtaur (Reserved) Assembly Constituency. | Admitted by respondent no. 1. |
| 13 | A certified copy of the order dated 30.9.2013 issued by the Election Commission of India, New Delhi. | Proved by PW-1 |
| 14 | A certified copy of the order dated 7.4.2022 passed by this Court in Writ – C No. 9049 of 2022. | Admitted by respondent no. 1. |
| 15 | A copy of complete set of documents filed by respondent no. 1 including the affidavit in Form – 26. | Admitted by respondent no. 1. |
| 16 | A copy of the affidavit in Form – 26 filed by respondent no. 1 from the Uttar Pradesh Lok Sabha, Nagina Constituency. | Proved by PW-1 |
| 17 | A copy of the notification dated 26.2.2019 issued by the Election Commission of India. | Admitted by respondent no. 1. |
| 18 | A copy of the notification dated 28.2.2019 issued by the Election Commission of India. | Admitted by respondent no. 1. |

On his part, Respondent No. 1 filed the following documents to rebut the case of the petitioner:

| **Sl.N.** | **Nature of the document** | **Proved by** |
|---|---|---|
| 1 | A certified copy of the check list in connection with his nomination. | Proved by DW-1. |

| | | |
|---|---|---|
| 2 | A certified copy of Form – 17C Part II issued by the Assistant Returning Officer, Bijnor for the Vidhan Sabha Election 2022. | Proved by DW-1. |
| 3 | A certified copy of proforma issued by the Returning Officer for recording of votes by Additional Counting Staff. | Proved by DW-1. |
| 4 | A copy of the information from the Returning Officer to the District Election Officer, Bijnor. | Proved by DW-1. |

Before proceeding further, it would be apt to state that the counsel for the parties have agreed that the certified copies of the documents filed by the parties may be read in evidence.

In support of his case, the petitioner examined six witnesses who filed their affidavits in lieu of examination-in-chief and were subsequently cross-examined by Respondent No. 1. The petitioner examined himself as PW-1, followed by PW-2 Rohit Rathi (the petitioner's counting agent at Table No. 2), PW-3 Shahabuddin Ansari (the petitioner's counting agent at Table No. 12), PW-4 Gaurav Kumar (the petitioner's counting agent at Table No. 16), PW-5 Anil Chaudhary (the petitioner's counting agent at Table No. 18), and PW-6 Satyendra Kumar (the petitioner's counting agent at Table No. 19).

In his affidavit-in-chief (Paper No. A-64), the election petitioner reiterated the allegations made in the election petition regarding the improper acceptance of the nomination papers of Respondent Nos. 1, 4, 5, 7, 9 and 10 as well as regarding the irregularities and illegalities allegedly committed by the counting staff in counting, which, according to him, materially affected the election result in favour of Respondent No. 1. The witness asserted that, had the nomination papers of Respondent Nos. 4, 5, 7, 9 and 10 been rejected, the votes secured by them would have gone to him, resulting in his victory. The witness stated that 235 postal ballots had been wrongly counted in favour of Respondent No. 1. He stated that the details of the alleged counting irregularities had been communicated to him by his counting agents. The witness proved the certified copies of various documents issued by the

Assistant District Election Officer, Bijnor, and stated that Paper Nos. A-40 and A-41 had been downloaded directly from the official website of the Election Commission of India.

During his cross-examination by Respondent No. 1 (Paper No. A-65), the petitioner stated that he had not seen Respondent No. 1's nomination paper and affidavit at the time of their filing, but had seen them subsequently. When asked whether he had objected to the nomination papers, he did not give a categorical answer. Instead, he stated that the Returning Officer had summoned the candidates, including himself and Respondent Nos. 1, 2 and 3, declared their nomination papers to be in order and asked them to leave. He admitted that he had not filed any written objection but stated that he was not given an opportunity to do so. The witness could not recall the political parties represented by Respondent Nos. 5 and 7 and admitted that he had no personal knowledge of the residential addresses of Respondent Nos. 4, 7, 9 and 10. He further admitted that the allegations in the election petition and his affidavit concerning counting irregularities were based on information received from his counting agents.

The evidence of PW-2 to PW-6 shall be narrated while deciding Issue nos. (c) and (d).

Respondent No. 1 examined himself as DW-1 and filed his affidavit-in-chief (Paper No. A-81). In his affidavit the respondent has stated that after he filed his nomination paper, the Returning Officer issued him a checklist confirming that the nomination paper was complete in all respects. He proved a certified copy of the checklist (Paper No. A-53/1). DW-1 denied the allegations of illegalities and irregularities in the counting of votes recorded in EVMs, postal ballots and VVPAT slips. He asserted that counting was conducted peacefully and to the satisfaction of all the candidates present, without any complaint. During his cross-examination (Paper No. A-82) by the petitioner, DW-1 admitted that he had been carrying on business as the proprietor of Om Security and Cleaning Services since 1995.

Supporting the election petition, the counsel for the petitioner reiterated the grounds raised in the election petition and submitted that Respondent Nos. 1, 4, 5, 7, 9 and 10 had failed to furnish the required information in the relevant paragraphs of their affidavits in Form 26. He argued that these omissions constituted substantial defects in the affidavit and were material non-compliance with the provisions of the Act, 1951, the relevant Rules and the instructions issued by the Election Commission, and had materially affected the election result. It was argued that, had the nomination papers of Respondent Nos. 4, 5, 7, 9 and 10 been rejected, the votes polled by them would have gone to the petitioner. It was also submitted that the evidence on record established that the improper acceptance of nomination paper of Respondent No. 1 had materially affected the election result. It was further argued that the oral and documentary evidence adduced by the petitioner established irregularities and illegalities in the counting of votes, which materially affected the election result. He accordingly prayed that the election petition be allowed, the election of Respondent No. 1 be set aside and the petitioner be declared elected from the 21–Nehtaur (Scheduled Caste Reserved) Assembly Constituency.

In support of his submissions, the petitioner relied on ***Union of India v. Association for Democratic Reforms & Anr., AIR 2002 SC 2112***; ***People's Union for Civil Liberties v. Union of India, AIR 2003 SC 2363***; ***Resurgence India v. Election Commission of India, AIR 2014 SC 344***; ***Kisan Shankar Kathore v. Arun Dattatray Sawant, 2014 (4) ABR 200***; ***Lok Prahari v. Union of India, AIR 2018 SC 1101***; ***Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy & Others, AIR 2018 SC 3012***; ***S. Rukmani Medegowda v. State Election Commission, 2022 (4) AKR 617***; ***Ram Niwas Rawat v. Mukesh Melhotra & Others, Election Petition No. 24 of 2024***; ***Poonam v. Duley Singh & Others, (2026) AIR CC 443 (SC)*** and ***Sri Mairembam Prithviraj @ Prithviraj Singh v. Sri Pukhrem Sarad Chandra Singh, AIR 2016 SC 5087***.

In reply, the counsel for Respondent No. 1 submitted that deficiencies in an affidavit in Form 26 do not constitute a ground for rejection of a nomination paper by the returning officer. Referring to Sections 33, 33-A, 34 and 36(2) of the Act, 1951, and Rules 4 and 4-A of the Rules, 1961, he argued that the nomination paper and the affidavit in Form 26 are separate documents and that the affidavit is not a part of the nomination paper. He further submitted that a defect in Form 26 does not, by itself, invalidate an election unless it is pleaded and proved that the defect constituted substantial non-compliance with the statutory requirements and materially affected the election result. It was contended that Respondent No. 1 had disclosed his assets and liabilities and his source of income in his Form 26 affidavit and that the alleged omissions did not amount to substantial non-disclosure or non-compliance. It was also submitted that the petitioner had not filed any objections to the nomination of the respondent no. 1 and that the returning officer had also not issued any reminder to cure any defect in Form 26. It was argued that the returning officer had issued a check list to the petitioner certifying that Form 26 was complete and his nomination was in order. He further submitted that the petitioner had failed to prove that the alleged omissions had influenced the voters or materially affected the election result. It was also argued that the petitioner had failed to prove that had the nomination papers of Respondent Nos. 4, 5, 7, 9 and 10 been rejected, their votes would have gone to the petitioner. It was further submitted, on behalf of the respondents, that the petitioner had failed to prove any irregularity in the counting of VVPAT slips or postal ballots or that any such irregularity had materially affected the results of the elections. In support of his submissions, the Respondent No. 1 relied on ***Karikho Kri v. Nuney Tayang, 2024 SCC OnLine SC 519 [2024 (0) Supreme (SC) 325]; Shambhu Prasad Sharma v. Shri Charandas Mahant, AIR 2012 SC 2648; Gajanand Shahi v. Sudarshan Kumar, 2025 (0) Supreme (Pat) 31; Syed Abu Dojana v. Dilip Ray, 2024 (0) Supreme (Pat) 1036; Karim Uddin Barbhuiya v. Aminul Haque, AIR 2024 SC 2193; Gudem Mahipal Reddy v. Katam Srinivas Goud, 2025***

***(0) Supreme (Telangana) 880****; Ajmera Shyam v. Smt. Kova Laxmi, 2025 SCC OnLine SC 1723****; Bashir Ahmad Magrey v. Ghulam Quadir Mir, AIR 1977 SC 231*** and ***Paokai Haokip v. Rishang, AIR 1969 SC 663;Shiv Charan Singh v. Chandra Bhan Singh, AIR 1988 SC 637***.

I have considered the submissions of the counsel for the parties.

I now proceed to examine the issues framed for determination. Issue Nos. (c) and (d), which concern the alleged irregularities in the counting of votes, are taken up first. If the allegations are established and are found to have materially affected the election result, they may independently furnish a ground for declaring the election void. It is therefore appropriate to examine these issues before taking up Issue Nos. (a) and (b), which concern the validity and acceptance of the nomination papers.

Regarding Issue Nos. (c) and (d), the petitioner has alleged that the counting of votes was conducted in violation of the Act, 1951, the Rules, 1961 and the Instructions. It has been alleged that votes cast through ETPBS were counted without scanning their QR codes. The petitioner has also challenged the procedure of providing postal ballots to infirm and disabled electors and electors aged 80 years or above at their residences, alleging that there was no statutory provision authorising such a procedure. According to the petitioner, the irregularities in the counting of votes materially affected the election result insofar as it concerns respondent No. 1, the returned candidate.

**Issue No. (d) and Issue No. (c), insofar as it relates to VVPAT slips**

These issues concern the counting of VVPAT slips relating to votes polled at polling booth Nos. 44, 54, 180 and 234.

The election petitioner examined himself as PW-1. His counting agent, Rohit Rathi, who was deputed at Table No. 2 where the VVPAT slips of polling booth No. 44 were to be counted, was examined as PW-2. Shahabuddin, another counting agent of the petitioner, deputed at

Table No. 12 where the VVPAT slips of polling booth Nos. 54 and 180 were to be counted, was examined as PW-3. The VVPAT slips of polling booth No. 234 were counted at Table No. 10, where Kapil Kumar was deputed as the petitioner's counting agent. Kapil Kumar was not examined.

The petitioner has pleaded that the structural arrangements at the counting centre prevented his counting agents from properly watching the counting of votes. It has further been pleaded that the votes recorded in the control units of polling booth Nos. 44, 54, 180 and 234 were not counted when the control units were brought to Table Nos. 2, 12 and 10 on the pretext that the control units were not functioning. The petitioner alleges that the VVPAT slips relating to these polling booths were consequently counted in the last round. According to the petitioner, his counting agents requested the counting officials either to have the control units repaired immediately or to count the votes through VVPAT slips, but their requests were ignored. It has also been alleged that VVPAT slips containing votes cast in favour of the petitioner were illegally mixed with the bundles of votes cast in favour of respondent Nos. 1 and 2.

PW-1, the election petitioner, stated that his allegations concerning the counting of VVPAT slips were based upon information received from his counting agents. He had no personal knowledge of the alleged mixing of votes.

To prove the alleged irregularity relating to polling booth No. 44 at Table No. 2, the petitioner has relied upon the testimony of PW-2, Rohit Rathi. The witness stated that the VVPAT slips were not counted at Table No. 2 and were counted in the last round. He further stated that the structural arrangements at the counting centre prevented the counting agents from properly watching the counting proceedings and that votes were being recorded on the basis of oral information supplied by the counting officials. PW-2 also alleged that the counting officials wrongly sorted the VVPAT slips and mixed the votes cast in favour of the

petitioner with those cast in favour of respondent Nos. 1 and 2. He stated that, at the time of sorting, the bundle containing votes cast in favour of the petitioner was the largest. However, in cross-examination, PW-2 stated that he had noted the number of votes obtained by different candidates on the basis of information supplied by the counting agents of other candidates. He also stated that he had learned from those counting agents that the petitioner's bundle was the largest. When questioned as to how he knew that votes cast in favour of the petitioner had been counted in favour of other candidates, the witness did not give a specific answer.

PW-3, Shahabuddin, also stated that because of the structural arrangements at the counting centre, he could not properly watch the counting of votes. In his affidavit filed in lieu of examination-in-chief, he alleged that the petitioner's votes had been illegally mixed with those of respondent Nos. 1 and 2 by wrongly sorting and counting the VVPAT slips. He further stated that when he objected, he was shouted down and threatened. However, in cross-examination, PW-3 admitted that the VVPAT slips were neither counted in his presence nor shown to him during counting. He therefore could not say whether votes cast in favour of one candidate had been counted in favour of another candidate.

As already noted, Kapil Kumar, who was deputed at Table No. 10 where the VVPAT slips of polling booth No. 234 were counted, was not examined.

The evidence of PW-2 concerning the relative size of the bundles was based upon information received from counting agents of other candidates. He did not give a specific answer as to how he knew that votes cast in favour of the petitioner were counted in favour of other candidates. PW-3, who alleged that the petitioner's votes had been mixed with those of respondent Nos. 1 and 2, admitted that the VVPAT slips were neither counted in his presence nor shown to him during counting. He could not say whether votes cast in favour of one candidate had been counted in favour of another. The counting agent deputed at Table No. 10 was not examined.

The testimony of these witnesses does not prove that votes cast in favour of the petitioner were counted in favour of respondent Nos. 1 or 2. The allegations concerning the mixing of votes have not been proved.

As the alleged irregularities in the counting of VVPAT slips have not been proved by evidence, no useful purpose would be served by examining the various statutory provisions and clauses of the Instructions to consider the irregularities alleged by the petitioner.

It is accordingly held that the petitioner has failed to prove any illegality or irregularity in the counting of VVPAT slips relating to polling booth Nos. 44, 54, 180 and 234, or that any such irregularity materially affected the election result insofar as it concerns respondent No. 1, the returned candidate. Issue No. (d) is decided against the petitioner. Issue No. (c), insofar as it concerns the counting of VVPAT slips, is also answered accordingly.

**Issue No. (c), insofar as it relates to postal ballots and ETPBS**

Issue No. (c) was framed to determine whether the counting staff committed irregularities in counting votes recorded in the control units, VVPAT slips, postal ballot papers and Electronically Transmitted Postal Ballot System (ETPBS), and whether such irregularities materially affected the election result. The allegations concerning the control units and VVPAT slips have already been considered. The remaining allegations concern the counting of postal ballots and ETPBS which were counted at Table Nos. 16, 17, 18 and 19.

The final result sheet in Form 20 records a total of 1,391 votes by postal ballots, of which 177 were rejected and three were recorded against NOTA. According to the candidate-wise figures stated in Form 20, respondent No. 1, the returned candidate, secured 494 votes; respondent No. 2 secured 219 votes; respondent No. 3 secured six votes; the petitioner secured 478 votes; respondent No. 4 secured four votes; respondent Nos. 5 and 6 secured one vote each; respondent No. 7

secured two votes; respondent No. 8 secured no vote; respondent No. 9 secured six votes; and respondent No. 10 secured no vote.

