

**2023 LiveLaw (SC) 563 : 2023 INSC 641**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
S. RAVINDRA BHAT; J., ARAVIND KUMAR; J.**

**JULY 24, 2023.**

**CIVIL APPEAL NO(S). 4632 OF 2023 [ARISING OUT OF SPECIAL LEAVE PETITION (C) NO. 6614 OF 2023]**

**BHIM RAO BASWANTH RAO PATIL *versus* K. MADAN MOHAN RAO & ORS.**

**Representation of People Act, 1951 - Democracy being an essential feature of the Constitution and the right to vote being a statutory right, the voter has the right to know about the full background of a candidate. (Para 28)**

**Representation of People Act, 1951 - the right to vote, based on an informed choice, is a crucial component of the essence of democracy. (Para 27)**

**Constitution of India, 1950 - Democracy has been held to be a part of one of the essential features of the Constitution. Yet, somewhat paradoxically, the right to vote has not been recognized as a Fundamental Right yet; it was termed as a “mere” statutory right. (Para 27)**

**Representation of People Act, 1951; Section 33A, 33B - Disclosure of past criminal antecedents of every candidate - Providing information is vital for a vibrant and functioning democracy. (Para 13)**

**Code of Civil Procedure, 1908; Order VII Rule 11, Order XII Rule 6 - Rejection of Election Petition - Judgement on Admissions - A plain look at the election petition reveals that apart from allegations pertaining to non-disclosure of criminal cases pending against the appellant, or cases where he was convicted, other averments and allegations have been made regarding non-compliance with stipulations regarding information dissemination and the manner of dissemination through publication in newspapers, the font size, the concerned newspapers’ reach amongst the populace, etc. The alleged noncompliance with statutory and Election Commission mandated regulations, and their legal effect, cannot be examined in what are essentially summary proceedings under Order VII Rule 11, CPC, or even under Order XII Rule 6, CPC. Even if the allegations regarding non-disclosure of cases where the appellant has been arrayed as an accused, are ultimately true, the effect of such allegations (in the context of provisions of law and the non-disclosure of all other particulars mandated by the Election Symbols orders) has to be considered after a full trial. The admission of certain facts (and not all) by the election petitioner cannot be sufficient for the court to reject the petition, wholly. Even in respect of the undeniable nature of the judicial record, the effect of its content, is wholly inadequate to draw a decree in part. (Para 26)**

**Representation of People Act, 1951; Sections 81, 84 r/w. 100(1)(d)(i)(ii)(iii) & (iv) – the appellant questions judgment and order of the High Court dismissing an application which sought rejection of the election petition – Held, If the appellant’s contentions were to be accepted, there would be a denial of a full-fledged trial, based on the acknowledgement that material facts were not suppressed. Whether the existence of a criminal case, where a charge has not been framed, in relation to an offence which does not possibly carry a prison sentence, or a sentence for a short spell in prison, and whether conviction in a case, where penalty was imposed, are material facts, are contested. This court would be pre-judging that issue because arguendo if the effect of withholding some such information is seen as**

**insignificant, by itself, that would not negate the possibility of a conclusion based on the cumulative impact of withholding of facts and non-compliance with statutory stipulations (which is to be established in a trial). For these reasons, the impugned judgment cannot be faulted. (Para 28)**

(Arising out of impugned final judgment and order dated 17-03-2023 in IA No. 1/2020 in EP No. 34/19 passed by the High Court for the State of Telangana at Hyderabad)

*For Petitioner(s) Mr. C Aryama Sundaram, Sr. Adv. Mr. Harin P Raval, Sr. Adv. Mr. M Srinivas R Rao, Adv. Mr. N Manohar, Adv. Mrs. Nisha Padmanabhan, Adv. Mr. Abid Ali Beeran P, AOR Mr. Sarath S Janardanan, Adv. Mr. Abhishek Gupta, Adv. Mr. Zafar Inyat, Adv. Ms. Shreya Bansal, Adv.*

*For Respondent(s) Mr. Salman Khurshid, Sr. Adv. Ms. Azra Rehman, Adv. Ms. Vanya Gupta, AOR Mr. Ankit Agarwal, AOR Ms. Vijushti Rawat, Adv.*

## **J U D G M E N T**

### **S. RAVINDRA BHAT, J.**

1. Leave granted. The present appeal by special leave questions a judgment and order of the Telangana High Court<sup>1</sup> dismissing an application which sought rejection of the respondent's election petition. The appellant had contended that the election petition (hereafter "the petition") did not disclose any cause of action and was barred in law and was liable to be rejected.

