

ELPET No. 6 OF 2019

Debashish Samantaray **Election Petitioner**

-Versus-

Mohammed Moquim **Respondent**

INDEX

SL. NO.	CONTENTS	PAGE NO.	PARA NO.
1.	Case Background	1-2	1
2.	Case of the Election Petitioner	2-19	2
3.	Case of the Respondent	19-77	3
4.	Issues Framed	77-83	4
5.	Witnesses Examined	84-85	5
6.	Law on Election Petition	85-87	6
7.	Submissions of Counsel	87-88	7
8.	Issue Nos.1-3	88-124	8
9.	Issue Nos.4-14	124-204	9
10.	Issue Nos.15, 16, 19 & 20	204-342	10
11.	Issue Nos.17 & 21	342-562	11
12.	Issue Nos.22-27	563-599	12
13.	Issue Nos.28-32	599-647	13
14.	Issue Nos.18 & 33-36	647-649	14
15.	Issue Nos.37 & 38 [Conclusion]	650-651	15
16.	List of Witnesses	651-652	--
17.	List of Exhibits	652-693	--

IN THE HIGH COURT OF ORISSA, CUTTACK

ELPET No.06 of 2019

In the matter of an application under sections 80 to 84 read with section 100 of the Representation of People Act, 1951 read with Orissa High Court Rules to regulate proceedings under Representation of the People Act, 1951.

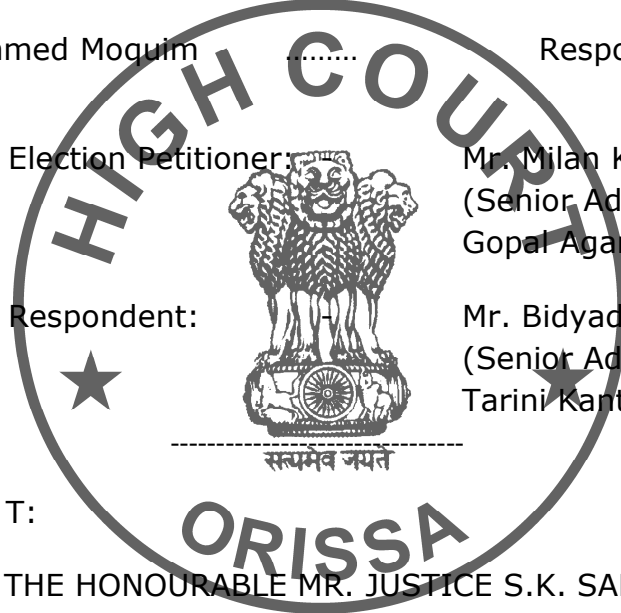
Debashish Samantaray Election Petitioner

-Versus-

Mohammed Moquim Respondent

For Election Petitioner: Mr. Milan Kanungo
(Senior Advocate)
Gopal Agarwal

For Respondent: Mr. Bidyadhar Mishra
(Senior Advocate)
Tarini Kanta Biswal



P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Hearing: 07.02.2024 Date of Judgment: 04.03.2024

S.K. SAHOO, J. Debashish Samantaray (hereafter 'the Election Petitioner') has filed this Election Petition under sections 80 to 84 read with section 100 of the Representation of Peoples Act, 1951 (hereafter 'R.P. Act, 1951') read with Orissa High Court Rules to regulate proceedings under the R.P. Act to declare that the

nomination of Mohammed Moquim (hereafter 'the Respondent') having been improperly and illegally accepted, so the entire process of election so far as it relates to the election of 90-Barabati Cuttack Assembly Constituency (hereafter 'the Constituency') has been vitiated and therefore, the result of the election of the Constituency is materially affected and is to be declared void and to be set aside. It is further prayed to declare that the Respondent had not submitted his nomination papers in the prescribed Form 2B and had filed false affidavit in Form 26 along with the nomination papers and has thus violated the Election Rules and Act and as such the election of Respondent is void and to direct, *inter alia* for fresh election in the constituency to the Odisha State Legislative Assembly and for any other relief or reliefs to which the petitioner is entitled to under law.

2. It is the case of the Election Petitioner that the Constituency is one of the nine Assembly Constituencies in the district of Cuttack and one of the 147 Assembly Constituencies of the State of Odisha.

The schedule of General Election of the Sixteenth Assembly Election to the Odisha State Legislative Assembly so far as it relates to the Constituency was that on 28th March 2019

the notification for election was issued, 4th April 2019 was the last date for filing nominations, 5th April 2019 was the date fixed for scrutiny of nominations, 8th April 2019 was the last date for withdrawal of candidature, 23rd April 2019 was the date of polling, 23rd May 2019 was the date of counting of votes/declaration of result and 27th May 2019 was the date before which the election was to be completed.