The petitioner has stated in the election petition that 807 postal ballots were cast by electors on election duty out of 875 postal ballots issued to them. He further stated that 304 votes were cast through postal ballots provided at the residences of disabled electors and electors aged 80 years or above. The petition also refers to total 280 postal ballots cast by service personnel through ETPBS. The allegations concerning the counting of these votes are being examined separately.

**Counting at Table No. 16**

The postal ballots of electors on election duty were counted at Table Nos. 16 and 17.

The petitioner has alleged that the counting at these tables was contrary to the prescribed procedure. According to him, the declaration in Form 13A was required to be scrutinized before opening the cover containing the postal ballot. Where the declaration was absent or defective in the manner prescribed by the Rules, the ballot was liable to rejection. It has been alleged that 46 postal ballots without declarations in Form 13A were illegally counted in favour of respondent No. 1 at Table No. 16.

Gaurav Kumar, who was deputed as the petitioner's counting agent at Table No. 16, was examined as PW-4. He stated that about 350 postal ballots were opened by the counting officials and, according to his estimate, 46 or more ballots did not contain declarations in Form 13A. He alleged that these ballots were nevertheless counted in favour of respondent No. 1.

In his affidavit filed in lieu of examination-in-chief, PW-4 stated that the ballots without declarations had initially been segregated into a separate bundle. In cross-examination, however, he stated that the number of such ballots could be more or less than 46. He also stated that

these ballots were subsequently mixed with those counted in favour of the returned candidate in his presence. At another stage of his cross-examination, PW-4 stated that he could not say whether the ballots had been segregated candidate-wise into bundles of 50 votes. Thus, PW-4's estimate of 46 ballots was not based on an actual count made by him. His statement concerning their inclusion in the returned candidate's bundle must also be considered alongside his inability to say whether candidate-wise bundles of 50 votes had been prepared.

The effect of the allegation concerning these 46 votes, even if accepted for the sake of argument, will be considered along with the other alleged irregularities.

**Counting at Table No. 17**

The petitioner has further alleged that 64 postal ballots which did not contain declarations in Form 13A were illegally accepted and counted in favour of respondent No. 1 at Table No. 17. According to the election petition and the testimony of PW-1, this information was supplied to him by Sikander Kasar, who was deputed as his counting agent at Table No. 17. Sikander Kasar was not examined by the petitioner. The petitioner has therefore not produced the testimony of the counting agent from whom he claims to have received information concerning these 64 ballots. There is no direct evidence from that counting table establishing the alleged irregularity. The allegation remains unproved.

**Counting at Table No. 18**

The petitioner has alleged a discrepancy of 28 votes in the counting at Table No. 18, where postal ballots supplied at the residences of disabled electors and electors aged 80 years or above were counted.

According to the figures stated in the election petition, respondent No. 1 secured 83 votes, the petitioner secured 106 votes, and respondent No. 2 secured 53 votes. Respondent Nos. 3, 4 and 6 secured one vote

each; respondent No. 5 and 7 secured two votes each. No votes were recorded in favour of respondent Nos. 8, 9 and 10 or NOTA.

The petitioner claims that 304 votes had been cast and that 27 votes were rejected. On the basis of the alleged discrepancy, he contends that 28 votes were illegally counted in favour of respondent No. 1.

PW-5, in his affidavit, repeated the figures stated in the election petition. He also stated that he had no special knowledge of the counting proceedings. Significantly, PW-5 did not state that any ballot which was liable to rejection, or which lacked the prescribed declaration, had actually been counted in favour of respondent No. 1.

The counsel for the petitioner also argued that postal ballots could not have been provided at the residences of disabled electors in view of Rule 27A of the Rules, 1961, Section 60 of the Act, 1951 and Section 20 of the Representation of the People Act, 1950. It is not required to decide that contention. Even according to the figures relied upon by the petitioner, he secured 106 votes at Table No. 18, whereas respondent No. 1 secured 83 votes. If the entire category of ballots were excluded on the ground urged by the petitioner, the petitioner's 106 votes would also stand excluded along with the 83 votes secured by respondent No. 1. Such exclusion would not reduce the returned candidate's lead over the petitioner. The alleged illegality would therefore not materially affect the election result in favour of the petitioner.

**Counting at Table No. 19 — ETPBS**

The petitioner has further alleged that ETPBS votes were illegally counted at Table No. 19 without displaying the scanning of QR codes to the counting agents and without verifying whether the ballots were valid or duplicated. According to the election petition, 280 ETPBS votes were counted at Table No. 19. The petitioner has stated that respondent No. 1 was shown to have secured 119 votes and he himself secured 28 votes. He further alleges that the result noted by his counting agent accounted for only 179 votes. On that basis, he claims a discrepancy of 101 votes

and alleges that those votes were illegally counted in favour of respondent No. 1.

Satender Singh, the petitioner's counting agent at Table No. 19, was examined as PW-6. In his affidavit, PW-6 stated that the counting officials did not scan the QR codes and did not verify duplication of the ballots. In cross-examination, he stated that the counting agents could not watch the scanning process because the back of the computer was facing them.

The statement that the counting agents could not see the computer screen does not establish that the QR codes were not scanned. PW-6 did not state that any duplicate ballot had been detected or that any particular invalid ballot was counted in favour of respondent No. 1. There is also no provision in the Instructions relied upon by the petitioner requiring the counting officials to display the scanning process to the counting agents. The evidence of PW-6 does not prove that any ETPBS vote was illegally counted in favour of the returned candidate. Nor does it prove that the alleged numerical discrepancy represents votes wrongly credited to respondent No. 1.

**Evidence of PW-1 and the effect upon the election result**

In cross-examination, PW-1 stated that his counting agents were watching the counting of ballots. He also admitted that he had not made any written complaint to the Returning Officer concerning irregularities in the counting of postal ballots. The evidence discussed above does not establish that the alleged invalid postal ballots were counted in favour of respondent No. 1. Nor has the petitioner established that the discrepancies alleged at Table Nos. 18 and 19 represent votes wrongly counted in favour of respondent no. 1.

There is a further difficulty with the petitioner's case. His allegations concern 46 votes at Table No. 16, 64 votes at Table No. 17, 28 votes at Table No. 18 and 101 votes at Table No. 19. These allegations concern a total of 239 votes. If the 64 votes counted at Table

no. 17 is excluded (because the counting agent of the petitioner at Table no. 17 was not examined by the petitioner), the total votes which the petitioner alleges were wrongly accepted and counted in favour of respondent no. 1 would be only 175. The margin between the petitioner and the returned candidate was 258 votes.

Even if, for the sake of argument, all 239 votes alleged by the petitioner were treated as votes wrongly included in the returned candidate's account, their exclusion would not reverse the result. The case of the petitioner is that *these votes were wrongly accepted* and counted in favour of respondent no. 1. It is not the case of the petitioner that these votes were cast in favour of the petitioner but counted in the account of the respondent no. 1. In the circumstance, the votes would only be excluded reducing the margin between the petitioner and the elected candidate and would not increase the vote of the petitioner. The petitioner has also not pleaded that they were votes cast in his favour which should instead be added to his account. These votes are alleged to have been wrongly *accepted* and counted in favour of the returned candidate.

Thus, apart from the failure to prove the alleged irregularities, the petitioner has not proved that the alleged improper counting of postal ballots and ETPBS materially affected the result of the election insofar as it concerns respondent No. 1.

Issue No. (c), insofar as it relates to the counting of postal ballots and ETPBS, is therefore decided against the petitioner. The allegations concerning the control units and VVPAT slips have already been rejected while deciding Issue No. (d). Issue No. (c) is accordingly decided against the petitioner.

Having decided Issue Nos. (c) and (d), I now turn to Issue Nos. (a) and (b), which concern whether the nomination papers and affidavits in Form 26 suffered from any defects, whether such defects, if found, invited rejection of the nominations, and whether the Returning Officer

improperly accepted the nominations of respondent no. 1 as well as nominations of respondent nos. 4, 5, 7, 9, and 10.

**Issue Nos. (a) and (b)**

Issue Nos. (a) and (b) concern whether the affidavits in Form 26 filed by the returned candidate, respondent No. 1, and respondent Nos. 4, 5, 7, 9 and 10 suffered from defects of substantial character, rendering the acceptance of their nomination papers improper, and whether such improper acceptance materially affected the election result. Issue No. (a) relates to the returned candidate, while Issue No. (b) concerns respondent Nos. 4, 5, 7, 9 and 10. Both issues are being considered together insofar as they concern the alleged defects and improper acceptance of nominations. However, the question of material effect upon the election result requires separate consideration in the case of respondent no. 1, the returned candidate and the other respondents.

The election petitioner has alleged that several columns in Form 26, requiring disclosure of prescribed information, were either left blank or marked with a cross (×) instead of “Nil” or “Not Applicable”. It has further been pleaded that respondent No. 9 had signed only the last page of his affidavit, while respondent No. 7 had not signed any page, including the last page, or the e-stamp annexed to his affidavit. According to the petitioner, these were defects of substantial character requiring rejection of the nominations. Their acceptance by the Returning Officer was therefore improper and materially affected the election result.

The counsel for respondent No. 1 has argued that the alleged defects were not of substantial character and that there was no proof that they materially affected the election result. It has further been argued that a nomination could not be rejected merely because of defects in Form 26. The petitioner had raised no objection during scrutiny. The Returning Officer had not pointed out any defect to the returned candidate and had issued a checklist showing the nomination papers to be complete. No reminder to cure any defect was therefore issued. On

these grounds, it has been argued that the petitioner cannot now challenge the acceptance of the nomination in an election petition.

The rival contentions raise several questions. Whether a nomination paper can be accepted despite omissions or defects in Form 26; whether the failure of the election petitioner to raise objections at the time of scrutiny prevents him from challenging the nomination subsequently; and what is the legal effect of the checklist issued by the Returning Officer certifying that the nomination paper of respondent No. 1 was complete and in order. It must also be determined whether the alleged omissions and defects were of such a character as to require rejection of the nomination papers. The contentions require examination of the relevant provisions of the Act, 1951, the Rules, 1961, and the decisions of the Supreme Court.

**The Statutory Provisions involved in the Case:**

Article 324(1) provides for the Superintendence, direction and control of elections to be vested in an Election Commission. It provides as follows : -

> **"324 (1). Superintendence, direction and control of elections to be vested in an Election Commission** - *The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).***"**

The relevant provisions in the Act, 1951 which are to be considered for a decision on Issue nos. (a) and (b) are reproduced below :-

> **"30. Appointment of dates for nominations, etc**.—*As soon as the notification calling upon a constituency to elect a member or members is issued, the Election Commission shall, by notification in the Official Gazette, appoint—*
> *(a) the last date for making nominations, which shall be the [seventh day] after the date of publication of the first mentioned notification or, if that day is a public holiday, the next succeeding day which is not a public holiday;*

*(b) the date for the scrutiny of nominations, which shall be [the day immediately following] the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;*

*(c) …..(excluded as not relevant for the petition)*

*(d) …..(excluded as not relevant for the petition)*

*(e) ..…(excluded as not relevant for the petition)*

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

*[Provided that… (excluded as not relevant for the petition)…..…]*

*(2) …*

*(3) …*

*(4) …..…(excluded as not relevant for the petition):*

*[Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.]*

*5. ….(excluded as not relevant for the petition)*

*6. …..(excluded as not relevant for the petition)*

*7. …..…(excluded as not relevant for the petition)*

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

*(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;*
*(ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more.*
*(2) The candidate or his proposer, as the case may be, shall,* ***at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1)****.*
*(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.]*
**33B. Candidate of furnish information only under the Act and the rules**.—*Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election which is not required to be disclosed or furnished under this Act or the rules made thereunder.]*

[**Note:** Section 33B was subsequently declared unconstitutional by the Supreme Court in **People's Union for Civil Liberties v. Union of India, (2003) 4 SCC 399.]**

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

*(a)….(excluded as not relevant for the petition)*

*(b)…..(excluded as not relevant for the petition)*

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

*(2) …..(excluded as not relevant for the petition)*

**35. Notice of nominations and the time and place for their scrutiny**.—*The returning officer shall, on receiving the*

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

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

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

*[(a) [that on the date fixed for the scrutiny of nominations the candidate] either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:— Articles 84, 102, 173 and 191,*

*[Part II of this Act and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963)] or*

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

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

*(3) Nothing contained in [clause (b) or clause (c)] of sub-section (2) shall be deemed to authorise the [rejection] of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the*

*candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.*

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

*(5) ..(excluded as not relevant for the petition)*

*(6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper:*

*Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the returning officer for election in the same constituency.*

*(7) …(excluded as not relevant for the petition)*

*(8) …..(excluded as not relevant for the petition)*

**169. Power to make rules**.*—(1) The Central Government may, after consulting the Election Commission, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.*

*(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—*

*(a) the form of affidavit under sub-section (2) of section 33A;*

*(aa) to (g) …...(excluded as not relevant for the petition)*

*(gg) the procedure as to counting of votes recorded by means of voting machines;]*

*(h) and (hh) …...(excluded as not relevant for the petition)*

*(i) any other matter required to be prescribed by this Act.*

*(3) …...(excluded as not relevant for the petition)***"**

The provisions of the Conduct of Elections Rules, 1961 that are involved in the present case are Rules 4 and 4A which are reproduced below : -

> ***"4. Nomination paper**.—Every nomination paper presented under sub-section (1) of section 33 shall be completed in such one of the Forms 2A to 2E as may be appropriate:*
> *Provided that a failure to complete or defect in completing, the declaration as to symbols in a nomination paper in Form 2A or Form 2B shall not be deemed to be a defect of a substantial character within the meaning of sub-section (4) of section 36.*
> ***4A. 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."*

Form – 2B is the prescribed nomination paper to be filled up by the candidate in an election to the Legislative Assembly of a State. The contents of Form 2B are not being narrated as they are not relevant for a decision of the present petition.

The controversy in the present case largely concerns Form 26 prescribed in the Schedule to the Rules, 1961. Form 26 was, for the first time, inserted in the Schedule in 2002, was amended in August 2012 and again on 26.02.2019. Form 26 as initially inserted in 2002 is not relevant for a decision of the present petition. Form 26, as amended in 2012, required disclosure in Paragraph 4 of the financial year for which the last income-tax return had been filed by the candidate, spouse and dependents, along with their PAN numbers. It also required disclosure of the total income shown in the income-tax return for that financial year. However, Form 26, as amended on 26.02.2019, requires disclosure in paragraph 4 of Part A of the total income shown in the income-tax returns for the last five financial years. Part B, which contains an abstract of the particulars furnished in Part A, requires disclosure of the total income shown in the income-tax return for the latest financial year only. The Notes given at the end of Form 26 are reproduced below: -

> ***"Note: 1**. Affidavit should be filed latest by 3.00 PM on the last day of filing nominations.*
> ***Note: 2**. Affidavit should be sworn before an Oath Commissioner or Magistrate of the First Class or before a Notary Public.*

> ***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", as the case may be, should be mentioned.*
> ***Note: 4****. The Affidavit should be either typed or written legibly and neatly.*
> ***Note: 5****. Each page of the Affidavit should be signed by the deponent and the Affidavit should bear on each page the stamp of the Notary or Magistrate before whom the Affidavit is sworn.****"***

Note 5 was inserted in Form 26 in 2019. Notes 1 to 4 were already part of Form 26 as amended in 2012.

It is pertinent to note that the notification dated 26.02.2019, by which Form 26 was amended, was issued by the Central Government after consultation with the Election Commission, in exercise of the powers conferred by Section 169 read with Section 33 of the Representation of the People Act, 1951.

Before proceeding further, it would be appropriate to briefly examine the structure of Form 26, as it stood at the time of the disputed election in 2022, and the particulars required to be disclosed.

The heading of Form 26 describes it as an affidavit to be furnished by the candidate *along with the nomination paper* before the Returning Officer. The affidavit consists of two parts, Part A and Part B. Part A contains paragraphs 1 to 10, including the additional paragraphs inserted between them, while Part B contains paragraph 11.