2. The appellant was a successful candidate in the election conducted for the Zaheerabad Parliamentary Constituency on 11.04.2019. He was declared elected on 23.05.2019, defeating the respondent (hereafter referred to as "the election petitioner") by a margin of 6229 votes. The respondent preferred an election petition under Sections 81 and 84 read with Sections 100(1)(d)(i)(ii)(iii) & (iv) of the Representation of People Act, 1951 (hereafter "the Act"). The election petition alleged, amongst others, that the appellant had furnished false information in Form 26 (election affidavit); that the Returning Officer had not followed the Election Commission's guidelines dated 10.10.2018; that the appellant filed false information in C-4 report furnished to the District Election Officer and that there was no previous publication of papers, regarding pending cases against the appellant and those in which he was convicted. Other allegations included failure to follow additional requirements such as the font size mentioned in the form for publication; listing of cases in separate rows; failure to have the pending cases disclosed in a widely circulated newspaper/news channels, and disclosure of information with respect to cases in which the appellant was convicted and lastly that his name was shown in a misleading manner in the newspaper publication.

3. After the election petition was filed, the appellant applied, under Order VII Rule 11 of the Code of Civil Procedure (hereafter "CPC") for its rejection. It was contended *inter alia* that the mandatory requirements under Sections 81 and 81 (3) of the Act were not followed; it was alleged that – there was no pleading as to how the nomination paper was improperly accepted; that there was no need to disclose the so-called criminal cases as they did not fall within Section 8 of the Act and Section 33A of the Act as the appellant had not been sentenced to imprisonment of more than one year. As a result, non-disclosure of conviction under Payment of Wages Act, 1936 and Minimum Wages Act, 1948 was not required. It was further alleged that the offences pleaded against the appellant were not criminal and other allegations with respect to publication and font size etc. were not substantial and on the other hand, there was substantial compliance with the law and the

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<sup>1</sup> Election Petition No.34/2019, rejecting IA 01/2020

guidelines. The election petitioner/respondent resisted the application after which the appellant filed a rejoinder.

4. During the course of the proceedings, on 15.11.2021, the appellant filed a memo<sup>2</sup> which stated that he had obtained certified copies of the order sheet dated 28.06.2013; regarding seizure of property in CF 97/2013, from the file of the Chief Judicial Magistrate Garhwa and related criminal case. Translations of those into English were made available. These documents were filed in the election proceedings to contest the election petitioner's assertion. The appellant also applied under Section 340 of the Criminal Procedure Code (hereafter "CrPC") read with Section 195 of the CrPC, broadly alleging that the documents produced as true copies along with the election petition and the averments made were false, calling for appropriate criminal proceedings to be drawn up against the respondent.

5. The High Court had earlier heard the application<sup>3</sup> and reserved orders on 23.12.2021. The judgment was delivered on 15.06.2022, whereby the respondent's election petition was rejected, and the appellant's application was allowed. This court, however, set aside that order on 12.09.2022<sup>4</sup>. This court observed in its order that even on the date it disposed of the special leave petition, i.e., 26.09.2022, the reasons for allowing the application for rejection had not been given by the learned Judge.

6. In the present case, the High Court noticed the contentions of the parties as well as the pleadings and was of the opinion that having regard to the terms of Order VII Rule 11 CPC, only the averments in the petition and the accompanying documents could be considered and not any other materials brought on record during the course of the proceedings. The court was of the opinion that taking in the overall conspectus of the facts available on the record did not lead to a compelling reason for rejecting the election petition. Accordingly, the appellant's application was dismissed, and the contentions were kept open to be agitated during the trial.

7. The appellant's main contention was that though the appellant had urged several grounds with respect to its explanation for the alleged non-compliance of what were termed by the election petitioner as mandatory requirements, it was also alleged that Section 81(3) had not been complied with. However, during the hearing, the arguments on behalf of the appellant, by Mr. C.S. Sundaram, Senior Advocate, were confined to submissions to the aspect regarding non-disclosure of criminal cases. The first related to a criminal case pending before the CJM, Garhwa bearing CR 96P; case No.CF 97/13 dated 20.03.2013 in Form 26, i.e., the election affidavit. The second case was with respect to non-disclosure in Form 26 of conviction. It was alleged that the cases referred to in the election petition, i.e., *Labour Enforcement Officer v. M/s. Patil Construction represented by (1) Mr. B.B. Patil (partner) and (2) Mr. M.B. Patil (partner)* (Case No. 20/12), this case pertained to non-payment of minimum wages to workers under the Payment of Wages Act, 1936 and Payment of Wages (Mines) Rules, 1956. The appellant was convicted on 30.07.2013; the second case pertained to *State through Labour Enforcement Officer v. M/s. Patil Construction represented by B.B. Patil and M.B. Patil* before Sub Divisional Judicial Magistrate registered under Section 22A of the Minimum Wages Act, 1948 for nonmaintenance of records of workers/employers. The appellant was convicted on 05.09.2017.