It is the further case of the Election Petitioner that during the above process of election, nine persons were duly notified as contesting candidates and their names, names of political parties fielding them and their respective symbols are as follows:-

Sl. No.	Names of contesting candidates	Names of Political parties	Election Symbol
1.	Mohammed Moquim	Indian National Cong.	Hand
2.	Samir Dey	B.J.P.	Lotus
3.	Debashish Samantaray	B.J.D.	Conch
4.	Jay Sankar Acharya	Kalinga Sena	Bat
5.	Priyadarsan Paval	SUCI (Communist)	Glass Tumbler
6.	Biswanath Rout	Kruppa Party	Chappals
7.	Seetal Kinner	Akhil Bharat Hindu Mahasabha	Coconut Farm
8.	Shaikh Muntaqem Buksh	A.A.P.	Broom
9.	Hemanta Behera	Independent	Diamond

It is stated that the Election Petitioner and the Respondent filed their respective nomination papers on 02.04.2019. The further case of the Election Petitioner is that in the Constituency, there were 197 polling stations (booths) and 235699 numbers of total electors, out of which 133854 votes polled including the postal ballots. The votes polled by each contesting candidate including the postal ballots are given hereunder:-

Sl. No.	Name of contesting candidate	Party Affiliation	Number of Votes polled
1.	Mohammed Moquim	Indian National Cong.	50244
2.	Debashish Samantaray	B.J.D.	46417
3.	Samir Dey	B.J.P.	33825
4.	Jay Sankar Acharya	Kalinga Sena	217
5.	Priyadarsan Paval	SUCI (Communist)	313
6.	Biswanath Rout	Kruppa Party	165
7.	SeetalKinner	Akhil Bharat Hindu Mahasabha	210
8.	Shaikh Muntazeem Buksh	A.A.P.	268
9.	Hemanta Behera	Independent	761
Total:			132420

Apart from the above, 1298 votes were polled as 'None of the above' and 136 votes were rejected. The Respondent received majority of votes and was accordingly declared to have been elected as M.L.A. from the constituency to the Odisha State Legislative Assembly.

It is the further case of the Election Petitioner that the result of election so far as it relates to the Constituency in declaring the Respondent to have been elected as M.L.A. to the Odisha State Legislative Assembly has been materially affected on account of material facts and particulars pleaded in the election petition.

The Election Petitioner, in paragraph-7 of his election petition, pleaded the following concise statement of material facts and particulars on the basis of which he seeks the reliefs:

(A) That the respondent, Mohammed Moquim filed his nomination as Indian National Congress (I.N.C) candidate for 90-Barabati Cuttack Assembly Constituency. The respondent, along with his nomination, filed an affidavit purportedly in Form 26. The respondent filed his nomination paper in violation of section 33 of the R.P. Act, 1951. According to section 33 of the R.P. Act, 1951, 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. Further, Rule 4 of the

Conduct of Elections Rules, 1961 prescribes:-
Every nomination paper presented under subsection (1) of section 33 shall be completed in such one of the Forms 2-A to 2-E as may be appropriate. In the General Election of the Legislative Assembly of the States, the appropriate form is Form 2-B appended to the Conduct of Elections Rules, 1961. The respondent filed his nomination paper before the Returning Officer on 02.04.2019 but the same is not in the prescribed Form 2-B. The respondent suo moto deleted Part II of the Form 2-B in the nomination paper filed by him before the Returning Officer on 02.04.2019. The Part III of Form 2-B of the nomination paper filed by the respondent is also not in the prescribed Form 2-B. Part III-A of the nomination paper filed by the respondent has not been filled up by the respondent. The columns of the Part III-A of the nomination paper have been left blank and columns from (3) to (9) are also not in the prescribed Form 2-B. Thus, it was incumbent upon the Returning Officer to reject the nomination paper of the respondent but the Returning Officer illegally and improperly accepted the nomination paper filed by the respondent in contravention of section 33 of the R.P. Act, 1951 read with Rule 4 of the Conduct of Elections Rules, 1961. The Returning Officer should have rejected the nomination of the

respondent while exercising power under section 36 of the R.P. Act, 1951 at the time of scrutiny as the nomination papers filed by the respondent was not in prescribed Form 2-B. The illegal and improper acceptance of nomination paper of the respondent has materially affected the result of the election so far as it concerns the returned candidate and as such the same is liable to be set aside.

(B) That the respondent also has not filed the affidavit in prescribed Form 26 as required U/s. 33-A of the R.P. Act, 1951. According to section 33-A:-(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 of one year or more.

It is submitted here that the respondent had filed his nomination before the Returning Officer on 02.04.2019 along with the affidavit

dated 03.04.2019 said to be in Form 26. The nomination paper and the affidavit filed by the respondents available in public platform web portal i.e. <http://www.ceoorissa.nic.in/main.html>. It is pertinent to state that the respondent has submitted four sets of nomination papers with affidavit as per the information available in the aforesaid web portal. The petitioner downloaded the nomination papers and the affidavit filed by the respondent from the aforesaid web portal and came to know that the affidavit along with his nomination paper filed on 02.04.2019 is of dated 03.04.2019 which is a date subsequent to the filing of the nomination paper. Thus the affidavit dated 03.04.2019 is no affidavit in the eye of law. The affidavit dated 03.04.2019 filed on 02.04.2019 is in contravention of the mandate of the law. Thus the Returning Officer should have rejected the nomination papers filed by the respondent on 02.04.2019 along with the affidavit dated 03.04.2019 but the same has not been done by the Returning Officer at the behest of the respondent and the Returning Officer has deliberately and illegally accepted the nomination paper dated 02.04.2019 along with the affidavit dated 03.04.2019 of respondent, though it was the duty of the Returning Officer to reject the nomination paper of respondent as the respondent has filed the affidavit which is no affidavit as required under law. Therefore, the

nomination papers dated 02.04.2019 of respondent are invalid nomination and the votes received in favour of the respondent cannot be treated as valid votes. So, the result of election has been materially affected so far as it relates to 90-Barabati Cuttack Assembly Constituency and as such the same is liable to be set aside.