Paragraph 1 requires the candidate to disclose the political party which has set him up as a candidate or whether he is contesting as an independent candidate. Paragraphs 2 and 3 seek particulars of the candidate's enrolment in the electoral roll, contact telephone number, email ID and social media accounts. Paragraph 4 requires disclosure of the Permanent Account Number (PAN), the financial year for which the last income-tax return was filed and the total income shown in the income-tax returns for the last five financial years. These particulars are required in respect of the candidate, spouse, HUF and dependents, as applicable. A candidate who has been allotted PAN must disclose it.

Where no PAN has been allotted, the entry must state “No PAN allotted”.

Paragraph 5(i) requires the candidate to declare whether any criminal case is pending against him. If any criminal case is pending, its details must be furnished in paragraph 5(ii). If no criminal case is pending, the appropriate declaration is to be made in paragraph 5(i), and “Not Applicable” is to be entered in paragraph 5(ii). Similarly, paragraph 6 requires disclosure of criminal convictions, if any. Where the candidate has not been convicted, the appropriate declaration is to be made in paragraph 6(i), with “Not Applicable” entered in paragraph 6(ii). Where there has been a conviction, its particulars must be furnished in Paragraph 6 (ii). Paragraph 6A requires a declaration concerning the information supplied by the candidate to his political party regarding pending criminal cases and convictions disclosed in paragraphs 5 and 6. Paragraph 7 seeks details of movable and immovable assets of the candidate, spouse and dependents. Paragraph 8 requires disclosure of liabilities and dues to public financial institutions and the Government. Paragraph 9 seeks particulars of profession or occupation, while paragraph 9A requires disclosure of sources of income of the candidate, spouse and dependents. Paragraph 9B concerns contracts with the appropriate Government and public companies. Paragraph 10 requires disclosure of the candidate's educational qualifications.

Part B contains an abstract of the particulars furnished in Part A. The affidavit is required to be verified by the deponent.

As already noted, the Notes appended to Form 26 require the affidavit to be filed by 3 p.m. on the last day for filing nominations. Every column must be filled, and no column is to be left blank. Where there is no information to furnish, “Nil” or “Not Applicable”, as the case may be, must be entered. Each page of the affidavit must also bear the signature of the deponent and the stamp of the Notary or Magistrate before whom it is sworn.

## Judicial Pronouncements:

Election law does not operate in isolation from the realities of the electoral process. The law concerning disclosure of information by candidates, the consequences of non-disclosure and the difference between defects which require rejection of a nomination and those which do not, has evolved through judicial decisions dealing with different situations arising in elections. It would therefore be appropriate to trace this development, beginning with the recognition of the voters' right to know in **Union of India v. Association for Democratic Reforms, (2002) 5 SCC 294.**

The Law Commission of India, in its 170th Report, recommended electoral reforms, including disclosure of candidates' criminal antecedents and assets, to ensure free and transparent elections. The Vohra Committee highlighted the growing nexus between criminals, politicians and government officials, the circulation of black money, and the influence of criminal syndicates on elections and public administration. A petition was filed before the Delhi High Court stating that despite these reports, successive governments had failed to take effective action and a direction was sought for implementing the recommendations and also for mandatory disclosure of information by the candidates. The High Court recognising the voters' right to know the background of the candidates, directed the Election Commission to secure disclosure of their criminal antecedents, assets, educational qualifications and other relevant information. The directions of the Delhi High Court were challenged before the Supreme Court in ***Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 294** (hereinafter referred as the **ADR Case**). The issue before the Supreme Court was as to whether the Election Commission was empowered to issue directions as ordered by the High Court and whether a voter had a 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?

The Supreme Court took note of the contention that elections in the country were held with the help of money power which was gathered from black sources and once elected to power, tons of black money are collected which is used for retaining power and for re-election and this vicious circle had totally polluted the basic democracy. The court observed that purity of elections was fundamental to democracy. Referring to its earlier decisions, the Supreme Court observed that Article 324 conferred plenary powers on the Election Commission to ensure free and fair elections and where the law was silent, the Commission could issue necessary directions, provided they did not conflict with any existing law. The Supreme Court recognised that the right of voters to know the antecedents of candidates, including their assets and liabilities, formed part of the fundamental right under Article 19(1)(a) of the Constitution and held that voters must have access to relevant information concerning candidates so that they can make an informed choice. Accordingly, the Supreme Court directed the Election Commission as follows:

> ***"48****. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature* ***as a necessary part of his nomination paper****, furnishing therein, information on the following aspects in relation to his/her candidature:*
>
> *(1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past — if any, whether he is punished with imprisonment or fine.*
>
> *(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.*
>
> *(3) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependants.*
>
> *(4) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.*
>
> *(5) The educational qualifications of the candidate."*

(Emphasis supplied)

The directions issued in the *ADR case* laid the foundation for the subsequent framework requiring disclosure of information through Form 26 under Rule 4-A of the Conduct of Elections Rules, 1961 (hereinafter referred to as the Rules, 1961). *The importance of this decision lies in its recognition that disclosure of information concerning candidates, including their assets and liabilities, is essential to the voters' fundamental right under Article 19(1)(a) of the Constitution. The requirement of disclosure is therefore not a mere formality. Its purpose is to enable voters to make an informed choice.*

Following the decision in the *ADR case*, Parliament enacted the Representation of the People (Third Amendment) Act, 2002, inserting Sections 33A, 33B, 75A and 125A into the Act, 1951, and amending Section 169. Section 33A required candidates to disclose specified criminal antecedents, while Section 33B sought to restrict disclosure to the information expressly required under the Act and the Rules. Significantly, Section 75A provided for disclosure of assets and liabilities by elected representatives after the election, but did not require such disclosure to the electorate before voting. The Rules, 1961 were also amended by inserting Rule 4-A and prescribing Form 26. The contents of Form 26 as originally prescribed in 2002 need not be examined in detail. It is sufficient to note that Form 26, as originally prescribed in 2002, did not require disclosure of assets, which was then governed by separate directions of the Election Commission.

Section 33B was challenged before the Supreme Court in ***People's Union for Civil Liberties v. Union of India, (2003) 4 SCC 399*** (hereinafter referred to as, “PUCL Case”). The three-Judge Bench delivered separate opinions. All three learned Judges agreed that Section 33B was unconstitutional, although their views differed on certain other issues. Justice M.B. Shah held that the decision in the *ADR case* had attained finality and reaffirmed the voters' fundamental right under Article 19(1)(a) to know the antecedents of candidates. However, the Court disapproved Direction 4 contained in the Election Commission's

order dated 28 June 2002, insofar as it authorised rejection of nominations for furnishing wrong information or suppressing material information after a summary inquiry into the correctness of such information. The Court observed that it would be difficult for the Returning Officer to effectively resolve the issue regarding wrong information in a summary inquiry at the stage of scrutiny. The relevant observations are reproduced below:

> ***"72****. Before parting with the case, there is one aspect which is to be dealt with. After the judgment in Assn. for Democratic Reforms case the Election Commission gave certain directions in implementation of the judgment by its Order No. 3/ER/2002/JS-II/Vol-III, dated 28-6-2002. In the course of arguments, learned Solicitor-General as well as learned Senior Counsel appearing for the intervener (BJP) pointed out that Direction 4 is beyond the competence of the Election Commission and moreover, it is not necessary to give effect to the judgment of this Court. The said direction reads as follows:*
>
> *"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 Penal Code, 1860 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 in the summary inquiry conducted by him at the time of 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."*
>
> ***73. While no exception can be taken to the insistence of affidavit with regard to the matters 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 enquiry 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."*

In his separate opinion, Justice P. Venkatarama Reddi held that Section 75A, which required elected candidates to declare their assets and liabilities to the Speaker or Chairman after election, did not adequately protect the voters' right to information. Having recognised the need for disclosure of assets and liabilities, Parliament ought to have required such disclosure when the nomination was filed. Its failure to do so violated Article 19(1)(a). Justice P. Venkatarama Reddi further held that the Election Commission's directions concerning disclosure of assets and liabilities would continue to operate. However, Direction 4, insofar as it permitted verification of those particulars through a summary inquiry and rejection of nominations for furnishing wrong information or suppressing material information, was not to be enforced.

Justice D.M. Dharmadhikari agreed that Section 33B was unconstitutional and that disclosure of information concerning candidates was necessary to protect the voters' right under Article 19(1)(a).

It is clarified that the opinions of the learned Judges have been referred to only to the extent that they are relevant to the present case.

*The importance of the **PUCL case** for the present petition lies in its reaffirmation of the voters' fundamental right to obtain information concerning the financial affairs of candidates.* The Court also recognised the limits of the Returning Officer's powers to inquire into the correctness of financial declarations at the stage of scrutiny. It was observed that a *dispute concerning the truth of information furnished may require a detailed inquiry and cannot be decided in a summary*

*enquiry at the time of scrutiny of the nominations.* The scope and effect of the observations in paragraph 73 of the PUCL case as reproduced above, particularly whether they prevented rejection of a nomination where prescribed particulars in Form 26 were left blank, subsequently came up for consideration before the Supreme Court in ***Resurgence India v. Election Commission of India, (2014) 14 SCC 189*** (hereinafter referred to as, *"Resurgence India").*

However in order to appreciate the observations of the Court in **Resurgence India**, it would be appropriate to first consider the judgement of the Supreme Court in **Shaligram Shrivastava v. Naresh Singh Patel, (2003) 2 SCC 176** (hereafter referred to as "Shaligram") referred and relied upon by the Court in **Resurgence India**. It be noticed that the dispute in **Shaligram** arose before the judgement in **ADR Case** and before the Representation of the People (Third Amendment) Act, 2002, inserting Sections 33A, 33B, 75A and 125A in the Act, 1951 as well as the amendments in the Rules, 1961 inserting Rule 4-A and prescribing Form 26.

The dispute in **Shaligram** related to elections held in February, 2000 and the Election Petition filed in the High Court was decided and dismissed on 9.4.2001. The Election Petition was filed challenging the rejection of nomination papers at the time of scrutiny of nomination on the ground that the candidate had failed to fill up the proforma prescribed by the Election Commission vide letter dated 28.8.1997. The proforma sought information concerning convictions that might attract disqualification under Section 8 of the Act, 1951. The candidate had filed his nomination paper in the statutory Form 2-B, declaring that he was qualified and not disqualified, and had also submitted an affidavit affirming the correctness of the information in the proforma. However, the proforma itself was left blank. The rejection was challenged on the ground that the proforma was not prescribed under the Act or Rules, but only through instructions of the Election Commission, and that non-compliance with such instructions could not justify rejection of the

nomination. The High Court rejected this contention and upheld the rejection. Before the Supreme Court, it was contended that the instructions had been issued by officers of the Election Commission rather than by the Commission itself. The Court rejected this objection, finding that the communications issued by the officers merely conveyed the Commission's instructions. The Court held that the Returning Officer's authority to seek such information concerning disqualification under Section 8 arose directly from Section 36(2) and was not dependent upon the instructions issued by the Election Commission. The information could be sought through a proforma supplied to the candidate, who was under an obligation to furnish it so that the Returning Officer could effectively discharge his statutory duty. The candidate had left the prescribed proforma blank and had also failed to appear personally or through a representative at the time of scrutiny. The Supreme Court held that the failure to furnish the necessary information prevented the Returning Officer from effectively discharging his statutory duty *and constituted a defect of substantial character* under Section 36(4). The rejection of the nomination was therefore upheld. It is this aspect in **Shaligram** concerning the failure to furnish necessary information and the substantial character of the resulting defect that was subsequently considered and applied by the Supreme Court in **Resurgence India.**

In **Resurgence India**, the Supreme Court considered whether the Returning Officer could reject a nomination paper where the affidavit filed by the candidate contained blank particulars. The petitioner organisation had found widespread instances of incomplete disclosure in affidavits filed by candidates during the 2007 Punjab Legislative Assembly elections. The Election Commission took the position that, in view of the decision in the **PUCL case**, the Returning Officer could not reject a nomination solely on account of false, incomplete or blank particulars in the affidavit. The Union of India contended that filing an affidavit with blank particulars should be treated in the same manner as furnishing false information, attracting prosecution under Section 125-A

of the Act, 1951, rather than rejection of the nomination. The Supreme Court examined Sections 33-A, 36 and 125-A of the Act 1951 and considered the legal consequences of filing an affidavit in Form 26 with blank particulars.

The Supreme Court after referring to ***Shaligram***, explained the significance of furnishing the information required in an affidavit. The Court observed in paragraph 18 of the reports that "it was 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* evaluated the purpose behind filing the proforma for advancing latitude to the Returning Officers to reject the nomination papers." Thereafter, referring to the **ADR case**, the Supreme Court reaffirmed that the right to obtain full particulars concerning a candidate is an integral part of the right to know under Article 19(1)(a) of the Constitution. The Court observed that the ultimate purpose of filing an affidavit with the nomination paper was to give effect to that fundamental right and that an affidavit filed with blank particulars would be rendered nugatory. It was held that the Returning Officer can very well compel a candidate to furnish information relevant on the date of scrutiny and *it was the duty of the Returning officer to check that whatever the information required was fully furnished at the time of filing of affidavit with the nomination paper* and if a candidate failed to fill the blanks even after the reminder by the Returning Officer, the nomination is fit to be rejected (Reference may be made to Paragraph nos. 22 and 23 of the reports). The court rejected the contention of the Union of India that the candidate who had filed an affidavit with false information should be treated in the same manner as the candidate who had filed an affidavit with particulars left blank, holding that it would result in breach of fundamental right guaranteed under Article 19(1)(a)

of the Constitution. It was held that if the Election Commission accepted the nomination papers in spite of blank particulars in the affidavits, it would directly violate the fundamental right of the citizen to know the criminal antecedents, assets and liabilities and educational qualification of the candidate and would undermine the decision in the *ADR Case*. *Further, subsequent prosecution of the candidate under Section 125-A(i) would not remedy the violation of the citizens' fundamental right under Article 19(1)(a) of the Constitution* (see paragraphs 26–28 of the judgment). The court further clarified that observations of the Court in Paragraph no. 73 of the **PUCL Case** (reproduced above) did not contemplate a situation where it bars the Returning Officer to reject the nomination paper on account of filing affidavit with particulars left blank and clarified that the directions in Paragraph no. 73 of the **PUCL Case** would not come in the way of the Returning Officer to reject the nomination paper if the said affidavit was filed with blank columns. It was observed that the restriction recognised in **PUCL Case** concerned rejection of nominations on allegations of false information or concealment of material particulars, which could require examination of disputed evidence through a summary inquiry. Such allegations might not be capable of proper determination at the stage of scrutiny. The Supreme Court summarised its conclusions in paragraph 29 of the judgment as follows::

> ***"****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 recognised. 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.***

> *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 penalised for the same act by prosecuting him/her."*

(Emphasis supplied)

The importance of **Resurgence India** for the present case lies in its recognition that *the affidavit in Form 26 is intended to give effect to the voters' fundamental right under Article 19(1)(a) of the Constitution and that the affidavit with blank particulars was different from an affidavit containing false information*. Acceptance of a nomination despite blank particulars in the affidavit would itself violate the voters' fundamental right under Article 19(1)(a). The difference between an affidavit containing information whose correctness is disputed and an affidavit with blank pariculars was subsequently considered in **Kisan Shankar Kathore v. Arun Dattatray Sawant, (2014) 14 SCC 162** hereinafter referred to as "Kathore").