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<sup>2</sup> Registered as USR 69931/2021.

<sup>3</sup> I.A. No. 1/2020 in E.P. No. 34/2019

<sup>4</sup> SLP(C) 17247/2022

8. It was argued by Mr. Sundaram that the reference to the pending case before the CJM Garhwa District, in the documents filed along with the election petition, was an abuse of process and a clear case of interpolation. Learned counsel pointed out that this aspect has been acknowledged by the main judgment in para 27, whereby after considering the certified copy relating to that case, the court observed that there appeared to be some interpolation. Learned counsel reiterated the submissions and referred to certified copies which were placed on record. He also referred to the original of the complaint which was summoned by this court during the present proceedings. It was further stated that the conclusion of the High Court with respect to the non-disclosure of two cases in respect of the Payment of Wages Act and Minimum Wages requiring them to be gone into during the trial is in error. Learned counsel contended that even upon conviction, the minimum threshold indicated in Section 33A of the Act is not satisfied because, in either way, the maximum sanction is a penalty.

9. Dr. A.M. Singhvi, learned senior counsel for the election petitioner, urged that the impugned order correctly appreciated the law relating to Order VII Rule 11 and dismissed the appellant's application. Counsel reiterated that the suppression of the truth with respect to criminal cases, i.e., non-disclosure of cases where the petitioner was convicted and of pending cases, in Form- 26 affidavit were in relation to the following:

a) Pending cases: The appellant did not disclose the criminal case pending before the Chief Judicial Magistrate Garhwa relating to Forest Department cases.

b) Regarding cases in which the appellant was convicted (in section 6 of Form-26), there was a deliberate attempt to suppress the truth; the appellant had written "not applicable" when there were two cases in which he was convicted: firstly case No.20/2012 Labour Case relating to Payment of Wages and Minimum Wages Act, and secondly, Case No 1/ 2013, another case relating to Payment of Wages and Minimum Wages Act.

10. It was submitted that going into the merits of whether those cases actually existed, and related to the provisions of the Act, would amount to a mini-trial which is plainly impermissible while considering an application seeking rejection of the petition. It was submitted that the law on the subject is well settled. Counsel stated that the judgments of this court, such as *Saleem Bhai v. State of Maharashtra*<sup>5</sup> and *Mayar (H.K.) Limited v. Owners and Parties, Vessel M.V. Fortune Express*<sup>6</sup> had, in no uncertain terms, ruled that while considering an application under Order VII Rule 11, CPC, *only the averments in the pleadings (i.e., in the suit or petition) and the accompanying documents can be looked into*. Therefore, reference to and reliance on any document which was not part of the petition, but produced as a part of the respondent/defendant's plea, cannot be considered.

11. It was next urged that while it is undoubtedly important to respect popular will and the courts ought to be slow in upsetting them, equally it important to maintain the purity of the election process. Courts are, hence, duty bound to examine the allegations whenever the same are raised within the framework of the statute without being unduly hyper-technical in their approach and oblivious of the ground realities.

### **Analysis and Conclusions**

12. Section 33A of the Act, which requires disclosure of past criminal antecedents of every candidate, reads as follows:

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<sup>5</sup> 2002 [5] Suppl. SCR 491

<sup>6</sup> 2006 [1] SCR 860

**“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.”

Section 8 provides for disqualification of elected candidates, upon their conviction of specified offences. However, Section 33A, introduced through an amendment to the Act, in 2002, *compels those holding out their candidature to disclose information about their criminal antecedents*. The idea behind this provision is to ensure transparency and enable the voters to make an informed choice while casting the ballot. The need for a detailed declaration by candidates was underlined by this court in *Public Interest Foundation & Ors v Union of India (UOI) & Ors.*<sup>7</sup>, which required the Election Symbols (Reservation and Allotment) Order, 1968 to be suitably amended. The court observed that:

*“The best available people, as is expected by the democratic system, should not have criminal antecedents and the voters have a right to know about their antecedents, assets and other aspects. We are inclined to say so, for in a constitutional democracy, criminalization of politics is an extremely disastrous and lamentable situation. The citizens in a democracy cannot be compelled to stand as silent, deaf and mute spectators to corruption by projecting themselves as helpless. The voters cannot be allowed to resign to their fate. The information given by a candidate must express everything that is warranted by the Election Commission as per law. Disclosure of antecedents makes the election a fair one and the exercise of the right of voting by the electorate also gets sanctified. It has to be remembered that such a right is paramount for a democracy. A voter is entitled to have an informed choice. If his right to get proper information is scuttled, in the ultimate eventuate, it may lead to destruction of democracy because he will not be an informed voter having been kept in the dark about the candidates who are Accused of heinous offences. In the present scenario, the information given by the candidates is not widely known in the constituency and the multitude of voters really do not come to know about the antecedents. Their right to have information suffers.*

116. Keeping the aforesaid in view, we think it appropriate to issue the following directions which are in accord with the decisions of this Court:

(i) Each contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the particulars as required therein.

(ii) It shall state, in bold letters, with regard to the criminal cases pending against the candidate.

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<sup>7</sup> 2018 [10] SCR 141

(iii) If a candidate is contesting an election on the ticket of a particular party, he/she is required to inform the party about the criminal cases pending against him/her.

(iv) The concerned political party shall be obligated to put up on its website the aforesaid information pertaining to candidates having criminal antecedents.

(v) The candidate as well as the concerned political party shall issue a declaration in the widely circulated newspapers in the locality about the antecedents of the candidate and also give wide publicity in the electronic media. When we say wide publicity, we mean that the same shall be done at least thrice after filing of the nomination papers.”

13. Section 33-B inserted by the Representation of the People (Third Amendment) Act, 2002, provided *inter alia*, that “...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”. This court, in its decision reported as *People’s Union for Civil Liberties v Union of India*<sup>8</sup> held that provision to be invalid and unconstitutional. The court ruled that Section 33B imposed a “blanket ban on dissemination of information other than that spelt out in the enactment irrespective of the need of the hour and the future exigencies and expedients and secondly for the reason that the ban operates despite the fact that the disclosure of information now provided for is deficient and inadequate.” This decisively ruled that providing information is vital for a vibrant and functioning democracy.

14. Pursuant to the decision and directions of this court, the Election Commission issued guidelines and also framed forms that were part of guidelines requiring declarations *inter alia* with respect to disclosure of pending criminal cases and those in which candidate(s) had been convicted. The relevant extract of the guidelines first issued by the Election Commission on 10.10.2018 *inter alia* reads as follows:

“2. In pursuance of the directions in the abovementioned judgment, the Commission, after due consideration, has given the following directions to be complied with by candidates at elections to the Houses of Parliament and Houses of State Legislatures, who have criminal cases against them, either pending cases or cases of conviction in the past, and to the political parties that set up such candidates.

(a) Candidates at elections to the House of the People, Council of States, Legislative Assembly or Legislative Council who have criminal cases against them, shall publish a declaration about their criminal cases, for wide publicity in newspapers with wide circulation in the constituency area. This declaration is to be published in Format C-1, attached hereto, at least on three different dates from the day following the last date for withdrawal of candidatures and up to two days before the date of poll.

xxxxxx xxxxxx xxxxxx

3. The Political parties-recognized parties and registered un-recognized parties, which set up candidates with criminal cases, either pending cases or cases of past conviction, are required to publish declaration giving details in this regard, for wide publicity, on their website as well as in TV channels and newspapers having wide circulation in the State concerned. Declaration in this regard shall be published in Format C-2, annexed hereto, and should be provided State wise with separate statements for each State/Union Territory. Publishing of the declaration in newspapers and TV channels is required to be done at least on three different dates during the period mentioned in Para-2(a) above. As specified above, the declaration in newspapers should appear in at least 12 font size, and should be placed suitable so that the directions for wide publicity are complied with in letter and spirit. In the case of publishing of declaration in TV channels, the same

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<sup>8</sup> (2003) 4 SCC 399

should be completed before the period of 48 hours ending with the hour fixed for conclusion of poll. All such political parties shall submit as report to the Chief Electoral Officer of the State/UT concerned confirming that they have fulfilled the requirements of these directions and enclosing therewith the paper cuttings containing the declarations published by the party in respect of the candidates in the State/UT concerned. This shall be done within 30 days of completion of election. It may be noted that failure to abide by these directions would be treated as failure/refusal to carry out a lawful direction of the Commission for the purposes of paragraph-16A of the Election Symbols (Reservation & Allotment) Order, 1968.