(C) That the respondent in his affidavit dated 03.04.2019 filed along with his nomination paper on 02.04.2019 has falsely and deliberately not made correct, proper and full declaration about the details of the criminal cases pending against him. The respondent has not accurately mentioned correct fact under column (5) of the affidavit submitted by him before the Returning Officer as to whether any criminal case was pending against him or not. In column (5)(ii)(a)(vi), the respondent has mentioned FIR No.136/2012 dated 24.09.2012 in Baliana Police Station, Cuttack, Odisha whereas there is no Baliana Police Station in the district of Cuttack. Similarly, the respondent has mentioned FIR No.34 dated 06.09.2007, Vigilance Police Station, Cuttack, Odisha whereas there is no FIR No.34 dated 06.09.2007 in Vigilance Police Station, Cuttack, Odisha against the respondent. The respondent has not disclosed about the pendency of the FIR/V.G.R. No.34 dated 06.09.2007 of Vigilance Police

Station, Bhubaneswar, Odisha against him. The respondent has also not disclosed the FIR/V.G.R No. of the T.R. No.41/2013 pending in the Court of Spl. Judge, Vigilance, Bhubaneswar against him and others. Similarly, the declaration made in column (5)(ii)(b) Sl. No.(ix) by the respondent about the G.R. case No.680/2012 in the Court of S.D.J.M., Bhubaneswar is false and misleading declaration. There is no G.R. Case No.680/2012 pending against the respondent in the Court of S.D.J.M., Bhubaneswar rather a G.R. Case No. 680/2012 is pending against the respondent in the Court of the J.M.F.C. (O), Bhubaneswar. Further, the FIR Nos. given in column (5)(ii)(a) and the corresponding case nos. and the name of the Court declared in column (5)(ii)(b) and sections of the concerned Acts/Codes involved are false and misleading declarations. The respondent in column (5)(ii)(d) has declared that two charge related to wrongful restraint (I.P.C. section 341) whereas in column (5)(ii)(c) sl. No.(v), (vi) and (xii), he has declared three cases under section 341 of the I.P.C. is pending against him. The respondent in column (5)(ii)(d) has declared that two charges related to obscene acts and songs (I.P.C. section 294) whereas in column (4)(ii)(c) sl. nos. (i), (ii), (iv), (v), (vi) and (xii), he has declared six cases under section 294 of the I.P.C. is pending against him. Similarly, the respondent in column

(5)(ii)(d) has declared five charges related to cheating and dishonestly inducing delivery of property (I.P.C. section 420) whereas in column (5)(ii)(c) sl. Nos. (iii), (vii) to (x) and (xiii), he has declared six cases under section 420 of the I.P.C. are pending against him. The respondent in column (5)(ii)(d) has declared five charges related to punishment of criminal conspiracy (I.P.C. section 120-B) whereas in column (5)(ii)(c) sl. nos. (iii), (vii) to (x) and (xiii), he has declared six cases under section 120-B of the I.P.C. is pending against him. The respondent in column (5)(ii)(d) has declared two charges related to mischief by injury to public road, bridge, river, channel (I.P.C. section 143) whereas in column (5)(ii)(c) sl. nos. (i), (iv) and (v), he has declared three cases under section 143 of the I.P.C. is pending against him. The respondent in column (5)(ii)(d) has declared two charges related to mischief by doing any act in respect of any public property (section 7/3 and 7/4 of P.D.P.P. Act) whereas in column (5)(ii)(c) sl. nos. (i), (ii), (xii), he has declared three cases under the P.D.P.P. Act. The respondent in column (5)(ii)(c), sl. nos.(iii), (vii) to (x) and (xiii) has declared about the cases pending against him under section 13(2) read with section 13(1)(d) of P.C. Act, 1988 but has not declared about the same in column (5)(ii)(d) of the affidavit. Thus the respondent has made

false declaration about the pendency of criminal cases against him. Non-disclosure of criminal cases by the respondent in entirety and in full detail in the prescribed Form 26 as mandated under section 33-A of the R.P. Act, 1951 read with Rule 4-A of the Conduct of Elections Rules, 1961 creates impediment in free exercise of electoral rights by the voters, therefore, the election of the respondent from 90-Barabati Cuttack Assembly Constituency is to be declared null and void as the misinformed voters could not make an informed choice according to their free will and conscience and the same violates the fundamental rights of the voters to know.

(D) That column (7)(a) Note 1 of the prescribed form of Form 26 requires assets in joint name indicating the extent of joint ownership will also have to be given but the respondent in the affidavit, though has mentioned about the Account No.13770100031593 (joint account) in The Federal Bank Ltd, B.K. Road, Cuttack and about the Account No.10861745745 (joint account) in S.B.I. Main Branch, Badambadi, Cuttack, but has not disclosed the name and other details of the joint account holder of the above said bank accounts and has not indicated about the extent of ownership in the said bank accounts. Similarly, in column no.(7)(iii), the respondent has declared about the investment made in shares of different companies but has

not declared the book value of shares as per the books of the company. Further, in column (7)(iv) the respondent is required to declare the details of investment in NSS, Postal Savings, Insurance Policies and in any financial instruments in Post Office or Insurance Company and the amount but the respondent has not given the details of investment made in his and his spouse's insurance policies. The respondent is required to give details separately in respect of each investment. He has given loans to six companies but the details of the same have not been given.