In **Kathore** the election of the returned candidate was challenged under Sections 100(1)(d)(i) and (iv) of the Representation of the People Act, 1951, on the ground that he had failed to disclose electricity dues, property, bungalow and a vehicle owned by his wife, and his interest in a partnership firm. After examining the evidence, the High Court held that the nomination had been improperly accepted and set aside the election. It further held that, where the nomination of the returned candidate was

improperly accepted because of an invalid or incomplete affidavit forming part of the nomination, separate proof that the election result was materially affected was unnecessary. Dismissing the appeal, the Supreme Court considered whether there was substantial compliance in disclosing the requisite information in the affidavits and whether the omissions materially affected the election result. It held that the non-disclosure of electricity and municipal dues was not a substantial lapse having regard to genuine disputes concerning liability and the candidate's *bona fide* belief. *However, the Court held that failure to disclose the bungalow and vehicle owned by the candidate's wife and his interest in the partnership firm constituted substantial omissions. The candidate did not dispute his wife's ownership of the bungalow and vehicle, but claimed that their values had already been included in the assets disclosed under the column "Self"*. As regards the partnership firm, the elected candidate claimed to have retired from it, which explanation was found wrong and it was found that the candidate was a partner in the firm on the date of nomination. The Supreme Court rejected the explanations as afterthoughts, and declined to treat the affidavits as substantial compliance. Referring to *ADR case*, *PUCL case* and the Election Commission's directions, the Supreme Court held that the voters' fundamental right under Article 19(1)(a) imposes a *solemn obligation upon candidates to disclose their criminal antecedents, educational qualifications and assets, including those of their spouses and dependent children.* Failure to furnish the required asset particulars in the prescribed affidavit amounted to non-disclosure or suppression of information.

What is relevant for the present case is that before the Supreme Court in **Kathore**, it was argued on behalf of the returned candidate that the Returning Officer could reject a nomination only on the grounds specified in Section 36(2). It was further contended that, in view of the *PUCL case,* the Returning Officer could not undertake a summary inquiry into the correctness of information furnished in the affidavit and that this restriction had also been recognised in *Resurgence India*. The

Supreme Court rejected the contention that these limitations prevented an election court from examining whether the nomination had been improperly accepted. It held that allegations concerning the correctness or completeness of information may require evidence which cannot be examined during summary scrutiny. In such cases, the question whether the nomination was improperly accepted may be determined subsequently in an election petition. Where suppression or misinformation is proved and the defect warranted rejection, the question of rejection is, in effect, deferred until that determination. If the nomination is found to have been improperly accepted, the election can be declared void. By contrast, *an affidavit containing blank particulars can be dealt with at the scrutiny stage itself*. The Court also observed that permitting prosecution under Section 125-A while denying any challenge to an election secured through material suppression would produce an unacceptable result. The relevant observations of the Supreme Court in paragraph 43 are reproduced below:

> ***"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 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."*

**Kathore** clarified the difference between an affidavit containing information whose correctness was disputed and an affidavit in which prescribed particulars were left blank. While the latter defect can be dealt with by the Returning Officer at the stage of scrutiny, cases in which the correctness of disclosures was disputed and detailed evidence was required can be examined subsequently in an election petition.

The importance of disclosure of financial information concerning electoral candidates and its relationship with the voters' fundamental right under Article 19(1)(a) of the Constitution was again examined by the Supreme Court in **Lok Prahari v. Union of India, (2018) 4 SCC 699 (**hereinafter referred to as "Lok Prahari").

In **Lok Prahari,** the Supreme Court expressed serious concern over the growing influence of money in elections, the disproportionate accumulation of wealth by legislators and their associates, ie, the spouse and dependants of the legislators, and the possible misuse of public office for private financial gain. It warned that unchecked accumulation of wealth through unexplained or questionable sources could undermine the rule of law and democratic institutions and pave the way for the rule of mafia. The Court emphasized the need to examine increases in the assets of legislators and their associates in relation to their known sources of income and that they do not take undue advantage of their privileges and status to accumulate wealth and assets through questionable means. The relevant extracts from the observations of the Supreme Court in paragraph nos. 34, 35, 36, 38 and 39 of the reports are reproduced below:

> ***"34**. Undue accretion of assets of legislators and their associates is certainly a matter which should alarm the citizens and voters of any truly democratic society. Such phenomenon is a sure indicator of the beginning of a failing democracy.* ***If left unattended it would inevitably lead to the destruction of democracy and pave the way for the rule of mafia****. …..… This Court in ADR case took note of the fact that in certain democratic countries, laws exist compelling legislators, officers and employees of the State to periodically make financial disclosure statements. But this Court did not issue any further direction in that regard. Hence the present writ petition.*
>
> ***35**. Undue accumulation of wealth in the hands of any individual would not be conducive to the general welfare of the society. It is the political belief underlying the declaration of the Preamble of the Constitution that India should be a Socialistic Republic. Articles 38 and 39 of our Constitution declare that the State shall direct its policy towards securing that the ownership and control of material resources of the community are distributed so as to best subserve the common good and guaranteeing that the economic system does not result in the concentration of wealth and means of production to the common detriment. In our opinion, such declarations take within their sweep the requirement of taking appropriate measures to ensure that legislators and the associates do not take undue advantage of their constitutional status afforded by the membership of the legislature enabling the legislator to have access to the power of the State.* ***Accumulation of wealth in the hands of elected representatives of the people without any known or by questionable sources of income paves way for the rule of mafia substituting the rule of law.*** *….…..…*
>
> ***36**. If assets of a legislator or his/her associates increase without bearing any relationship to their known sources of income, the only logical inference that can be drawn is that there is some abuse of the legislator's Constitutional Office. Something which should be fundamentally unacceptable in any civilised society and antithetical to a constitutional government. It is a phenomenon inconsistent with the principle of the Rule of Law and a universally accepted Code of Conduct expected of the holder of a public office in a constitutional democracy. ……..*
>
> ***38**.* ***Abnormal growth of assets of a legislator or his associates need not always be a consequence of such illegal activity. It could be the result of activities which are improper i.e. activities which may or may not constitute offences either under the PC Act or any other law but are inconsistent with the basic constitutional obligations flowing from the nature of the office of a legislator.*** *They are deputed by the people to get grievances redressed. But they become the grievance.*
>
> ***39**. Abnormal increase in the personal assets of the legislators and their associates is required to be examined in juxtaposition to the abovementioned activities. Further, it is also necessary to examine whether such benefits were received by taking undue advantage of the office of the legislator."*

The Supreme Court further held that information concerning the sources of income of candidates and their associates enables voters to

make an informed electoral choice and forms part of their fundamental right under Article 19(1)(a) of the Constitution. The Court also held that financial disclosure requirements could be prescribed through rules framed under the Act, 1951, and that the information already required under Section 33-A and Form 26 was not exhaustive. Accordingly, it directed amendment of Rule 4-A and Form 26 to require disclosure of sources of income. The relevant extracts from the observations of the Supreme Court in paragraph nos. 55, 58, 60, 67 and 68 of the reports is reproduced below:

> ***"Information to the voter***
>
> ***55. The information regarding the sources of income of the candidates and their associates, would in our opinion, certainly help the voter to make an informed choice of the candidate to represent the constituency in the legislature. It is, therefore, a part of the fundamental right under Article 19(1)(a) as explained by this Court in ADR case.***
>
> ***58****. The obligation to make the second of the abovementioned two declarations arises as a corollary to the fundamental right of the voter under Article 19(1)(a) to know the relevant information with respect to the candidate, to enable the voter to make an assessment and make an appropriate choice of his representative in the legislature. The enforcement of such a fundamental right needs no statutory sanction. …..…..… Voters have a fundamental right to know the relevant information about the candidates. For reasons discussed earlier, the financial background in all its aspects, of the candidate and his/her associates is relevant and critical information. Therefore, a candidate's constitutional right to contest an election to the legislature should be subservient to the voter's fundamental right to know the relevant information regarding the candidate; information which is critical to the making of an informed and rational choice in this area.*
>
> ***60****. If we analyse the scheme of the Constitution, rights falling under the fundamental rights chapter cannot be abrogated or taken away except by authority of law. Law in the context has always been held by this Court to require statutory basis. …..… Logically there cannot be any objection for imposing the legal burden upon the candidates to disclose the relevant information by rules (subordinate legislation) under the 1951 RP Act. Form 26 provides for various kinds of information to be disclosed by the candidate.* ***It cannot be said that the existing information required to be disclosed under the affidavit is exhaustive of all the information a candidate needs to provide. Neither is the information provided under Section 33-A an exhaustive list.*** *This is because any embargo placed on the voters' right to*

*know the relevant information to be disclosed by the candidate is subject to scrutiny under the fundamental right of the voter under Article 19(1)(a). T**herefore, any limitation on information to voter cannot be inferred. We are of the opinion that Form 26 is only indicative of the information which is required to enable the voter to make an informed choice.** And we see no legal bar in Section 169(2) to fetter the Central Government's rule-making power from making such information available.*

***67**. Respondents 1 and 2 are constitutionally obliged to implement the directions given by this Court in exercise of its jurisdiction under the Constitution. It may also be noticed that Section 169(1) of the 1951 RP Act obligates the Government of India to make Rules after consulting the Election Commission. I**n the light of the conclusions recorded in paras 50 to 53, we are also of the opinion the information regarding the sources of income of the legislators and their associates and candidates is relevant and legislators and candidates could be compelled even by subordinate legislation. We see no reason for declining Prayer 1(1).***

***68**. In the light of the law declared by this Court in ADR case and PUCL case, we do not see any legal or normative impediment nor has any tenable legal objection been raised before us by any one of the respondents, for issuance of the direction relating to the changes in Form 26 (declaration by the candidates). On the other hand, the 2nd respondent in his counter stated:*

*"**7**.It is submitted that so far as the first prayer in the captioned writ petition is concerned, the information about source(s) of income of candidates, their spouses and dependants will be a step in the direction of enhancing transparency and should form part of the declaration in Col. (9) of Form 26. The Answering Respondent Commission vide its Letter No. 3/4/ECI/LET/FUNC/JUD/SDR/Vol.I/2016 dated 7-9-2016 has already requested the Ministry of Law and Justice to consider the proposed amendments made in Column (3) and Column (9) of Form 26 and in total affirmation with the prayer made by the petitioner.**"***

***Therefore, we are of the opinion that Prayer 1(1) should be granted and is accordingly granted. We direct that Rule 4-A of the Rules and Form 26 appended to the Rules shall be suitably amended, requiring candidates and their associates to declare their sources of income."***

After the aforesaid judgement in **Lok Prahari**, Form 26 was amended through notifications dated 10.10.2018 and 26.2.2019. Through notification dated 10.10.2018, Paragraph 9A was amended and in its

present form requires details of sources of income of Self, Spouse and of depedents. The notification dated 26.2.2019 amended column 5 of Paragraph 4 of Form 26 which in the present form requires disclosures of ‘Total income shown in income tax returns for the last five Financial years (as on the 31st March)’.

The nature and significance of omissions concerning financial particulars in Form 26, and their effect upon the validity of a nomination under Section 36(4) of the Act, 1951, were further examined by the Supreme Court in ***Karikho Kri v. Nuney Tayang, (2024) 15 SCC 112*** (hereinafter referred to as, “Karikho Kri”).

In **Karikho Kri**, the Supreme Court examined whether the election of the returned candidate had been rightly declared void on account of improper acceptance of his nomination. The alleged omissions concerned three vehicles registered in the names of the wife and dependent son of the returned candidate, his earlier occupation of government accommodation between 2009-2014 and failure to submit the prescribed no-dues certificate in relation to said accommodation, and municipal and property tax liabilities disclosed in one part of Form 26 but omitted from another. The last ground was not pressed by the election petitioner in the Supreme Court.

The Supreme Court found that the three vehicles had been sold or gifted long before the filing of the nomination. The court held that merely because the vehicles continued to be registered in the names of the candidate's wife and son under the Motor Vehicles Act, 1988, they could not be treated as owned by them for purposes other than those covered by the Act, 1988. The court held that the vehicles were not owned or possessed *in praesenti* by the dependants of the candidate at the time of filing of nomination. The Court distinguished **Kathore** where the undisclosed vehicle was actually owned and possessed by the candidate's wife. The Court also noted that the value of the three vehicles was insignificant when compared with the movable assets disclosed by the candidate. It accordingly held that their non-disclosure did not

constitute undue influence under Section 123(2) of the Act, 1951. Regarding government accommodation, the Supreme Court found that there were no outstanding dues and that the relevant certificates had been furnished after an objection was raised before the Returning Officer. The omission was therefore not a defect of substantial character. The Court also held that failure of the elected candidate to disclose that he had been in occupation of government accommodation during the years 2009-2014 could not be treated as a defect of substantial character so as to taint his nomination and render its acceptance improper. It is significant to note that the elections in issue in the present case were held in 2019. Similarly, municipal and property tax liabilities had been disclosed in one part of Form 26, although omitted from another. The Court held that this could not be treated as non-disclosure.

In **Karikho**, the Supreme Court held that every defect or omission in a nomination paper does not necessarily constitute a defect of substantial character under Section 36(4). The question had to be determined according to the facts and circumstances of each case and *that every departure from the prescribed format did not justify rejection*.

On the question of material effect, the Supreme Court reaffirmed that where the nomination improperly accepted is that of the returned candidate himself, the result of the election is necessarily materially affected. No separate pleading or proof of such effect is required, because rejection of the nomination would have prevented the returned candidate from contesting and being elected. The Court also recognised that acceptance by the Returning Officer does not prevent the election court from examining whether that acceptance was improper.

It is significant to note that in **Karikho** the issue was not regarding blank particulars but regarding the correctness of the disclosures by the elected candidate.

The question whether non-disclosure of income particulars for four out of five financial years in Form 26 constitutes a defect of

substantial character under Section 36(4) of the Act, 1951, arose directly before the Supreme Court in ***Ajmera Shyam v. Kova Laxmi, (2026) 3 SCC 373*** (hereinafter referred to as, “Ajmera Shyam”), upon which the respondent no. 1 has placed strong reliance.

In **Ajmera Shyam,** the Supreme Court considered whether the entry “Nil” against the income particulars for four out of five financial years in Form 26, despite the receipt of honorarium during that period, constituted a defect of substantial character and rendered the acceptance of the nomination improper under Section 100(1)(d)(i) of the Act. The Court also considered allegations of corrupt practice under Section 100(1)(b) and non-compliance under Section 100(1)(d)(iv). For the purposes of the present case, it is sufficient to refer mainly to the Court's observations concerning defects of substantial character in Form 26 and improper acceptance of a nomination.

The returned candidate in **Ajmera Shyam** had been a Member of the Legislative Assembly from 2014 to 2018. From 2 May 2019, she served as Chairperson of the Zilla Parishad and received an honorarium of ₹1,00,000 per month. The election in question was held in 2023. Form 26 required disclosure of income as per income-tax returns for the five financial years from 2018–2019 to 2022–2023. The returned candidate disclosed income of ₹11,50,000 for the last financial year, 2022–2023, but entered “Nil” against the income particulars for the preceding four financial years. The election petitioner alleged that she had failed to disclose the honorarium received as Chairperson of the Zilla Parishad and pension from her earlier tenure as an MLA.