4. It may also be noted that the provisions for the additional affidavit in respect of dues against Govt. accommodation, if any, that may have been allotted to the candidates, have now been incorporated in Form-26 itself under Item (8) relating to liabilities to Public Financial Institutions and Govt. Therefore, the candidates shall give the requisite declaration/particulars in this regard in Item (8) of Form-26. Accordingly, the candidates are now not required to file the additional affidavit prescribed under the Commissioner's Order No.509/11/2004-JS-1, dated 3rd February, 2016, as the provisions are not part of Form-26 itself.

5. These directions may be circulated to all formations of your party and also brought to the notice of candidates of the Party in future elections for guidance and for strict compliance of these directions.”

15. The other requirements include submission of copies of newspapers in which declarations about criminal cases were furnished to the District Election Officer, publication of declaration on TV Channels at least on three different dates but which was to be completed before 48 hours, ending with the year fixed for completion of poll. In the case of candidates with criminal cases set up by political parties, whether recognized parties or registered unrecognized parties, such candidates are required to declare before the Returning Officer concerned that they have informed their political party about the criminal cases against them. Provision for such declaration has been made in Form-26 in the newly inserted item (6A) and other stipulations were framed. The relevant form with respect to publication in newspapers was Form C-1; the report by the candidate “*about publication of declaration regarding criminal cases*” was in Form C-4 and Form 26 in terms of Rule 4A dealt with the election affidavit disclosing the description and details of income returns of the candidate. Clause 5 of Form 26 contains the column for disclosure of pending criminal cases and those in which the candidate was convicted for any offence. In the present instance, the relevant form filed by the appellant along with the declaration (Clause 6A) of Form 26 reads as follows:

**“FORM 26**

**(See Rule 4A)**

*Affidavit to be filed by the candidate along with nomination paper before the Returning Officer for Election to the House of the People (Lok Sabha) (Name of the House) from 05-Aheerbad Parliamentary Constituency (name of the Constituency)*

**PART-A**

*I, BHEEMRAO BASWANTHRAO PATIL son of late BASWANTHRAO PATIL, aged 63 years, resident of H.No.1-9-, Shirpur village, Madnoor Mandal, Kamareddy District, Telangana-503309 a candidate at the above election, do hereby solemnly affirm and state on oath.*

xxxxxx xxxxxx xxxxxx

**(5) Pending Criminal cases**

i) *I declare that there is no pending criminal case against me.*

(Tick this alternative if there is no criminal case pending against the Candidate and write NOT APPLICABLE against alternative. (ii) below)

OR

ii) The following criminal cases are pending against me:

(if there are pending criminal cases against the candidate, then tick this alternative and score off alternative (i) above, and give details of all pending cases in the Table

(a)	FIR No. with name and address of Police station concerned	List Enclosed Annexure-I	List Enclosed Annexure-I	List Enclosed Annexure-I
(b)	Case No. with Name of the Court	List Enclosed Annexure-I	List Enclosed Annexure-I	List Enclosed Annexure-I
(c)	Section(s) of concerned Acts/Codes involved (give no of the Section, e.g. Section of IPC, etc.)	List Enclosed Annexure-I	List Enclosed Annexure-I	List Enclosed Annexure-I
(d)	Brief description of offence	List Enclosed Annexure-I	List Enclosed Annexure-I	List Enclosed Annexure-I
(e)	Whether charges have been framed (mention Yes or No)	List Enclosed Annexure-I	List Enclosed Annexure-I	List Enclosed Annexure-I
(f)	If answer against (e) above is Yes, then give the date on which charges were framed	List Enclosed Annexure-I	List Enclosed Annexure-I	List Enclosed Annexure-I
(g)	Whether any Appeal/application for revision has been filed against the proceedings (Yes or No)	List Enclosed Annexure-I	List Enclosed Annexure-I	List Enclosed Annexure-I

(6) Cases of conviction

(i) I declare that I have not been convicted for any criminal offence.

(Tick this alternative, if the candidate has not been convicted and write NOT

OR

(ii) I have been convicted for the offences mentioned below: NOT APPLICABLE (if the candidate has been convicted, then tick this alternative and score off alternative (i) above, and give details in the Table below):

Table

(a)	Case No.	Not applicable	Not applicable	Not applicable
(b)	Name of the Court	Not applicable	Not applicable	Not applicable
(c)	Sections of Acts/Codes involved (give no. of the Section e.g. Section of IPC, etc.)	Not applicable	Not applicable	Not applicable
(d)	Brief description of offence for which convicted	Not applicable	Not applicable	Not applicable
(e)	Dates of orders of conviction	Not applicable	Not applicable	Not applicable
(f)	Punishment imposed	Not applicable	Not applicable	Not applicable
(g)	Whether any appeal has been filed against the conviction (Mention Yes or No)	Not applicable	Not applicable	Not applicable
(h)	If answer to (g) above is Yes give details and present status of appeal	Not applicable	Not applicable	Not applicable

(6A) I have given full and up to date information to my political party about all pending criminal cases against me and about all cases of conviction as given in paragraphs (5) and (6): Yes.”