(E) That in column (7)(B)(ii), the respondent has declared about the non-agriculture land in Dist. Cuttack, Mouza-Patpur, Khata No.15-D1, Plot No.114, 116, 112, 113. It is submitted here that at present, there is no Mouza known as Patpur in Dist. Cuttack so the Khata No. and Plot No. described therein are all false declarations. Similarly, the respondent has declared about the non-agriculture land of his spouse in Dist.-Cuttack, Mouza-Patpur, Khata No.16-D1, Plot No.111/1048. It is submitted here that at present there is no Mouza known as Patpur in Dist. Cuttack, so the Khata No. and Plot No. described therein are all false declarations deliberately made by the respondent to mislead the voters. The respondent has further declared about the Mouza Unit-13, Chandinichowk, Khata

No.799, Plot No.220 and 221 but there is no plot No.221 in Khata No.799 as per the R.O.R. downloaded from the official website i.e., bhulekh.

(F) That in Para (7)(B)(iv), the respondent has declared about the residential building known as "City Shelter" in the district of Cuttack, Mouza: Cuttack town, Unit No.15, Plot No.1882/3012, 2743, 1882/3020. Ground Floor Flat Nos.1/A, 2/B, F/5. In the above declaration, the respondent has not declared the Khata No. of the above said Plot Nos. whereas in the declaration made with respect to his spouse, he has declared in serial no.(2) that Khata No.04/79, 04-80 Plot No.1882/3019, 1882/3020 and in serial no.(3), he has mentioned Khata No.992 with respect to same plot Nos. i.e. Plot No.1882/3019, 1882/3020, 2743. The respondent has mentioned about the above said plots in three Khatas which are false declarations as all the above plots cannot be recorded in three different Khata of same Mouza.

The respondent has not declared in his affidavit filed in Form 26 along with his nomination paper about the loans taken by the companies in which he himself and his spouse are the directors. The respondent's company has taken huge amount of loans from Odisha Rural Housing Development Corporation when the respondent himself was the Managing Director of

M/S. Metro Builders Pvt. Ltd. The respondent has suppressed to disclose the above facts in the affidavit filed in Form 26.

In column (11) of Part B of the affidavit, the respondent is required to declare the abstract of the details given in (1) to (10) of part A and in column (8)(i), he is to declare the purchase price of self-acquired immovable properties of himself and his spouse. The respondent while declaring the purchase price of self-acquired immovable property of his spouse has declared "NOT APPLICABLE." He has not declared the purchased price of the self-acquired properties by his spouse. He has also not declared the development/construction cost of immovable property after purchase by his spouse. The respondent has also not declared in Part B column (8)(iii) about the approximate current price and the total value of self-acquired assets by his spouse. Thus the respondent has filed the affidavit in Form 26 along with his nomination paper by making false declarations and as such his nomination has been accepted illegally and improperly by the Returning Officer. Therefore, the election of the respondent is to be declared void by this Hon'ble Court as he has violated the mandate of section 33 of the R.P. Act, 1951 read with Rule 4A of the Conduct of Election Rules, 1961.

(G) It is submitted here that the respondent has not submitted his nomination paper as required under law in the prescribed form. He has also not filed the affidavit in Form 26 giving true and correct declarations about his criminal cases, assets (both movable and immovable) and liabilities of himself and his spouse for which his nomination papers ought to have been rejected by the Returning Officer as the respondent has not complied with the requirement of section 33 of the R.P. Act, 1951.

(H) That the non-disclosure or misinformation about the criminal cases pending against him, and the assets (both movable and immovable) and liabilities of himself and his spouse leads to suppression and amounts to making false declaration. Therefore, the respondent is not entitled to contest the election for the above said suppression and false declarations in the affidavit filed in Form 26 and for which the election of the respondent is to be declared void. Non-disclosure/misinformation of criminal cases, assets (both movable and immovable) and the liabilities of the respondent and his spouse interferes with free exercise of the right of the voters to vote according to their choice and conscience. Free and fair election is the essence of democracy. Without freely and fairly informed voters, votes cast by uninformed voters in favour of the respondent are meaningless. One

sided information, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce. Therefore, casting of votes by misinformed and non-informed voters is bound to affect the democracy seriously. The information required in the nomination Form 2B and in the affidavit filed in Form 26 is vital for giving effect to the "Right to Know" of the citizens. If a candidate fails to file the prescribed nomination form in Form 2B and files affidavit by suppressing the required information in Form 26, his nomination paper is to be rejected. The respondent has not filed his nomination paper in the prescribed Form 2B and files affidavit by suppressing the required information in Form 26. In the present case, the respondent has not filed his nomination paper in the prescribed Form 2B and has not fully disclosed about the criminal cases pending against him. The respondent has also not disclosed his correct assets (both movable and immovable) and liabilities and of his spouse in the affidavit filed in Form 26 along with his nomination paper. The Returning Officer should have rejected his nomination papers as the same was not filed in the prescribed Form 2B and whatever has been filed is also with blank particulars. But the Returning Officer illegally and improperly accepted the nomination papers of the respondent though the same were not in

the prescribed Form 2B. Therefore, non-filing of nomination paper in the prescribed form and whatever has been filed with blank particulars materially affects the result of the election as such the election of the respondent declaring him as MLA of 90-Barabati Cuttack Assembly Constituency is to be declared void.