The Supreme Court recognised that the voters' right to information concerning candidates forms part of their fundamental right under Article 19(1)(a) of the Constitution. The Supreme Court traced the development of disclosure requirements through earlier judicial decisions and the statutory provisions. It distinguished the disclosure of criminal antecedents, which is connected with disqualification under Sections 8 and 9 of the Act 1951, from disclosure of assets and

educational qualifications required under Rule 4-A and Form 26. The Court observed that disclosure of criminal antecedents required stricter scrutiny, whereas omissions concerning assets and other financial particulars had to be examined to determine whether they were of substantial character. The Court distinguished between scrutiny of nominations by the Returning Officer before the election and judicial examination of their validity after the election. At the latter stage, the voters have already expressed their mandate. The Court emphasized that the voters' right to information must be considered along with the need to respect that mandate. An election should not be invalidated for minor or technical defects which are not of substantial character. On examining Form 26, the Supreme Court found that the returned candidate had not furnished the required income particulars for four financial years and had instead entered “Nil” in the relevant columns. The affidavit was therefore defective and did not fully comply with Rule 4-A. However, referring to Section 36(4) and *Karikho Kri*, the Court held that every defect does not justify rejection of a nomination. Whether a defect is of substantial character must be determined from the facts of the particular case. In paragraph 79 of the report, the Supreme Court observed:

> “79. Further, whether the non-disclosure of assets is of a substantial character or not, must be determined by the court *based on the specific facts of each case, …..*”

(Emphasis supplied)

The Supreme Court then examined the disclosures made by the returned candidate. She had disclosed her movable and immovable assets, liabilities, profession, occupation and sources of income. *The allegation that she had concealed pension from her earlier tenure as an MLA was not established. A certificate confirming that she was not drawing pension had been produced*. *The Court also found that the returned candidate had disclosed in paragraph 9 of Form 26 her position as Chairperson of the Zilla Parishad and the honorarium received from that position as a source of income.* Merely because the amount of honorarium had not been separately stated, the Court held that

it did not amount to concealment of that source of income. The Supreme Court then considered whether failure to furnish income particulars as per income-tax returns for four financial years was a defect of substantial character. The returned candidate had otherwise disclosed her assets and sources of income, and there was no substantial dispute concerning those disclosures. Income particulars for the last financial year had also been furnished. The election petitioner had not established any substantial variation in assets or income during the remaining years, disproportionately higher income, or accumulation of wealth inconsistent with the disclosed sources of income. It was on these facts that the Court treated the defect as technical rather than concealment of assets. In paragraph 93 of the report, the Supreme Court observed:

> "*93. Filing of an income tax return is intrinsically related to and based on a person's assets and sources of income. An income tax return cannot be considered in isolation or independently of the person's assets. It merely provides a reference framework for the assets and sources of income from the perspective of Income Tax Authorities for the purpose of levying income tax. The income tax return in essence reflects a person's financial position, viz-à-viz the assets and sources of income. An income tax statement is a declaration in fiscal terms for assessment by the income tax authority, intended for taxation on the assets and income received by a person. It is not to be considered as a statement of fact of the existence of assets or source of income.* ***As long as the assets, income, and sources of income are otherwise disclosed, and if there is no dispute of the same, non-disclosure of the tax return for certain financial years, although a technical defect under the rules, in our opinion cannot be considered to be a defect of significant importance as it does not in any manner amount to hiding the assets.*** *What has not been disclosed in the form of income tax returns is certain information relating to assets and not 'of assets', as there was full disclosure of her assets and source of income.*"
>
> (Emphasis supplied)

However, in paragraph 97 of the judgment, the Supreme Court specifically noted that the returned candidate had not left the relevant columns blank but had entered "Nil". Referring to *Resurgence India*, the Court observed that leaving the relevant columns blank would have rendered the nomination paper fatally defective. The relevant observations in paragraph 97 are reproduced below:

> *"97. It is also noted that* ***Respondent 1 had not left the relevant column in the affidavit blank, which would have made the nomination paper fatally defective and liable to be rejected,*** *as per the judgment in Resurgence India."*

(Emphasis supplied)

The Supreme Court also considered the absence of an objection during scrutiny of the nomination. It recognised that failure to raise an objection before the Returning Officer did not prevent a subsequent challenge in an election petition. However, in the circumstances of that case, the Court considered the absence of an objection *relevant to examining* the *bona fides* of the election petitioner. The Supreme Court further held that non-disclosure concerning assets could not justify invalidation of an election unless the defect was of substantial character. On the facts before it, the Court held that entering 'Nil' in the column relating to income particulars for four financial years was not a defect of substantial character and did not render the acceptance of the nomination improper.

The importance of **Ajmera Shyam** for the present case lies in the difference expressly recognised by the Supreme Court between entering "Nil" in a prescribed column and leaving that column blank. The Court specifically observed that leaving the relevant columns blank would have rendered the nomination paper fatally defective**.** The observations of the Supreme Court concerning substantial compliance and the significance of disclosures of assets and sources of income must therefore be read in the context of the facts considered by the Court where the issue was regarding the correctness of the disclosure made by the elected candidate.

The election petitioner has also relied upon ***Poonam v. Dule Singh, (2026) 3 SCC 732*** (hereafter referred to as, "Poonam"). The case concerned non-disclosure of a criminal conviction by the returned candidate in an election to a Municipal Council. The Supreme Court held that the suppression of the conviction rendered the acceptance of her nomination improper. It further held that where the nomination of the

returned candidate was improperly accepted, the election result was necessarily materially affected and no separate proof of such effect was required. The decision concerns disclosure of criminal antecedents, which stands on a different footing from disclosure of financial particulars, as explained in **Ajmera Shyam**.

Another decision relied upon by the respondent no. 1 is ***Shambhu Prasad Sharma v. Charandas Mahant, (2012) 11 SCC 390*** (hereafter referred to as, "Shambhu Prasad Sharma"). The election was challenged on the ground that the affidavits filed by the candidates did not disclose their liabilities towards financial institutions and the Government in the prescribed format. The Supreme Court found that the affidavits contained declarations showing the outstanding dues as "Nil". There was no allegation that any liability had actually been concealed. The Court held that the defect concerned the form of disclosure rather than its substance. In paragraph 18 of the report, the Supreme Court observed:

> ***"18****. From the above it is evident that the form of the nomination papers is not considered sacrosanct. What is to be seen is whether there is a substantial compliance with the requirement as to form. Every departure from the prescribed format cannot, therefore, be made a ground for rejection of the nomination paper."*

(Emphasis supplied)

The Court held that the defect was not of substantial character under Section 36(4) of the Act. The principle laid down in **Shambhu Prasad Sharma** is also reflected in the later decision in **Ajmera Shyam**, where the Supreme Court considered the disclosures otherwise made by the candidate while determining whether the defect was of substantial character. In **Shambhu Prasad Sharma**, the information concerning liabilities had been furnished, though not in the prescribed format.

Having considered the statutory provisions and the decisions of the Supreme Court, I now proceed to examine the objections concerning the affidavits in Form 26 filed by the respective respondents. But before examining the alleged defects in Form 26, it would be appropriate to

consider two other major contentions raised on behalf of respondent No. 1. The first contention is that an affidavit in Form 26 does not form part of the nomination paper and that a defect in such an affidavit is not a ground for rejection of the nomination under Section 36(2) of the Act 1951. The other contention is that the petitioner had not raised any objection to the nomination papers of the respondents, including respondent No. 1, at the time of scrutiny, therefore, the petitioner cannot subsequently challenge the acceptance of their nominations in an election petition on the ground of non-disclosure of information sought in Form 26. Another contention raised on behalf of respondent No. 1 concerns the legal effect of the checklist issued by the Returning Officer, showing his nomination paper to be complete and in order. This contention will be considered while examining the alleged omission by the respondent no. 1 to disclose his total income for four financial years preceding the last financial year in Paragraph 4 of Form 26. The question also involves proof of the issuance and contents of the checklist and relates specifically to respondent No. 1. The first two contentions, however, concern the legal consequences of defects in Form 26 and the failure to raise objections during scrutiny. They are common to the nominations under challenge and are therefore considered first.

**Whether Form 26 forms part of the nomination paper under the Act, 1951, and whether defects in Form 26 can justify rejection of a nomination paper**

It was argued by the counsel for respondent No. 1 that the right to contest an election is a statutory right and that an election petition must be decided in accordance with the statutory provisions. Therefore, judicial directions which have not been incorporated into the statute cannot be relied upon while deciding an election petition. It was further argued that a nomination paper can be rejected at the stage of scrutiny only on the grounds specified in Section 36(2) of the Act, 1951. Under Section 36(4), a nomination paper cannot be rejected for a defect which is not of substantial character. According to the counsel for respondent no. 1, a reading of Sections 33, 33A and 35 of Act 1951 and also a

reading of Rules 4 and 4A of the Rules 1961 show that the affidavit in Form 26 does not form part of the nomination paper. It was argued that Section 33 provides that the nomination paper must be filed in 'prescribed form' which on a reading of Rule 4 would show that, in the present case for election to Legislative Assembly, was Form 2B. The nomination paper is required to be presented between 11 a.m. and 3 p.m. within the prescribed nomination period. Section 33 (6) permits filing of a maximum of four nomination forms. It is submitted that, on the other hand only one affidavit has to be filed and either the Act 1951 or the Rules 1961 or the Instructions neither stipulate nor permit filing of multiple affidavits in Form 26. It was submitted that the affidavit in Form 26 is filed under Section 33A read with Rule 4A. The candidate, in accordance with Item 5.11.1(v) has the liberty to file a fresh revised affidavit complete in all respects by the time fixed for commencement of scrutiny of nomination form if the initial affidavit was incomplete and was so pointed out by the Returning Officer in the check list issued during the preliminary examination of nomination form. It was submitted that in light of these instructions, the affidavit in Form 26 may be filed beyond 3 p.m. of the last date of nomination. It was submitted that the aforesaid provisions show that the nomination paper, which is in Form 2B and the affidavit in Form 26 are different documents and Form 26 is not a part of nomination paper. Therefore, a defect in Form 26 cannot furnish a ground for rejection of the nomination paper. It was also submitted that the defects alleged by the petitioner mainly concern matters which do not fall within the grounds specified in Section 36(2). Consequently, the nomination papers of the respondents could not have been rejected at the stage of scrutiny on account of those defects.

For reasons to be stated presently, I am unable to accept these submissions.

The Rules, 1961, were framed by the Central Government after consultation with the Election Commission of India, in exercise of the powers conferred by Section 169 of the Act, 1951. Although the Rules

constitute subordinate legislation, they have statutory force and are binding so long as they remain consistent with the parent Act. Form 26 is contained in the Schedule appended to the Rules, 1961. It was first introduced in 2002 following the insertion of Rule 4-A. It was subsequently amended by notification dated 26 February 2019, giving it its present form. This notification was issued by the Central Government, after consultation with the Election Commission of India, in exercise of the powers conferred by Section 169 read with Section 33 of the Act, 1951. In *Aphali Pharmaceuticals Ltd. v. State of Maharashtra*, (1989) 4 SCC 378, the Supreme Court held that a Schedule forms part of the statute and must be read together with its provisions. Thus, even though Form 26 was incorporated into the Rules, 1961, as a consequence of judicial intervention and directions, it has statutory force and is not merely a form prescribed by administrative instructions of the Election Commission.

Form 26, being part of the Schedule to the Rules, 1961, must therefore be read together with Rule 4-A and the other relevant statutory provisions. Note 1 appended to Form 26 expressly provides that the affidavit should be filed latest by 3 p.m. on the last date for filing nominations. Paragraph 5.11.1(v) of the Handbook for Returning Officers provides that where defects in an affidavit are indicated in the checklist, the candidate has an opportunity to file a fresh affidavit, complete in all respects, by the time fixed for commencement of scrutiny. This instruction must be read together with Rule 4-A and Note 1 appended to Form 26. It does not permit the filing of a fresh or revised affidavit after the time fixed for commencement of scrutiny. The fact that an opportunity is given to rectify defects in Form 26 until the commencement of scrutiny does not establish that the affidavit has no bearing on the validity of the nomination paper. The different provisions governing the filing of Form 2B and Form 26 do not, by themselves, establish that a nomination paper cannot be rejected under Section 36 (4) on account of a defect of substantial character in Form 26. The instructions contained in the Handbook must be read consistently with

the statutory Rules and the prescribed Form 26. They cannot override or dispense with the requirements of those Rules.

At this stage it would be appropriate to examine the different statutory provisions relating to Form 26 and the nomination paper in Form 2B. Section 33A (2) and Rule 4A provide that the affidavit in Form 26 shall be delivered to the returning officer at the time of delivering to the returning officer the nomination form under Section 33(1). The heading of Form 26 also clarifies that it is an affidavit filed by the candidate along with the nomination paper before the returning officer. The notification dated 26.2.2019 also specifies that it was being issued in exercise of powers under Section 169 read with Section 33 of the Act 1951. Section 169 (2) (a) of the Act empowers the Central Government to make rules, after consultation with the Election Commission, providing the form of affidavit under Section 33A(2). The statutory provisions themselves require Form 26 to accompany the nomination paper presented under Section 33(1) of the Act, 1951. The affidavit is therefore an integral part of the statutory process of filing and scrutiny of nominations. The fact that the Act, 1951, permits a candidate to file more than one nomination paper, whereas only one affidavit in Form 26 is required, does not by itself, substantiate the claim that defects in the affidavit are irrelevant while considering whether the nomination is liable to be rejected.

The issue is not whether, on a plain reading of the statute, Form 2B and Form 26 are separate documents. They obviously are. The issue is whether a defect in Form 26, which is of a substantial character, would invite rejection of nomination under Section 36 (2)?

This question was answered by the Supreme Court in *Kathore* where it was argued that the acceptance of nomination was as per Section 33 of the Act, which contains the requirement for a valid nomination. It was argued that Section 36(2) deals with the rejection of nomination on grounds specified therein and at the time of scrutiny of the nomination under Section 36, nomination could be rejected only if

any of the grounds stipulated in sub-section (2) are satisfied and there cannot be any “deemed” ground, which was not covered by Section 36(2) of the Act. The Court rejected the argument and held that a nomination can be rejected under Section 36(2) on the ground of a defect of substantial character in Form 26. The Court distinguished between the grounds stated in Section 36(2) and other grounds requiring a detailed inquiry. It held that the grounds stated in Section 36(2) were those which could be examined there and then, on the basis of which the Returning Officer would be in a position to reject the nomination paper. *The Court further held that a nomination could be rejected there and then, i.e., under Section 36 (2), also in cases where blanks were left in an affidavit.* In other cases, i.e., in cases where a detailed inquiry was necessary, it would depend upon the outcome of the inquiry in an election petition whether the nomination paper had been properly or improperly accepted.

The contention that Form 26 and the nomination paper in Form 2B are separate documents and, therefore, Form 26 cannot be considered as part of the nomination paper is also not supported by the judgments of the Supreme Court referred to earlier. In the *ADR case*, the Supreme Court, while issuing directions to the Election Commission, directed it to call for information on affidavit from each candidate *as a necessary part of his nomination paper,* furnishing therein information on the matters specified in paragraph 48 of the judgment. In the *PUCL case*, the Supreme Court held that the judgment in the *ADR case* had attained finality.

In *Shaligram*, the rejection of a nomination on the ground that the candidate had left blank a proforma which was not a part of nomination paper was upheld on the ground that the failure to furnish the necessary information prevented the Returning Officer from effectively discharging his statutory duty and constituted a defect of substantial character under Section 36(4). In *Resurgence India* also, the Supreme Court affirmed the power of Returning Officer to reject a nomination where the failure to furnish the information required in the affidavit

constitutes a defect of substantial character. Under the present statutory scheme, the information is required to be furnished in Form 26, which has statutory force. The relevance of Form 26 in determining whether a nomination paper is liable to rejection under Section 36 cannot therefore be denied merely because Form 26 and Form 2B are separately prescribed documents. Both form part of the statutory process of filing and scrutiny of nominations.

At this stage, it would be appropriate to remind ourselves that Section 33A was inserted in the Act, 1951, and Rule 4-A and Form 26 were introduced in the Rules, 1961, following the judicial intervention in the *ADR case*. The statutory framework concerning disclosure of information by candidates subsequently developed through legislative amendments and the decisions of the Supreme Court in *PUCL*, *Resurgence India* and *Lok Prahari*. These developments were founded on the recognition of the voter's fundamental right to know under Article 19(1)(a) of the Constitution. As held in *Resurgence India*, the requirement of filing an affidavit along with the nomination paper was intended to give effect to the fundamental right of the voter to know the relevant information concerning the candidate (paragraph 22 of the judgment). The requirement to furnish an affidavit in Form 26 is therefore not an empty formality. If the contention of respondent No. 1 that Form 26 cannot be considered at the time of scrutiny and that defects in Form 26 cannot furnish a ground for rejection of the nomination paper is accepted, it would defeat the very purpose of introducing Form 26 in the Schedule to the Rules, 1961. The statutory requirement and the directions of the Supreme Court concerning scrutiny of such affidavits cannot be rendered ineffective merely because Form 26 is prescribed separately from the nomination paper in Form 2B.