16. The election petitioner/respondent contends that the disclosure in this case was false because the appellant was earlier convicted in cases concerning violation of the Minimum Wages Act, 1948 and the Payment of Wages Act, 1936. The appellant counters this and, in his application, contended that no such disclosure was essential by reason of the fact that under Section 33A, a candidate who 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 has to furnish such information [Section 33A(1)(i)]. It is also contended that in cases of conviction, the requirement of disclosure is by reason of Section 33A(1)(ii) only where she or he is convicted of an offence and sentenced to imprisonment for one year or more, other than offences expressly mentioned in Section 8(1) or (2) or (3). It is submitted that since the provisions of the Act, in fact, mandate disclosure only in respect of those classes of offences expressly stated, the non-disclosure of information with respect to criminal cases pending where the accused candidate can face punishment for less than two years or has not been convicted of an offence and sentenced to imprisonment for one year or more is not required.

17. The election petitioner had alleged in the election petition that with respect to withholding of vital information inasmuch as – as mentioned earlier – particulars of offences under the Minimum Wages Act and Payment of Wages Act where the candidate had been convicted as well as where he was facing criminal trial under the Indian Forest Act, were not disclosed. In support of this allegation, the election petitioner had annexed copies of a complaint and certain proceedings before the Magistrate at Garhwa. Likewise, the proceedings before the concerned Court in the cases relating to past convictions under the Payment of Wages Act and the Minimum Wages Act were mentioned. The appellant's main contention is that the election petitioner's assertions are false inasmuch as they rely upon a document, i.e., copies of certain order sheets in the pending criminal case relating to offences under the Forest Act before the Court in Garhwa and that so far as the past convictions under the Minimum Wages Act and the Payment of Wages Act are concerned, there was no requirement at all.

18. To clear the air, this court had summoned the file pertaining to the pending criminal case before the Garhwa Court, the records of which show that the following were arrayed as accused:

1. Sri M.B. Patil, Director, M/s. Patil Construction, S/o Unknown, Sarget, Pune, Maharashtra
2. Sri Ramayan Singh, S/o Late Ram Chhabila Singh, Shastri Nagar, P.S.-Garhwa, District-Garhwa. [A.G.M., Patil Construction, Kutchery Road, P.S.-Garhwa, District-Garhwa.]
3. Santosh Sinha, S/o Radha Prasad Sinha, Bijli Colony, P.S.-Garhwa, District-Garhwa. [Worker, Patil Constrction].
4. Dharpal, S/o Unknown, Patil Construction, Sarget, Pune, Maharashtra.
5. Sri Ranjan Das, S/o Chakradhar Das, 1917 Pokhanput, B.B.S.R.

The complaint/intimation by the Forest Department with respect to seizure and the commission of the offences named - M/s. M.B. Patil B.B. Patil Construction Company and four others (Ramayan Singh, Santosh Sinha, Dharpal and Ranjan Das) is dated 19.03.2013. The order sheet dated 02.04.2013 named four persons [other than the

present appellant] and stated that there was no need to issue warrants against the accused. According to the allegations, the constructions were carried out by the company inside 1/3<sup>rd</sup> portion of the forest area and stones were broken and converted into stone chips. The Forest Department Report was to the effect that 5000 cub. Ft of small and big boulders were seized on 20.03.2013. The order sheet for 28.06.2013 further discloses that Mr. Santosh Sinha, Ramayan Singh, Dharampal and only M.B. Patil were charged with committing the offence. This clearly shows the appellant was not charged for the offences alleged in the complaint under the Indian Forest Act.

19. So far as the past convictions are concerned, the allegations are not *per se* denied by the appellant, but rather the application for rejection of the petition contended that no disclosure of this kind was needed since they did not answer the description of the class of offences enumerated in Section 33A of the Act.

20. As far as criminal charges and offences go, the punishment for violating provisions of the Minimum Wages Act, 1948, is provided in Section 22, which prescribes a maximum prison term of 6 months or fine upto ₹ 500/-. Section 22A prescribes punishment for other offences imposing fine upto ₹ 500/-. As regards the Payment of Wages Act, 1936, the penalty provision is Section 20, which prescribes a maximum fine of ₹ 7500/-. A subsequent conviction under the same provision attracts a stiffer punishment: imprisonment of a month which may extend to six months.