(I) That filing of nomination papers by the respondent is not as per the prescribed form, rather with alternation and deletion of columns thereby withholding the information from the voters amounts to violation of the mandate of section 33 of the R.P. Act, 1951 read with Rule 4-A of the Conduct of Elections Rules, 1961. The respondent has failed to comply the requirement of section 33 of the R.P. Act, 1951 read with Rule 4-A of the Conduct of Elections Rules 1961. Thus, the election of the respondent is liable to be declared void.

(J) That the respondent filed this nomination on 02.04.2019 with an affidavit dated 03.04.2019 which is no affidavit according to law. Therefore, it was incumbent upon the Returning Officer to reject the nomination filed on 02.04.2019 with the affidavit dated 03.04.2019 but the Returning Officer illegally and improperly accepted the nomination dated 02.04.2019 filed by the respondent. The improper acceptance of nomination dated 02.04.2019 with affidavit dated 03.04.2019 materially affects the result of

the election so far it relates to 90-Barabati Cuttack Assembly Constituency as such the same is liable to be declared void.”

3. The Respondent in his written statement has, *inter alia*, stated that assertion of the Election Petitioner that the result of the election in question has been materially affected is totally false, concocted and baseless rather the result of election is valid, lawful and legally sustainable. It is further stated that the election petition does not disclose complete cause of action and as such the same is liable to be dismissed at the very threshold. The pleadings made under paragraphs 7(A) to 7(J) of the election petition are bereft of material facts to disclose any complete cause of action inasmuch as whatever pleaded under paragraphs 7(A) to 7(J) of the election petition are wholly unnecessary, scandalous, frivolous and vexatious, which are nothing but otherwise an abuse of the process of the Court and tend to prejudice, embarrass the fair trial of the case. With respect to paragraphs 7(A) to 7(J) of the election petition, in the written statement, it is stated as follows:-

Paragraph-7(A) of the election petition:

According to the Respondent, so far as the allegations made by the Election Petitioner in paragraph 7(A) of the election petition is concerned, it falls under section

100(1)(d)(i) and (iv) of the R.P. Act which postulates that if the High Court is of opinion that the result of the election, in so far as it concerns a returned candidate, has been materially affected, (i) by the improper acceptance of any nomination, or (iv) by any non-compliance with the provisions of the Constitution or of the R.P. Act or of any rules or orders made under that Act, the High Court shall declare the election of the returned candidate to be void.

According to the Respondent, while making the above allegations, the Election Petitioner has admitted in his pleadings that the Respondent filed his nomination as the official candidate set up by the Indian National Congress which is a recognized national political party. As prescribed under section 33 of the R.P. Act, the nomination form of such a candidate is required to be signed by the candidate and an elector of the constituency as proposer. First proviso to sub-section (1) of section 33 of the R.P. Act postulates that a candidate not set up by a recognized political party shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency. From a bare perusal of the Form 2B as prescribed under Rule 4 of the Conduct of Elections Rules, 1961

(hereafter '1961 Rules'), which is appended to the said Rules, it would be abundantly clear that Part-I of the said Form 2B is required to be used by candidate set up by recognized political party whereas its Part-II is required to be used by candidate not set up by recognized political party. At the beginning of Form 2B before Part-I, there is a clear instruction in capital letters that, "STRIKE OFF PART I OR PART II BELOW WHICHEVER IS NOT APPLICABLE". Under the format of Part-I of Form 2B, there is provision for proposing the nomination of the candidate by one elector/proposer and the part-I is required to be signed by one proposer only whereas under its part-II, there is provision for proposing the nomination by ten electors as proposers to the candidature and the Part-II is required to be signed by ten proposers.

According to the Respondent, he is admittedly a nominated candidate set up by a recognized national political party i.e. Indian National Congress who is required under law to use/fill up the part I of Form 2B, which has been complied in its letter and spirit in utter compliance with the provisions of law. The Respondent is also required under law to strike off the part II of Form 2B, which has been done by deleting the part II as prescribed under the law. It is further submitted that the words

'strike off' and 'delete' has one and the same meaning. If part II of Form 2B would not have been deleted from the form, the same was required to be struck off by the Respondent. Thus, according to the Respondent, the defect pointed out by the Election Petitioner is not at all a defect of substantial character. Sub-section (4) of section 36 of the R.P. Act, 1951 mandates that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. Therefore, the Returning Officer while scrutinizing the nomination paper of the respondent has rightly, properly and legally accepted the same as valid as prescribed under section 36 of the R.P. Act, 1951.