I therefore find no merit in the contention that defects in Form 26 cannot furnish a ground for rejection of a nomination paper merely because Form 26 and Form 2B are separately prescribed documents. A defect in Form 26, if it is of substantial character within the meaning of

Section 36(4) of the Act, would invite rejection of the nomination paper under Section 36 (2). The fact that Form 26 is separate from the nomination paper, and that only one affidavit is required even when several nomination papers are filed, does not establish that defects in the affidavit fall outside the scope of Section 36(2). Interpreting Section 36 (2) and Section 36 (4) in the manner argued on behalf of the respondent would deprive the statutory disclosure requirements of their intended effect and defeat the very purpose for which they were introduced- to effectuate the right to know of the voter under Article 19 (1) (a). The contention raised on behalf of respondent No. 1 is rejected.

The next contention raised on behalf of respondent No. 1 is that the petitioner did not raise any objection to the nomination papers at the time of scrutiny and, therefore, cannot subsequently challenge their acceptance in an election petition on the ground of defects in Form 26.

**Whether the failure of the petitioner to raise objections at the time of scrutiny prevents him from challenging the acceptance of the nomination papers of the respective respondents in an election petition**

The contention raised on behalf of respondent No. 1 on the aforesaid issue is based on the observations of the Supreme Court in paragraphs 102 to 105 of its judgment in *Ajmera Shyam*. In the aforesaid paragraphs, the Supreme Court observed that the failure of the election petitioner to raise any objection at the time of scrutiny raised a question mark on the *bona fides* of the election petitioner, which would prompt the Court to minutely examine his claim (see paragraph 104 of the judgment).

Before considering the applicability of these observations to the present case, it would be appropriate to remind ourselves that it is the contention of respondent No. 1 himself that the right to contest an election and the right to challenge an election are governed by statute. There can be no dispute about this proposition. An election petition is not a claim founded on equity. The right to challenge an election is not a

common law right but a statutory right, governed by the provisions of the Act, 1951.

Section 83 of the Act, 1951, provides that an election petition shall contain a concise statement of the material facts on which the petitioner relies, shall set forth full particulars of any corrupt practice alleged by the petitioner, including the names of the parties alleged to have committed such corrupt practice and the date and place of its commission, and shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (hereafter referred to as the CPC) for the verification of pleadings. A reading of Sections 81, 83 and 100 of the Act does not show that the *bona fides* of an election petitioner constitute a statutory requirement for challenging the improper acceptance of a nomination paper under Section 100(1)(d)(i).

The question is whether the nomination of the returned candidate was improperly accepted and whether the statutory consequence follows. Section 36 itself permits the Returning Officer to act on his own motion. Section 36(2) of the Act, 1951, provides that the Returning Officer may, either on an objection made to him or on his own motion, reject a nomination paper on the grounds specified therein. The statute itself shows that the legality of the acceptance of a nomination paper is not made dependent upon an opponent having raised an objection. The issue in an election petition challenging an election under Section 100(1)(d)(i) is whether the nomination paper was improperly accepted, and that issue is not dependent either on the *bona fides* of the election petitioner or in his having raised an objection before the Returning Officer. It is the statutory duty of the Returning Officer to consider, at the time of scrutiny of nomination, whether the nomination of the candidate suffered from any defect of substantial character. If it does the Returning Officer is statutorily bound to reject the nomination paper.

There is an additional reason not to accept the contention of respondent No. 1. The disclosures sought from a candidate in Form 26

are intended to give effect to the fundamental right of the voter under Article 19(1)(a) of the Constitution. These disclosures are not required for the benefit of the election petitioner. The argument concerning the *bona fides* of the election petitioner seeks to attach a consequence to his conduct in not raising an objection at the time of scrutiny. The fundamental right of the voter cannot be made dependent upon the motive, intention or acts of the election petitioner. Barring a challenge based on the petitioner's conduct, as counsel for respondent No. 1 urges, would subvert the statutory disclosure mandates of Section 33A, Rule 4-A, and Form 26, rendering them hollow.

It is in this legal background that the observations in *Ajmera Shyam* has to be considered. In *Ajmera Shyam*, the elected candidate had not left blank the columns in paragraph 4 of Form 26 but had entered "Nil" against the total income for the four financial years preceding the last financial year. Those entries were challenged on the ground that they were false. The election petitioner had failed to prove his allegations. It was on these facts that the Supreme Court observed in paragraph 104 that the failure of the election petitioner to raise an objection at the time of scrutiny raised a question mark on his *bona fides*, which would prompt the Court to minutely examine his claim. The Supreme Court had, however, expressly acknowledged in paragraph 102 that the failure to object would not prevent anyone from challenging the validity of the nomination by filing an election petition. The observations of the Supreme Court in paragraphs 102 and 104 of the judgment are reproduced below:

> ***"102**. There is another important aspect noticeable in this case, which is the absence of objection during the scrutiny of the nomination forms by the Returning Officer under Section 36 of the Act. **Although this failure to object will not prevent anyone from challenging the validity of the nomination by filing an election petition later,** the fact that the appellant did not raise any objection when certain deficiencies which could be easily ascertained and detected is very significant. We note that the election petition mentions that the petitioner's agent verbally objected to the nomination paper, but that agent was not examined at the trial. Therefore, this claim cannot be considered to have been proved, and hence, this argument is of no consequence.*

> ***104***. *We are mindful of the fact that it has also been held by this Court in PUCL [People's Union for Civil Liberties (PUCL) v. Union of India, (2003) 4 SCC 399], and Kisan Shankar Kathore [Kisan Shankar Kathore v. Arun Dattatray Sawant, (2014) 14 SCC 162] that it may not be desirable to reject a nomination at the stage of scrutiny considering the fact that the disputes relating to the correctness or non-disclosure of information may require a full-scale enquiry during the election trial and there can be no estoppel because of non-raising of objection during the scrutiny.* ***Yet, failure to raise any objection at the time of scrutiny raises a question mark on the bona fides of the election petitioner, which would prompt the Court to minutely examine such a claim by the election petitioner.*** *It may also be noted that in most of the earlier decisions of this Court referred to by the parties, there were serious objections about the non-disclosure of certain information at the stage of scrutiny by the Returning Officer."*

(Emphasis supplied)

A joint reading of Paragraphs 102 and 104 of *Ajmera Shyam* shows that the f*ailure to object at scrutiny may be relevant while appreciating the evidence concerning a disputed allegation of non-disclosure or misinformation. The failure to object does not, create a bar against challenging the acceptance of a nomination paper in an election petition.* An examination is an evidence-based investigation into contested issues. It would be required where the correctness of the disclosures made in Form 26 are in issue. The same can not be done, as noted in *PUCL Case*, in a summary inquiry during scrutiny. Where the alleged defect consists of blank entries apparent on the face of Form 26, the question whether such omissions existed and whether they were of substantial character must be determined from the affidavit and the applicable statutory provisions. No examination or evidence is required in such cases and the matter can be decided in a summary manner during scrutiny.The bona fides of the election petitioner or his failure to file objections are not relevant to determine whether such a statutory defect existed.

In view of the aforesaid, I find no merit in the contention that the petitioner is prevented from challenging the acceptance of the nomination papers of the respective respondents merely because he did

not raise objections at the time of scrutiny. The contention raised on behalf of respondent No. 1 is accordingly rejected.

I now proceed to examine the specific defects alleged in the affidavits in Form 26 filed by the respective respondents, beginning with the use of cross marks instead of the words “Nil” or “Not Applicable”.

**Cross marks (×) in place of “Nil” or “Not Applicable” in Form 26:**

The petitioner contends that respondent Nos. 1, 4, 5, 7, 9 and 10 entered a cross mark (×) instead of “Nil” or “Not Applicable” in certain columns of Form 26, contrary to the instructions of the Election Commission, Note 3 of Form 26 and the decision in *Resurgence India*. According to the petitioner, these entries constituted defects of substantial character requiring rejection of the nomination papers, and their acceptance by the Returning Officer was therefore improper.

A cross mark (×) is commonly understood to mean “Not Applicable”. It is also used to convey that there is nothing to be stated against a particular entry. The use of a cross mark instead of the words “Nil” or “Not Applicable” is therefore a matter of form rather than substance. It does not, by itself, amount to non-disclosure or concealment of information. As held in *Shambhu Prasad Sharma*, every departure from the prescribed format does not justify rejection of a nomination paper. I therefore do not consider the use of cross marks in the relevant columns of Form 26 to be a defect of substantial character requiring rejection of the nominations.

**Failure of the respondents to tick the appropriate entries in paragraphs 5 and 6 and leaving paragraph 6A blank**

The next contention of the petitioner is that respondent Nos. 1, 4, 5, 7, 9 and 10 did not tick the appropriate entries in paragraphs 5(i) and 6(i) of Form 26 and left them blank. As already noted, paragraph 5 requires disclosure of pending criminal cases, while paragraph 6 concerns criminal convictions. Where no criminal case is pending or no conviction has taken place, the candidate is required to make the

appropriate declaration and enter “Not Applicable” against the particulars sought in paragraphs 5(ii) and 6(ii), respectively. The affidavits of the concerned respondents show that although the appropriate entries in paragraphs 5(i) and 6(i) were not ticked, they had entered “Not Applicable” in paragraphs 5(ii) and 6(ii). These are parts of the same respective paragraphs. The entries of “Not Applicable” in paragraphs 5(ii) and 6(ii) clearly convey that no criminal cases were pending against the respondents and that they had not been convicted in any criminal case. Thus, the information sought through paragraphs 5 and 6 was conveyed, though not in the prescribed manner. As already discussed, every departure from the prescribed format does not justify rejection of a nomination paper. The omission was one of form rather than substance.

The concerned respondents had also left paragraph 6A blank. This paragraph requires a declaration regarding information furnished to the political party concerning pending criminal cases and convictions. Since the respondents had indicated in paragraphs 5(ii) and 6(ii) that there were no pending criminal cases or convictions, there was no such information to communicate to the political party. In these circumstances, leaving paragraph 6A blank cannot be regarded as a defect of substantial character requiring rejection of their nominations under Section 36(4).

Further, in Part B of Form 26, respondent No. 1 specifically entered “Not Applicable” against the particulars concerning pending criminal cases and convictions. In Part III-A of Form 2B, he also declared that he had not been convicted in any criminal case. These declarations further clarify the information furnished in his affidavit.

In view of the disclosures made in the affidavits, I do not consider the failure to tick the appropriate entries in paragraphs 5(i) and 6(i), or the omission to fill paragraph 6A, to be defects of substantial character requiring rejection of the nomination papers under Section 36(4) of the Act 1951

**Failure of respondent Nos. 7 and 9 to sign the prescribed pages of Form 26**

The petitioner has pleaded that respondent No. 7 did not sign any page of his affidavit in Form 26, including the last page, while respondent No. 9 signed only the last page of his affidavit. According to the petitioner, the omissions constituted defects of substantial character requiring rejection of their nomination papers under Section 36(4) of the Act, 1951, and their acceptance by the Returning Officer was therefore improper.

Note 5 appended to Form 26 requires each page of the affidavit to bear the signature of the deponent and the stamp of the Notary or Magistrate before whom it is sworn. The requirement is intended to authenticate the affidavit and its contents. The consequences of the failure of respondent nos. 7 and 9 to sign every page of the affidavit made the affidavit nugatory- an unsigned affidavit is no affidavit.

In light of Note 5 in Form 26, the affidavits of respondent nos. 7 and 9 were defective and the defect was of a substantial character inviting rejection of their nomination paper under Section 36 (2). Consequently the nomination papers of respondents was improperly accepted.

Having considered the other defects alleged in Form 26, I now proceed to examine the omission to disclose the total income for four financial years preceding the last financial year in paragraph 4 of the affidavits filed by respondent Nos. 1 and 4, and whether leaving these columns blank constituted a defect of substantial character requiring rejection of their nomination papers under Section 36(2) of the Act.

**Whether leaving blank the relevant columns in paragraph 4 of Form 26 by respondent Nos. 1 and respondent no. 4 constitutes a defect of substantial character requiring rejection of their nomination papers under Section 36(2) read with Section 36 (4) of the Act:**

The petitioner has pleaded that respondent No. 1, the returned candidate, left rows (ii) to (v) of column 5 in paragraph 4 of Form 26 blank. These rows required disclosure of the total income shown in his income tax returns for the four financial years preceding the latest financial year. According to the petitioner, the omission was a defect of substantial character requiring rejection of his nomination paper. It has therefore been pleaded that the acceptance of his nomination was improper and materially affected the result of the election.

In Form 26, respondent No. 1 disclosed his income for the financial year 2021–2022 as Rs. 1,45,81,059.00. The income particulars were required for the financial years 2017–2018 to 2021–2022. The rows concerning the financial years 2017–2018 to 2020–2021 were left blank.

The certified copy of the nomination papers of respondent No. 1, including Form 2B and Form 26, was filed by the petitioner in evidence. The document was admitted by the counsel for respondent No. 1 with an appropriate endorsement and was marked as Exhibit P-3. The certified copy of the affidavit in Form 26, along with the documents annexed to it, was also filed in evidence by the petitioner. It was admitted by the counsel for respondent No. 1 and marked as Exhibit P-8.

So far as respondent No. 4 is concerned, the petitioner has pleaded that he left columns 4 and 5 in paragraph 4 of Form 26 blank. These columns required disclosure of the last financial year for which income tax returns were filed and the total income shown in the income tax returns for the last five financial years. According to the petitioner, the omissions were defects of substantial character requiring rejection of the nomination paper of respondent No. 4, and its acceptance was therefore improper. It has also been pleaded that the improper acceptance of his nomination materially affected the result of the election of respondent No. 1, the returned candidate.

The certified copy of the nomination papers of respondent No. 4, including Form 2B and Form 26, was filed by the petitioner in evidence.

Respondent No. 4 did not contest the election petition, and proceedings were directed to continue *ex parte* against him. He did not appear to admit or deny the document. The document was proved by the petitioner.

A perusal of Form 26 filed by respondent No. 4 shows that he had put cross marks in the column requiring disclosure of the total income shown in income tax returns for the last five financial years. He had, however, left blank the column seeking disclosure of the last financial year for which an income tax return had been filed. Thus, the petitioner's allegation that column 5 of paragraph 4 was left blank is not proved. The issue requires consideration only so far as it concerns the blank entry in column 4 of paragraph 4 of the affidavit.

It was argued by the counsel for respondent No. 1 that he had disclosed his income for the latest financial year, 2021–2022, as shown in his income tax return. This was also the last financial year for which he had filed his income tax return. It was argued that respondent No. 1 had disclosed the sources of income of himself and his spouse in paragraph 9A, their occupations in paragraph 9, and the movable and immovable assets of himself, his spouse and dependants in the relevant paragraphs of Form 26. According to the counsel, in view of these disclosures, the omission alleged by the petitioner was not a defect of substantial character and the nomination of respondent no. 1 was therefore rightly accepted. It was also argued that the petitioner had failed to establish that any entry concerning the movable and immovable assets of respondent No. 1 was incorrect, or that there was any incorrect disclosure concerning the occupations and sources of income of himself and his spouse. According to the counsel, income shown in an income tax return is neither an asset nor a liability, and the relevant disclosures concerning assets and liabilities had already been made. It was further submitted that the records did not show any substantial increase in the income of respondent No. 1 during the five financial years preceding the election. It was further argued that after respondent No. 1 filed his nomination paper and Form 26, the Returning Officer issued a checklist

indicating that his nomination paper and Form 26 were complete and in order. No reminder was issued to him to complete Form 26 or file a revised affidavit. It was also argued that the petitioner had failed to prove that the alleged omission materially affected the election result so as to justify setting aside the election. The other arguments advanced on behalf of respondent No. 1 have already been considered earlier in this judgment.