21. The impugned order, as noticed earlier, is premised on the reasoning that any material brought on the record by the successful candidate who is a respondent in the election proceedings, *ipso facto* cannot be considered within the framework of Order VII Rule 11 CPC to reject the plea altogether. That understanding in this Court's opinion is correct. At the same time, there could be circumstances when there is material on the record, the consideration of which may not be considered by Order VII Rule 11 CPC but may fall within the ambit of Order XII Rule 6 CPC (decree on admission), which reads as follows:

***“Judgement on admissions-(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.***

***(2) Whenever a judgment is pronounced under sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”***

22. It has been held by this Court that the expression “*otherwise*” mentioned in sub-rule 1 of rule 6 of the Order XII, CPC is not confined to pleadings but also includes documents filed along with the complaint or main pleading or other materials subsequently brought on the record which are admitted by the other party. In other words, the matter of record that is not denied and contains facts that can lead the court to draw a decree is sufficient for the court to do so and, by its judgment, direct decree of the suit (in this case, petition) wholly or partly.

23. The appellant's argument with respect to using a document (i.e., a photocopy of the court related documents, and orders) in the case relating to Forest Act offences, not being true copies, but containing interpolations, as the title involving the appellant's name (i.e., “B.B. Patil) is merited. The appellant has sought to initiate proceedings before the High Court under Section 340 read with Section 195 of the Cr. PC. This court is loath to express

any opinion about whether annexing such photocopy amounts to an offence. The High Court indicated (in para 27 of the impugned judgment) that the “interpolation” alleged by the appellant appears to be borne out. The original trial court record, which this court had the benefit of considering, bears out the appellant’s submission. To that extent, therefore, the condition in Order XII Rule 6 CPC (i.e., admission on the basis of pleadings “or otherwise”) is undeniably made out; which is that the appellant, BB Patil, was not indicted individually; the company of which he was a part, as director, was charged. In relation to and for the company, as its representative, Shri M.B. Patil was charged. The trial court record establishes these as undeniable facts. Yet, the consequence of such admission has to be considered keeping in mind that several other allegations need a trial.

**24.** It is a salutary position in law that there cannot be a partial rejection of the plaint (or petition, as in this case) in exercise of power under Order VII Rule 11, CPC. This court had stated this principle, in *Sejal Glass Ltd. vs. Navilan Merchants Pvt. Ltd*<sup>9</sup> in the following manner:

*“This cannot elevate itself into a Rule of law, that once a part of a plaint cannot proceed, the other part also cannot proceed, and the plaint as a whole must be rejected Under Order VII Rule 11. In all such cases, if the plaint survives against certain Defendants and/or properties, Order VII Rule 11 will have no application at all, and the suit as a whole must then proceed to trial.”*

This principle was stated clearly, in *D. Ramachandran v. R.V. Jankiraman*<sup>10</sup> which, in relation to an election petition, explained the position as follows:

*“The election petition as such does disclose a cause of action which if unrebutted could void the election and the provisions of Order 7 Rule 11 (a) CPC cannot therefore be invoked in this case. There is no merit in the contention that some of the allegations are bereft of material facts and as such do not disclose a cause of action. It is elementary that under Order 7 Rule 11(a) CPC, the Court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action. Under the Rule, there cannot be a partial rejection of the plaint or petition.”*

**25.** There is some authority for the proposition, that the court’s power under Order XII Rule 6, CPC, is not only discretionary but requires exercise of caution and that unless an admission is unambiguous, *enabling the court to draw a decree*, the power would not be exercised. Thus, in *Himani Alloys Ltd. v. Tata Steel Ltd.*,<sup>11</sup> this court held that:

*“It is true that a judgment can be given on an “admission” contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the Defendant, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a Defendant to contest the claim. In short the discretion should be used only when there is a clear ‘admission’ which can be acted upon. (See also *Uttam Singh Duggal and Co. Ltd. v. United Bank of India 2000 [Supp 2] SCR 187; Karam Kapahi v. Lal Chand Public Charitable Trust 2010 (4) SCR 422 and Jeevan Diesels and Electricals Ltd. v. Jasbir Singh Chadha 2010) 6 SCC 526”**

**26.** A plain look at the election petition reveals that apart from allegations pertaining to non-disclosure of criminal cases pending against the appellant, or cases where he was