According to the Respondent, the further allegation made by the Election Petitioner is that the Part III of Form 2B of the nomination paper filed by the Respondent is also not in the prescribed Form 2B, but it does not point out any mistake and/or defect which appears under Part III of Form 2B filed by the respondent. It is stated that Part III of Form 2B requires the candidate to declare that he is a citizen of India and has not acquired the citizenship of any foreign State/Country; the age of the candidate; name of the recognized political party by which he has been set up as a candidate; symbols chosen by the

candidate in case of set up by a registered unrecognized political party/independent candidate; that the name of the candidate and his father's/mother's/husband's name have been correctly spelt out in which language; that he is qualified and also not disqualified for being chosen to fill the seat in the Legislative Assembly of the State; and where applicable the details of his caste/tribe. The Election Petitioner while alleging that the Part III of Form 2B is not in prescribed Form 2B has completely failed to plead to substantiate his allegation to the effect that the Respondent has not furnished the required information and/or not made correct and full declaration with respect to the above mentioned requirements.

According to the Respondent, the allegation made by the election petitioner with respect to Part IIIA of Form 2B filed by the respondent does not point out any particular mistake and/or defect. It is stated that Part IIIA of Form 2B requires the candidate to disclose his criminal antecedents, if any; as to whether he holds any office of profit under Central/State Government; as to whether he has been declared insolvent by any Court; as to whether he is under allegiance or adherence to any foreign country; as to whether he has been disqualified under section 8A of the 1951 Act or by an order of the President;

as to whether he was dismissed for corruption or for disloyalty while holding office under Central/State Government; as to whether he has any subsisting contract(s) with the Government for supply of goods or execution of works; as to whether the candidate is a managing agent, or manger or secretary of any company or corporation in the capital of which the Central/State Government has not less than 25% share; as to whether he has been disqualified by the Commission under section 10-A of the 1951 Act. The Election Petitioner while alleging that Part III-A of the nomination paper filed by the respondent has not been filled up by the Respondent and the columns of the Part III-A of the nomination paper have been left blank and columns from (3) to (9) are also not in the prescribed Form 2B has completely failed to plead that on account of such allegation, the Respondent has not furnished the required information as stated above and as such is not qualified and/or disqualified to contest the election in question.

According to the Respondent, the pleadings/allegations made under paragraph-7(A) of the election petition are bereft of materials facts and the same does not disclose complete cause of action and that on a bare perusal of the pleadings contained under paragraph-7(A), it would be

evident that the following vital material facts are completely absent on account of which the pleadings do not disclose complete cause of action to frame any triable issue:-

(i) Though the Election Petitioner has made his allegations with respect to the nomination paper filed in Form 2B by the Respondent before the Returning Officer of the Constituency on 02.04.2019, he has not filed either the certified copy of the said nomination paper in Form 2B or the downloaded copy of the said Form 2B from the official website of the Election Commission of India or of the Chief Electoral Officer of Odisha along with the election petition. The Election Petitioner is required to file the said document duly signed and verified by him in the manner laid down in the C.P.C. along with his election petition as prescribed under section 83(2) of the R.P. Act, 1951 read with Order-VII Rule 14(1) of the C.P.C. On account of non-filing of the above said document in utter disobedience to the provisions of law, the allegations made under paragraph-7(A) of the election petition amounts to non-disclosure of material facts inasmuch as such pleadings/allegations do not disclose complete cause of action and as such the same are liable to be struck down;

(ii) Under paragraph-7(A), there is no pleading about the numbers/sets of nomination papers filed by the Respondent in Form 2B whereas

under section 33(6) of the R.P. Act, 1951, it is prescribed that a candidate can file maximum four nomination papers;

(iii) It has been prescribed under section 35 of the R.P. Act, 1951 that the Returning Officer after receiving the nomination papers 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 whereas the Election Petitioner has not disclosed the said material fact with respect to the serial number (s) of the nomination paper(s) filed by the Respondent as endorsed by the Returning Officer of 90-Barabati Cuttack Assembly Constituency;

(iv) The Returning Officer is required under law to display in his notice board the copies of the nomination papers filed by each candidate along with the copy of the affidavit accompanying the nomination on the same day on which the nomination has been filed. If anyone asks for a copy of the papers mentioned above, the same should be made available to him/her freely by the Returning Officer. Copies of the same should also be handed over to media persons for wide dissemination of the information about the candidates. The nomination papers and the affidavits of each candidate should also be uploaded in the official website of the Election

Commission of India. If anyone furnishes any information contradicting the statements in the nomination form or the affidavit by means of a duly sworn affidavit, copies of such papers should also be displayed on the notice board of the Returning Officer and be uploaded on the website.

In the instant case, the Election Petitioner, though was a contesting candidate, has willfully suppressed the material facts to the effect as to whether the above provisions with respect to nomination papers and affidavits filed by the respective nominated candidates have been complied with by the Returning Officer or not. It has also not been disclosed by the Election Petitioner that as to whether he himself or anyone else has filed any counter affidavit to the nomination and the affidavit filed by the Respondent or not;

(v) The name(s) of the proposer(s), their respective polling station number(s) and their respective serial numbers in the said polling station has not been disclosed;

(vi) Though allegations are made with respect of Part II, Part III and Part III-A of Form 2B, the format of such parts of Form 2B have not been provided/disclosed in the election petition;

(vii) It has not been pleaded/disclosed in the election petition as to whether the Respondent is

required under law to fill up the Part II of Form 2B or not;

(viii) The information required to be furnished under Part III of Form 2B has not been disclosed/pleaded in the election petition;