I now examine whether the omissions in paragraph 4 of Form 26 constituted defects of substantial character requiring rejection of the nomination papers under Section 36(2) read with Section 36(4) of the Act.

As held earlier, the disclosures required in Form 26, are intended to give effect to the fundamental right of the voter under Article 19(1)(a) of the Constitution to enable him to to make an informed choice. This right was first recognised in *ADR* and was reaffirmed in subsequent decisions. In *ADR*, the Supreme Court directed the Election Commission to seek information from candidates contesting elections to Parliament or any State Legislature concerning their movable and immovable assets, bank balances and other assets, including those of their spouses and dependants, as well as their liabilities, particularly outstanding dues to public financial institutions and the Government. Section 33A was subsequently inserted in the Act, 1951, and Rule 4-A and Form 26 were introduced in the Rules, 1961. The issue in the present petition concerns financial disclosures by candidates. The importance of such disclosure was recognised by the Supreme Court in *Lok Prahari*. In that case, the Supreme Court expressed concern over the disproportionate accumulation of wealth by public representatives, the possible misuse of public office and the influence of unexplained wealth upon democratic institutions. It emphasized the need to examine the growth of assets in relation to known sources of income. The Supreme Court recognized that information concerning the sources of income of candidates and their associates was part of fundamental right of the voter under Article

19(1)(a) and directed amendment of Rule 4-A and Form 26 to require such disclosure. Form 26 was subsequently amended and, in its present form, requires disclosure of sources of income as well as the total income shown in income tax returns for the last five financial years.

The requirement to disclose income shown in income tax returns for five financial years serves the constitutional purpose recognized in *ADR* and *Lok Prahari*. Disclosure of assets gives information about the wealth held by a candidate, his/her spouse and dependants. Disclosure of sources of income identifies the means through which income is earned. It is the disclosure of income for five financial years which enables the voter to examine the income declared during that period and compare it with the candidate's assets and sources of income. The disclosure of assets and sources of income would not, by itself, enable the voter to examine whether the wealth held by a candidate is consistent with his declared income- whether the wealth was earned by legitimate means or questionable means. Income particulars for several years enable the voter to compare the income declared during that period with the assets held or acquired by the candidate. Such a comparison may raise questions concerning the sources of wealth, including possible misuse of public office or privileges. The relationship between illicit wealth, power and criminal networks is a matter of concern in electoral politics. It may not, by itself, establish any illegality but its importance lies in the fact that it gives the voter the information necessary to form his own opinion. The right protected by Article 19(1)(a) is the right of voters to receive the prescribed information before exercising their franchise. Thus, the requirement to furnish income particulars for five financial years is not an empty formality. Information concerning the income declared by a candidate in his income tax returns over a period of time, his assets and his sources of income is necessary to enable the voter to form an opinion as to how to exercise his franchise. Whether those particulars reveal anything questionable is not for the candidate to decide. His obligation is to furnish the information which the law requires, leaving the voter free to draw his own conclusions.

It follows that disclosure of income for the latest financial year cannot amount to substantial compliance with the requirement to disclose income for five financial years when the particulars for the remaining four years have not been furnished anywhere in Form 26. The requirement is not satisfied by furnishing only part of the information. The disclosure of assets and sources of income cannot be a substitute for, specific income figures, since each requirement serves a different objective. Treating one as sufficient compliance with the others would make the requirement to disclose income for five financial years meaningless.

It is in this background that I now proceed to consider whether leaving the relevant columns in paragraph 4 of Form 26 blank constitutes a defect of substantial character requiring rejection of the nomination paper under Section 36(4) of the Act.

In *Resurgence India*, a three-Judge Bench held that leaving prescribed particulars blank defeats the purpose of Form 26 and the voters' fundamental right to know about candidates. It held that paragraph 73 of *PUCL* would not prevent the Returning Officer from rejecting a nomination paper where the accompanying affidavit contained blank particulars. The Court distinguished a candidate who furnished false information from one who left the prescribed particulars blank. It held that treating both situations alike would defeat the fundamental right guaranteed under Article 19(1)(a).

In the present case, respondent No. 1 has not disclosed the total income shown in his income tax returns for the four financial years preceding 2021–2022. The relevant rows in paragraph 4 of Form 26 were left completely blank. In light of the principles laid down in *Resurgence India*, the disclosure concerning those financial years was rendered nugatory. The omission constituted a defect of substantial character. The fact that respondent No. 1 also disclosed his income for the latest financial year in Part B of Form 26 does not help him. Part B is only an abstract of the information furnished in Part A. It cannot take the

place of the particulars omitted from Part A. The income particulars for the preceding four years remain undisclosed.

To support his case the counsel for respondent no. 1 relied on *Karikho* and *Ajmera Shyam*. The facts of the present case are different from those in *Karikho*. In *Karikho* vehicles which were not shown in the assets of the spouse of the elected candidate had already been transferred and government dues were found not to be outstanding. In the present case there is no issue regarding ownership of an asset or a disputed liability requiring examination of contested evidence. It concerns blanks in the column seeking disclosure of income particulars for four financial years, the information regarding which was not furnished anywhere else in the affidavit. The omission was apparent on the face of Form 26. The Returning Officer could have noticed it at the stage of scrutiny without conducting any inquiry into any disputed fact. The omission in the present case is not a mere irregularity or departure from the prescribed format. Respondent No. 1 failed to furnish information expressly required by law for four out of five financial years. The voters were thus denied information which they were entitled to receive before exercising their franchise. The omission was not insubstantial merely because respondent No. 1 disclosed his assets and sources of income elsewhere in Form 26.

Similarly, *Ajmera Shyam* also does not help respondent No. 1. In that case, the returned candidate had entered “Nil” against the income particulars for four of the five financial years in paragraph 4 of Form 26. In *Ajmera Shyam*, the Supreme Court itself recognized the difference between an entry of ‘Nil’ and one where the prescribed entries are left blank. In *Ajmera Shyam*, it was the correctness of entry which was questioned. The Court examined the evidence concerning those declarations and held that the defect was not substantial. The facts of the present case are different from *Ajmera Shyam*. In the present case there is no question of examining whether the information furnished for four financial years is correct or incorrect. No information has been

furnished. The defect is not in the correctness of the information but in the failure to furnish it. The present case therefore falls within the principle laid down in *Resurgence India*.

At this stage, it would be relevant to note that respondent no. 1 attempted to salvage himself by arguing that his income details for the four missing financial years were on record in the documents filed by the petitioner himself. Counsel for Respondent No. 1 argued that his income remained largely unchanged over the five-year period—a point supposedly borne out by the Petitioner's own documents. This argument is untenable. Subsequent disclosure during trial cannot substitute for the statutory mandate of pre-election transparency, which exists to empower voters and uphold their right under Article 19(1)(a). Post-election filings are already separately addressed under Section 75-A of the Act, 1951. Moreover, this Court is not concerned with the legality or source of Respondent No. 1's assets, as that lies beyond the scope of an election petition. Rather, the sole question in this case is whether omitting mandatory details from the Form 26 affidavit rendered the acceptance of the nomination improper—both as an infringement of the electorate's Article 19(1)(a) rights and as a substantial defect requiring rejection under Section 36(2) read with Section 36(4). The issue in the petition is not the correctness of disclosures made by the respondent no.1 requiring adjudication and evidence but the legal consequences of non-disclosures by leaving the relevant column in the affidavit blank.

For the reasons stated above, I hold that the failure of respondent No. 1 to disclose his total income for the four financial years preceding the latest financial year, leaving the relevant columns in paragraph 4 of Form 26 completely blank, constituted a defect of substantial character requiring rejection of his nomination paper under Section 36(2) read with Section 36(4) of the Act, 1951. For the same reasons I hold that the failure of respondent no. 4 to disclose his latest income tax return constituted a defect of substantial character requiring rejection of his

nomination paper under Section 36(2) read with Section 36(4) of the Act, 1951.

**Whether the checklist issued by the Returning Officer and the failure to issue a reminder could validate the acceptance of respondent No. 1's nomination paper despite the defect in Form 26:**

A checklist is issued to a candidate after the preliminary examination of the nomination paper. Items 5.11.1(iv) and (v) of the Instructions issued by the Election Commission provide that, at the time of filing the nomination paper, the Returning Officer shall check whether the affidavit in the revised Form 26 has been duly filled up and attached to the nomination paper. If the affidavit is not attached, the Returning Officer shall bring the requirement to the notice of the candidate through the checklist. The Returning Officer shall also check whether all columns of the affidavit have been filled up. If any column is left blank, the Returning Officer shall mention the omission in the checklist and hand it over to the candidate, who shall have an opportunity to file a fresh affidavit, complete in all respects, by the time fixed for commencement of scrutiny.

It is the case of respondent No. 1 that a checklist was issued to him indicating that his nomination paper was in order, that the affidavit was complete and that no column had been left blank. The checklist was also filed in evidence by respondent No. 1 and was proved by him. Consequently, the respondent no. 1 claims that he had no occasion to file a fresh affidavit before the commencement of scrutiny, as permitted under Item 5.11.1(v) of the Instructions. It was argued that since the Returning Officer had not reminded him to fill the blank columns, his nomination paper could not have been rejected under Section 36(2) read with Section 36(4) of the Act, 1951 and its acceptance could not be considered improper. In his support respondent no. 1 relies on *Resurgence India*.

I am unable to accept the contention.

As noted earlier, the information sought through Form 26 is intended to give effect to the fundamental right of voters under Article 19(1)(a) of the Constitution and the disclosures are required for the benefit of voters and the obligation to furnish the information is on the candidate and does not arise only when the Returning Officer points out an omission. Neither Section 36(2) nor Section 36(4) provides that a nomination paper suffering from a defect of substantial character would not be liable to rejection if the Returning Officer failed to notice the defect. The checklist is meant to ensure that the prescribed information has been furnished and it cannot be treated as a document which excuses the candidate from furnishing that information. If the argument of respondent No. 1 is accepted, a candidate whose omission was detected by the Returning Officer would face rejection of his nomination if he failed to rectify it despite a reminder. On the other hand, a candidate whose omission was overlooked by the Returning Officer would escape that consequence. The result would depend not on the nature of the defect but on whether the Returning Officer noticed it. The right of voters under Article 19(1)(a) cannot be made dependent upon the action or inaction of the Returning Officer. It cannot be made dependent upon whether an administrative officer notices a blank entry in an affidavit. Such an interpretation would also leave room for misuse of power. A Returning Officer could overlook a substantial defect and issue a checklist showing the affidavit to be complete. If that checklist were treated as sufficient to validate the nomination, the Returning Officer would, in effect, acquire the power to dispense with the statutory requirement of disclosure. Neither the Act nor the Rules confer such a power upon him.

It is true that in *Resurgence India*, the Supreme Court directed the Returning Officer to remind a candidate to fill the blank particulars before rejecting the nomination for failure to do so. The direction was given to ensure that the candidate had an opportunity to complete the affidavit. The issue in the present case is different. In the present case, the Returning Officer did not point out the blank entries but issued a

checklist showing the affidavit to be complete and accepted the nomination. This situation was not there before the Supreme Court in *Resurgence India* and was not considered in that judgment. The direction concerning a reminder cannot mean that the obligation of the candidate to furnish the prescribed information depends upon the Returning Officer performing his duty. The reminder can only be treated as a procedural safeguard and not a means to transfer a disclosure obligation from the candidate to the Returning Officer or make an erroneous checklist conclusive. The failure to issue a reminder may explain why respondent No. 1 did not file a corrected affidavit. But it does not change the fact that the prescribed information for four financial years was not furnished.

There is another reason not to accept the argument of respondent counsel. In an election petition under Section 100(1)(d)(i), the Court has to examine whether the Returning Officer improperly accepted the nomination paper. It is the legality of the decision of the Returning Officer which is being examined, therefore the failure of the Returning Officer to notice the defect cannot itself be a justification for holding that the acceptance was proper.

Considering the obligation of the candidate to furnish the prescribed information, the purpose of the disclosures under Article 19(1)(a), the provisions of Section 36 and the objective of the directions issued in *Resurgence India*, I am unable to accept the contention of respondent No. 1. I hold that the failure of the Returning Officer to point out the blank entries in Form 26, and the issuance of a checklist showing the affidavit to be complete and in order, do not validate the acceptance of a nomination paper which suffers from a defect of substantial character. The contention of respondent No. 1 is accordingly rejected.

In light of the aforesaid discussion, I hold that the nomination papers of respondent Nos. 5 and 10 did not suffer from any defect of substantial character and their nominations were not improperly accepted. However, the nomination papers of respondent Nos. 1, 4, 7 and

9 suffered from defects of substantial character and were liable to be rejected by the Returning Officer under Section 36(2) read with Section 36(4) of the Act, 1951. Their nominations were therefore improperly accepted. The said respondents could not have contested the elections.

The next question is whether the improper acceptance of the nomination papers of respondent Nos. 1, 4, 7 and 9 materially affected the election result. Respondent Nos. 4, 7 and 9 are defeated candidates, whereas respondent No. 1 is the returned candidate. The two categories shall therefore be considered separately, as different legal principles apply to them.

**Whether the improper acceptance of the nominations of respondent Nos. 4, 7 and 9 materially affected the election result**

Form 20, the final result sheet, shows that respondent No. 4 secured 1,338 votes, respondent No. 7 secured 451 votes and respondent No. 9 secured 331 votes. The total number of votes obtained by these three respondents was 2,120. The margin of votes between the petitioner and respondent No. 1 was 258 votes. The question is whether, on these facts, it can be held that the improper acceptance of the nomination papers of respondent nos. 4, 7 and 9 materially affected the election result.

The petitioner has pleaded that the improper acceptance of the nominations of the aforesaid respondents materially affected the election result. It has also been pleaded that if their nominations had been rejected, the votes cast in their favour would have been cast in favour of the petitioner. It is therefore necessary to examine the evidence led by the petitioner in support of this plea.

In his affidavit filed in lieu of examination-in-chief, the petitioner examined as PW-1, reiterated his plea concerning the distribution of votes if the nominations of the aforesaid respondents had been rejected. However, in his cross-examination, the petitioner could not recall the political party represented by respondent No. 7. He also admitted that he

had no knowledge of the places of residence of respondent Nos. 4, 7 and 9. These admissions in his cross-examination belie the claim of the petitioner that the votes obtained by the respondent nos. 4, 7 and 9 would have been cast in favour of the petitioner if the said respondents had not contested the elections. There is no other evidence to prove the distribution of votes as pleaded by the petitioner.

The fact that these three respondents together secured 2,120 votes, whereas the margin between the petitioner and respondent No. 1 was only 258 votes, also does not prove that those votes would have gone to the petitioner. The votes could have been distributed among the remaining candidates in different proportions. Their distribution cannot be determined merely on the basis of the margin of victory.