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<sup>9</sup> 2017 [7] SCR 557

<sup>10</sup> 1999 [1] SCR 983

<sup>11</sup> 2011[7] SCR 60

convicted, other averments and allegations have been made regarding non-compliance with stipulations regarding information dissemination and the manner of dissemination through publication in newspapers, the font size, the concerned newspapers' reach amongst the populace, etc. The alleged non-compliance with statutory and Election Commission mandated regulations, and their legal effect, cannot be examined in what are essentially summary proceedings under Order VII Rule 11, CPC, or even under Order XII Rule 6, CPC. Even if the allegations regarding non-disclosure of cases where the appellant has been arrayed as an accused, are ultimately true, the effect of such allegations (in the context of provisions of law and the non-disclosure of all other particulars mandated by the Election Symbols orders) has to be considered after a full trial. The admission of certain facts (and not all) by the election petitioner cannot be sufficient for the court to reject the petition, *wholly*. Even in respect of the undeniable nature of the judicial record, the effect of its content, is wholly inadequate to draw a decree in part. This court has also ruled that the truth or otherwise of anything is ordinarily a matter of evidence, in a full-blown trial, in *Virender Nath Gautam v Satpal Singh & Ors.*<sup>12</sup>:

*"52. The High Court, in our considered opinion, stepped into prohibited area of considering correctness of allegations and evidence in support of averments by entering into the merits of the case which would be permissible only at the stage of trial of the election petition and not at the stage of consideration whether the election petition was maintainable and dismissed the petition. The said action, therefore, cannot be upheld and the order deserves to be set aside."*

27. Lastly, the right to vote, based on an informed choice, is a crucial component of the essence of democracy. This right is precious and was the result of a long and arduous fight for freedom, for *Swaraj*, where the citizen has an inalienable right to exercise her or his right to franchise. This finds articulation in Article 326 of the Constitution which enacts that *"every person who is a citizen of India and who is not less than twenty one years of age on such date as may be fixed and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election"*.

Article 325 embeds a non-discriminatory principle:

*"325. No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex. There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them."*

Democracy has been held to be a part of one of the essential features of the Constitution. Yet, somewhat paradoxically, the right to vote has not been recognized as a Fundamental Right yet; it was termed as a "mere" statutory right. However, in *Jyoti Basu v. Debi Ghosal*,<sup>13</sup> this court again pointed out that:

*"a right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple a statutory right. With great reverence to the eminent Judges, I would like to clarify that the right to vote, if not a fundamental right, is certainly a constitutional right. The right originates from the Constitution and in accordance with the constitutional mandate contained in Article 326, the right has been shaped by the statute, namely, R.P. act. That, in my understanding, is the correct legal position as regards the nature of*

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<sup>12</sup> 2006 Supp SCR 413

<sup>13</sup> 1982 [3] SCR 318

*the right to vote in elections to the House of the People and Legislative Assemblies. It is not very accurate to describe it as a statutory right, pure and simple. Even with this clarification, the argument of the learned Solicitor General that the right to vote not being a fundamental right, the information which at best facilitates meaningful exercise of that right cannot be read as an integral part of any fundamental right, remains to be squarely met....”*

Similarly, in para 123 of the judgment, O. Chinnappa Reddi, J., held that:

*“(2) The right to vote at the elections to the House of the People or Legislative Assembly is a constitutional right but not merely a statutory right; freedom of voting as distinct from right to vote is a facet of the fundamental right enshrined in Article 19(1)(a). The casting of vote in favour of one or the other candidate marks the accomplishment of freedom of expression of the voter.”*

**28.** The elector or voter’s right to know about the full background of a candidate-evolved through court decisions- is an added dimension to the rich tapestry of our constitutional jurisprudence. Keeping this in mind, this court is of the opinion that if the appellant’s contentions were to be accepted, there would be a denial of a full-fledged trial, based on the acknowledgement that material facts were not suppressed. Whether the existence of a criminal case, where a charge has not been framed, in relation to an offence which does not possibly carry a prison sentence, or a sentence for a short spell in prison, and whether conviction in a case, where penalty was imposed, are material facts, are contested. This court would be pre-judging that issue because *arguendo* if the effect of withholding some such information is seen as insignificant, by itself, that would not negate the possibility of a conclusion based on the *cumulative impact* of withholding of facts and non-compliance with statutory stipulations (which is to be established in a trial). For these reasons, this court is of the opinion that the impugned judgment cannot be faulted.

**29.** In view of the foregoing discussion, there is no merit in the appeal; it is accordingly dismissed, with costs.

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