(ix) The substantial defects, if any, that appears under Part III of Form 2B have not been disclosed/pleaded in the election petition;

(x) The information required to be furnished under Part III-A of Form 2B has not been disclosed/pleaded in the election petition;

(xi) It has not been pleaded as to what are the columns of Part III-A of Form 2B that have been left blank by the Respondent;

(xii) It has also not been pleaded as to why and how the columns (3) to (9) of the Part III-A of Form 2B filed by the Respondent are not in the prescribed Form 2B;

(xiii) The information required to be furnished under columns (3) to (9) in Part III-A of Form 2B has not been disclosed/pleaded in the election petition;

(xiv) The substantial defects, if any, that appears under Part III-A of Form 2B have not been disclosed/pleaded in the election petition;

(xv) It has not been pleaded/disclosed by the Election Petitioner as to whether during the process of scrutiny of nominations, he himself or anybody else has raised objection, either oral or written, to the nomination of the Respondent

pointing out the above allegations as enumerated under (a), (b) and (c) above before the Returning Officer or not;

(xvi) It has not been pleaded/disclosed that on account of such allegation made under paragraph-7(A) of the election petition as to why and how the result of the election, in so far as it concerns the returned candidate, has been materially affected.

According to the Respondent, the allegations made by the Election Petitioner as enumerated under paragraph-7(A) are wholly unnecessary, scandalous, frivolous, vexatious and tend to prejudice, embarrass the fair trial of the case with ulterior political motive which is an abuse of the process of the Court.

Paragraph-7(B) of the election petition:

According to the Respondent, in paragraph-7(B) of the election petition, allegation is made to the effect that the Election Petitioner came to know from the downloaded copy of the nomination papers and the affidavit in Form 26 filed by the Respondent from the web portal i.e. <http://www.ceoorissa.nic.in/main.html> that the affidavit filed along with his nomination paper on 02.04.2019 is of dated 03.04.2019, which is a date subsequent to the filing of the

nomination paper. Thus the affidavit dated 03.04.2019 filed along with the nomination dated 02.04.2019 is not a valid affidavit in the eye of law. The affidavit dated 03.04.2019 filed on 02.04.2019 is in contravention of the mandate of law. Thus, the Returning Officer should have rejected the nomination papers filed by the Respondent on 02.04.2019 along with the affidavit dated 03.04.2019 but the same has not been done by the Returning Officer at the behest of the Respondent and the Returning Officer has deliberately and illegally accepted the nomination paper dated 02.04.2019 along with the affidavit dated 03.04.2019 of the Respondent though it was the duty of the Returning Officer to reject the nomination paper of the Respondent as the Respondent has filed the affidavit which is not a valid affidavit in the eye of law.

According to the Respondent, while making the above allegation under paragraph-7(B) of the election petition, the Election Petitioner has wilfully and deliberately suppressed the following material facts and as such the pleadings made under paragraph-7(B) of the election petition do not disclose complete cause of action:-

- (i) Though the Election Petitioner has pleaded that he is in possession of the downloaded copy of the nomination papers and the affidavit in

Form 26 filed by the Respondent, the said downloaded nomination papers and the affidavit after being duly signed and verified by the Election Petitioner in the manner laid down in the C.P.C. have not been filed/delivered/presented along with the election petition in utter violation of section 83(2) of the R.P. Act, 1951 read with Order-VII Rule 14(1) of the C.P.C.

(ii) As per the standing instruction issued by the Election Commission, if the nomination papers filed with affidavit in Form 26 is either incomplete, or has any column(s) left blank and not filled up, or the said affidavit is not at all filed, the Returning Officer shall inform the same to the nominated candidate concerned in writing in the prescribed 'checklist' directing him to file the same latest by 3.00 p.m. on the last date for filing of nominations or before commencement of scrutiny of nominations. In the case in hand, the Respondent filed his affidavit in Form 26 dated 02.04.2019 along with his nomination papers on 02.04.2019. As prescribed under section 33(4) of the R.P. Act, 1951, the Returning Officer made preliminary examination of nomination papers and affidavit in Form 26 filed by the Respondent then and there from the technical stand point when the same were filed/presented before him by the Respondent. During the process of preliminary examination of

nomination papers along with the affidavit in Form 26 by the Returning Officer, it was found by him that column/serial numbers 5, 6, 7 and 8 of the said affidavit in Form 26 were not properly mentioned. Therefore, the Returning Officer issued instruction to the Respondent to file a fresh/revised affidavit before the commencement of scrutiny of nominations. Similarly other three sets of 'checklist' were issued on 02.04.2019 by the Returning Officer to the Respondent with respect to his other three sets of nominations numbered as 03/LA/2019/RO, 04/LA/2019/RO and 05/LA/2019/RO respectively. In due compliance to the instruction issued by the Returning Officer as enumerated under the 'checklist', the Respondent prepared a fresh/revised affidavit in Form 26 on 03.04.2019 and submitted/filed the said revised affidavit before the Returning Officer on 04.04.2019 at about 12.20 p.m. The Returning Officer upon receiving the revised affidavit dated 03.04.2019 on 04.04.2019 issued a 'checklist' to that effect to the Respondent.