In ***Santosh Yadav v. Narender Singh, (2002) 1 SCC 160,*** the Supreme Court held that where the nomination of a defeated candidate was improperly accepted, the election petitioner must prove that such acceptance materially affected the election result. Mere proof that the votes secured by that candidate exceeded the margin of victory is insufficient. The petitioner must plead material facts and adduce positive, cogent and satisfactory evidence showing how those votes would have been distributed had the candidate not contested. The Court cannot determine such distribution on conjectures, possibilities or unsupported assertions of witnesses. The burden of proof is strict, and unless it is discharged, the election cannot be set aside on that ground. It would be appropriate to reproduce the observations of the Supreme Court in Paragraph 16 :

> ***"16****. The law as regards the result of election having been materially affected in case of improper acceptance of nomination may be summed up as under:*
> *1. A case of result of the election, insofar as it concerns the returned candidate, having been materially affected by the improper acceptance of any nomination, within the meaning of Section 100(1)(d)(i) of the Representation of the People Act, 1951 has to be made out by raising specific pleadings setting out all material facts and adducing cogent evidence so as to enable a clear finding being arrived at on the distribution of wasted votes,*

> *that is, the manner in which the votes would have been distributed if the candidate, whose nomination paper was improperly accepted, was not in the fray.*
> *2.* ***Merely because the wasted votes are more than the difference of votes secured by the returned candidate and the candidate securing the next highest number of votes, an inference as to the result of the election having been materially affected cannot necessarily be drawn. The issue is one of fact and the onus of proving it lies upon the petitioner.***
> *3.* ***The burden of proving such material effect has to be discharged by the election petitioner by adducing positive, satisfactory and cogent evidence.*** *If the petitioner is unable to adduce such evidence the burden is not discharged and the election must stand. This rule may operate harshly upon the petitioner seeking to set aside the election on the ground of improper acceptance of a nomination paper, but the court is not concerned with the inconvenience resulting from the operation of the law. Difficulty of proof cannot obviate the need of strict proof or relax the rigour of required proof.*
> *4. The burden of proof placed on the election petitioner is very strict and so difficult to discharge as nearing almost an impossibility. There is no room for any guesswork, speculation, surmises or conjectures i.e. acting on a mere possibility.* ***It will not suffice merely to say that all or the majority of wasted votes might have gone to the next highest candidate. The law requires proof.*** *How far that proof should go or what it should contain is not provided by the legislature.*
> *5. The casting of votes at an election depends upon a variety of factors and it is not possible for anyone to predicate how many or which proportion of the votes will go to one or the other of the candidates.* ***It is not permissible to accept the "ipse dixit" of witnesses coming from one side or the other to say that all or some of the votes would have gone to one or the other on some supposed or imaginary ground."***

(Emphasis supplied)

In the absence of any positive, satisfactory and cogent evidence proving that had the nominations of respondent Nos. 4, 7 and 9 been rejected the votes cast in their favour would have been cast in favour of the petitioner, I hold that the requirement of Section 100(1)(d)(i) of the Act, 1951, has not been satisfied so far as these respondents are concerned and the petitioner has not been able to prove that the improper acceptance of the nominations of respondent Nos. 4, 7 and 9 materially affected the elections.

**Whether the improper acceptance of the nomination paper of respondent No. 1, the returned candidate, materially affected the election result**

The position of respondent No. 1 is different. He is the returned candidate, and the legal principle applicable to the improper acceptance of his nomination is different from that applicable to the defeated candidates considered above. In the petition it has been pleaded by the petitioner that the results of the election had been materially affected due to improper acceptance of the nomination of respondent no.1. The plea has been contested by the respondent no. 1 and it has been argued that the petitioner has not been able to prove that the results of the election were materially affected by the improper acceptance of nomination of respondent no. 1 and the material facts have not been pleaded by the petitioner.

In ***Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy, (2018) 14 SCC* 1**, it was held that once improper acceptance of the returned candidate's own nomination is established, its material effect upon the election result follows as a necessary consequence. The relevant observations of the Supreme Court in *Madiraju* are reproduced below:

> ***"52****. The only other plea of Respondent 1 that needs examination is about the absence of averment in the election petition that because of improper acceptance of nomination form of Respondent 1, it has materially affected the election results of Respondent 1. Even this contention should not detain us in light of the exposition in the recent decision of this Court in Mairembam Prithviraj [Mairembam Prithviraj v. Pukhrem Sharatchandra Singh, (2017) 2 SCC 487] . For, in Durai Muthuswami v. N. Nachiappan [Durai Muthuswami v. N. Nachiappan, (1973) 2 SCC 45] , noticed in this judgment, it has been observed that in the case of election to a single member constituency, if there are more than 2 candidates and the nomination of one of the defeated candidates had been improperly accepted, a question might arise as to whether the result of the election of the returned candidate had been materially affected by such improper reception. 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.*
> *53. In para 23 of the judgment in Mairembam Prithviraj [Mairembam Prithviraj v. Pukhrem Sharatchandra Singh, (2017) 2 SCC 487] , after analysing the exposition in Durai Muthuswami*

*[Durai Muthuswami v. N. Nachiappan, (1973) 2 SCC 45] , the Court observed thus : (Mairembam Prithviraj case [Mairembam Prithviraj v. Pukhrem Sharatchandra Singh, (2017) 2 SCC 487] , SCC p. 503)*

*"23. It is clear from the above judgment in Durai Muthuswami [Durai Muthuswami v. N. Nachiappan, (1973) 2 SCC 45] that there is a difference between the improper acceptance of a nomination of a returned candidate and the improper acceptance of nomination of any other candidate. There is also a difference between cases where there are only two candidates in the fray and a situation where there are more than two candidates contesting the election.* ***If the nomination of a candidate other than the returned candidate is found to have been improperly accepted, it is essential that the election petitioner has to plead and prove that the votes polled in favour of such candidate would have been polled in his favour. On the other hand, if the improper acceptance of nomination is of the returned candidate, there is no necessity of proof that the election has been materially affected as the returned candidate would not have been able to contest the election if his nomination was not accepted.*** *It is not necessary for the respondent to prove that result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination as there were only two candidates contesting the election and if the appellant's nomination is declared to have been improperly accepted, his election would have to be set aside without any further enquiry and the only candidate left in the fray is entitled to be declared elected."*

*(emphasis supplied)*

*54. …..*

*55. In Duni Chand [Duni Chand v. State of H.P., (2014) 16 SCC 152] , this Court was called upon to consider whether the nomination paper submitted by the appellant therein was improperly accepted by the Returning Officer. It observed that if the Returning Officer had rejected the nomination paper of the appellant therein at the time of scrutiny, the order of rejection would have been valid. As a result, the appellant could not have participated in the election process and there would have been no occasion for him to be elected. It would, therefore, follow that improper acceptance of his nomination by the Returning Officer has inevitably materially affected his result of the election.*

(Emphasis supplied)

The same principle was reaffirmed by the Supreme Court in *Karikho Kri* and *Poonam.*

At this stage it would be relevant to refer to the judgement in ***Karim Uddin Barbhuiya v. Aminul Haque Laskar,*** **(2025) 11 SCC 470,** relied by the respondent no.1 to support his contention. In **Karim Uddin,** the Supreme Court considered an appeal arising from the refusal of the High Court to reject an election petition under Order VII Rule 11 CPC. The election of the returned candidate had been challenged on allegations that he had falsely declared his educational qualification and

suppressed certain financial liabilities relating to a partnership firm. The Supreme Court found that the petition contained vague allegations without the material facts necessary to establish improper acceptance of the nomination or the corrupt practice of undue influence. It reiterated that an election petition must disclose the material facts constituting a complete cause of action and that omission of such facts may justify rejection under Order VII Rule 11 CPC. The Court also noted that the petition failed to explain why the nomination was liable to rejection under Section 36(2). In paragraph 28, the Supreme Court further observed that an election petition invoking Section 100(1)(d)(i) must state how improper acceptance of the nomination materially affected the result of the election. The observations in paragraph 28 of *Karim Uddin* suggest that separate pleading and proof of material effect are necessary even where the improperly accepted nomination is that of the returned candidate himself. *Madiraju* was decided by a Bench consisting of three Judges while *Karim Uddin* was decided by a Bench consisting of two Judges. The law declared by the larger Bench is binding on me and I decide the issue on the law stated by the Supreme Court in *Madiraju.*

In the present petition also the petitioner has pleaded that the election results were materially affected due to improper acceptance of nomination of respondent no. 1. The said challenge is under Section 100(1)(d)(i). If the nomination of respondent no. 1 had been rejected, he would not have contested the election.

In light of the aforesaid discussion, I hold that the improper acceptance of the nomination paper of respondent No. 1, the returned candidate, materially affected the result of his election.

Thus Issue no. (a) is decided as that the affidavit in Form 26 of respondent no. 1 suffered from a defect of substantial character and was liable to be rejected and his nomination was improperly accepted materially affecting the result of the election.

Issue no. (b) is decided as that the affidavit in Form 26 of respondent nos. 4, 7 and 9 suffered from a defect of substantial character and was liable to be rejected. However the affidavit in Form 26 of

respondent nos. 5 and 10 did not suffer from a defect of substantial character. The nomination of respondent nos. 4, 7 and 9 was improperly accepted while the acceptance of nomination of respondent no. 5 and 10 was not improper. The petitioner has not been able to prove that the improper acceptance of nomination of respondent nos. 4, 7 and 9 had materially affected the elections.

**Relief to which the petitioner is entitled:**

The next issue is regarding Issue no. (e) which relates to the relief to which the petitioner is entitled to:

In light of the findings on Issue (a), the petitioner is entitled to get the elections of respondent no. 1 declared void and also to get it set aside. However the petitioner has also claimed the relief of declaring him as elected after declaring void the elections of respondent no.1 and after setting it aside.

It has been contended by the petitioner that the votes polled by the respondent no.1 would have been polled in his favour had the nomination of respondent no. 1 been rejected and in any case the votes of respondent no.1 should be considered as wasted or thrown away votes and the petitioner having got the second highest votes should be declared elected.

The decision on the said relief requires a consideration of Section 101 of the Act 1951. Section 101 of the Act, 1951 is reproduced below:

> **“Section 101. Grounds for which a candidate other than the returned candidate may be declared to have been elected.—**
>
> *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,*
>
> *the High Court shall, after declaring the election of the returned candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected.”*

Section 101 was interpreted by the Supreme Court in ***Prakash Khandre Vs. Dr. Vijay Kumar Khandre (2002) 5 SCC 568*** and ***Muniraju Gowda P.M. Vs. Munirathna and others (2020) 10 SCC 192***. In *Prakash Khandre*, the Supreme Court held that declaring the election of the returned candidate void does not automatically entitle the petitioner or any other candidate to be declared elected. Where more than two candidates contested a single seat, the candidate securing the next highest number of votes cannot be declared elected merely because the returned candidate was subsequently found disqualified or his nomination was liable to rejection. It cannot be presumed that the votes secured by the returned candidate would have gone to the candidate who stood second. Such a conclusion would rest on speculation about how the electorate might have voted. A further declaration under Section 101 can be granted only when its statutory requirements are satisfied. The relevant observations of the Supreme Court are reproduced below:

> ***"11***. *However, the question which requires consideration is — if there are more than two candidates for one seat and the elected candidate is subsequently found to be disqualified, whether the candidate who has secured more votes than the remaining candidates should be declared as elected or not. For this, we would consider the ingredients of Section 101 which inter alia provide that after declaring election of the returned candidate to be void, the High Court may declare the petitioner or such other candidate to have been duly elected if—*
> *(a) in fact the petitioner or such other candidate received a majority of valid votes; or*
> *(b) 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.*
> *14. However, in an election where the elected candidate is declared to be disqualified to contest election and there are more than two candidates contesting election, there is no specific provision under the Act under which the person who has secured the next highest number of votes could be declared as elected. The Act is silent on this point. Further, it cannot be presumed that the votes secured by the disqualified elected candidates would have been wasted or would have been secured by the next candidate who has secured more votes. If disqualified candidate was not permitted to contest the election then how the voters would have voted in favour of the candidate who has secured more votes than the other remaining candidates would be a question in the realm of speculation and unpredictability. In such a situation, declaring the election of the returned candidate on the ground of his initial disqualification to contest the election by itself would not*

> *entitle the election petitioner or any other candidate to be declared elected.*
> *24.* ***In view of the aforesaid settled legal position, in our view, the impugned order passed by the High Court declaring the election petitioner as elected on the ground that the votes cast in favour of the elected candidate (appellant) are thrown away was totally erroneous and cannot be justified. As held by the Constitution Bench in Konappa case [(1969) 2 SCR 90 : AIR 1969 SC 604 sub nom Vishwanatha Reddy v. Konappa Rudrappa Nadgouda] that some general rule of election law prevailing in the United Kingdom that the votes cast in favour of a person who is found disqualified for election may be regarded as "thrown away" only if the voters had noticed before the poll the disqualification of the candidate, has no application in our country and has only merit of antiquity. We would observe that the question of sending such notice to all voters appears to us alien to the Act and the Rules. But that question is not required to be dealt with in this matter. As stated earlier, in the present case, for one seat, there were five candidates and it would be impossible to predict or guess in whose favour the voters would have voted if they were aware that the elected candidate was disqualified to contest election or if he was not permitted to contest the election by rejecting his nomination paper on the ground of disqualification to contest the election and what would have been the voting pattern. Therefore, order passed by the High Court declaring the election petitioner Dr Vijay Kumar Khandre as elected requires to be set aside."***
>
> (Emphasis supplied)

The same view was reaffirmed by the Supreme Court in **Muniraju Gowda P.M.**

There is no cogent or reliable evidence to establish that the votes obtained by respondent No. 1 would have been cast in favour of the petitioner if respondent No. 1 had not contested the election. The votes secured by respondent No. 1 cannot be treated as thrown away merely because his nomination was improperly accepted. The petitioner has also failed to establish either of the grounds specified in Section 101 of the Act, 1951. He is therefore not entitled to be declared elected merely because the election of respondent No. 1 is being declared void. The prayer for declaring the petitioner elected is accordingly rejected.

**On the aforesaid findings and reasons the issues are decided as follows:**

**Issue No. (a):** It is held that the affidavit in Form 26 filed by respondent No. 1 suffered from a defect of substantial character, requiring rejection of his nomination paper under Section 36(2) read with Section 36(4) of

the Act, 1951. His nomination paper was therefore improperly accepted by the Returning Officer, and the improper acceptance of the nomination materially affected the result of his election. The issue is decided in favour of the petitioner.

**Issue No. (b):** It is held that the affidavits in Form 26 filed by respondent Nos. 5 and 10 did not suffer from defects of substantial character, and their nomination papers were not improperly accepted. However, the affidavits in Form 26 filed by respondent Nos. 4, 7 and 9 suffered from defects of substantial character, requiring rejection of their nomination papers under Section 36(2) read with Section 36(4) of the Act, 1951. Their nomination papers were therefore improperly accepted by the Returning Officer. However, the improper acceptance of their nominations did not materially affect the election result.

**Issue No. (c):** Is decided against the petitioner.

**Issue No. (d):** It is held that the petitioner has failed to prove any illegality or irregularity in the counting of VVPAT slips relating to polling booth Nos. 44, 54, 180 and 234, or that any such irregularity materially affected the election result insofar as it concerns respondent No. 1, the returned candidate. The issue is decided against the petitioner.

**Issue no. (e)** : The petitioner is entitled to the relief to declare void the election of respondent no. 1 and get it set aside but is not entitled to the relief declaring him elected from the constituency. As a consequence of the decision on Issue nos. (c) and (d) being against the petitioner, the petitioner is also not entitled to the reliefs of recounting as prayed in Relief nos. B to F. Relief no. A is partly granted by declaring void the election of respondent no. 1 and by setting it aside.

The Election Petition No. 2 of 2022 is ***partly allowed***. The election of Om Kumar as Member of U.P. State Legislative Assembly from 21-Nehtaur (Reserved – Scheduled Caste) Assembly Constituency for which elections were held on 14.2.2022 and the results were declared on 10.3.2022 is declared void and is, hereby, set-aside.

All pending applications stand disposed of.

The parties shall bear their own costs.

The Registrar General / Registrar (Compliance) shall immediately intimate the substance of the decision in the present petition to the Election Commission of India and the Speaker, Vidhan Sabha-Uttar Pradesh and shall also send an authenticated copy of this order to the Election Commission within one week from today.

**(Salil Kumar Rai,J.)**

**November 26, 2026**
Satyam

Digitally signed by :-
SATYAM AGRAHARI
High Court of Judicature at Allahabad