According to the Respondent, the Election Petitioner being a contesting candidate in the election in question, who was also elected as M.L.A. from 90-Barabati Cuttack Assembly Constituency in previous elections consecutively for last two terms knew very well about the above instructions of the Election Commission of

India and provisions for issuance of 'checklist' by the Returning Officer, which he is supposed to have received in respect of his own nominations from the Returning Officer, but while making allegations against the Respondent with respect to filing of his affidavit in Form 26, the Election Petitioner wilfully and deliberately suppressed the said material facts and as such the allegations/pleadings made under paragraph-7(B) of the election petition does not disclose complete cause of action.

(iii) In his election petition, under its paragraph-1, the Election Petitioner has given the schedule of the election in question wherein it is mentioned that the last date for filing of nominations is 04.04.2019 and the date fixed for scrutiny of nominations is 05.04.2019. The format of the affidavit in Form 26 prescribed under Rule 4-A of the Conduct of Election Rules, 1961 has been appended with the said 1961 Rules. A bare perusal to the foot note of Form 26 affidavit vide its Note-1 as well as instructions of the Election Commission of India in the Hand Book for Returning Officer, it would be evident that the affidavit should be filed by the nominated candidate latest by 3.00 p.m. on the last day of filing nominations i.e. in the instant case by 3.00 p.m. on 04.04.2019. Further, as per the instruction of the Election Commission of India to the effect that in case

the affidavit in Form 26 is not at all filed by the nominated candidate along with his/her nomination papers or the same has been filed with its columns left blank, it should be brought to the notice of the nominated candidate and he will have opportunity to file a fresh affidavit complete in all respects by the time fixed for commencement of scrutiny of nominations i.e. in the instant case by 11.00 a.m. on 05.04.2019. The Election Petitioner deliberately and wilfully has suppressed these important material facts with an ulterior motive and only to create confusion, he has falsely stated that the affidavit in Form 26 dated 03.04.2019 filed by the Respondent along with his nomination papers on 02.04.2019 is no affidavit in the eyes of law.

(iv) The Election Petitioner has suppressed the material fact to the effect that the affidavit in question in Form 26 dated 03.04.2019 filed by the Respondent before the Returning Officer on 04.04.2019 at 12.20 p.m. was well within the prescribed time limit and the Returning Officer after receiving it has acknowledged the same in a fresh 'checklist' issued on 04.04.2019.

(v) Though the Election Petitioner has made allegation to the effect that the Returning Officer at the behest of the Respondent has deliberately and illegally accepted the nomination paper dated 02.04.2019 along with the affidavit dated 03.04.2019 of the Respondent, but the Election

Petitioner has not pleaded the basic material fact as to why and how on account of such allegation, the result of the election, in so far as it concerns the returned candidate, has been materially affected inasmuch as such illegal acceptance of the nomination papers filed by the Respondent comes under the ambit of section 100(1)(d)(i) and (iv) of the R.P. Act, 1951.

According to the Respondent, the allegations/pleadings made by the Election Petitioner under paragraph-7(B) of the election petition are wholly unnecessary, scandalous, frivolous, vexatious and tend to prejudice, embarrass the fair trial of the case and made with ulterior political motive which is an abuse of the process of the Court.

Paragraph-7(C) of the election petition:

According to the Respondent, under paragraph-7(C) of the election petition, the Election Petitioner has made following allegations with respect to pending criminal cases against the Respondent disclosed in his affidavit filed in Form 26, and further alleged that the Respondent has made false declaration about the pendency of criminal cases against him:-

(a) In column (5)(ii)(a)(vi), the Respondent has mentioned F.I.R. No.136/2012 dated 24.09.2012 in Baliana Police Station, Cuttack, Odisha

whereas there is no Baliana Police Station in the district of Cuttack;

(b) Similarly, the Respondent has mentioned F.I.R. No.34 dated 06.09.2007, Vigilance police station, Cuttack, Odisha whereas there is no F.I.R. No.34 dated 06.09.2007 in Vigilance police station, Cuttack, Odisha against the Respondent. The Respondent has not disclosed about the pendency of the F.I.R./V.G.R. No.34 dated 06.09.2007 of Vigilance police station, Bhubaneswar, Odisha against him;

(c) The Respondent has also not disclosed the F.I.R./V.G.R. No. of the T.R. No.41/2013 pending in the Court of learned Special Judge, Vigilance, Bhubaneswar against him and others;

(d) Similarly the declaration made in column (5)(ii)(b) sl. no.(ix) by the Respondent about the G.R. Case No.680/2012 in the Court of S.D.J.M., Bhubaneswar is false and misleading declaration. There is no G.R. Case No.680/2012 pending against the Respondent in the Court of S.D.J.M., Bhubaneswar rather such G.R. Case is pending against the Respondent in the Court of J.M.F.C.(O), Bhubaneswar;

(e) The F.I.R. Nos. given in column (5)(ii)(a) and the corresponding Case Nos. and the name of the Court declared in column (5)(ii)(b) and

sections of the concerned Acts/Codes involved are false and misleading declarations;

(f) The Respondent in column (5)(ii)(d) has declared that two charges related to wrongful restraint (section 341 I.P.C.) whereas in column (5)(ii)(c) sl. no.(v), (vi) and (xii), he has declared three cases under section 341 of the I.P.C. are pending against him;

(g) The Respondent in column (5)(ii)(d) has declared that two charges related to obscene acts and songs (section 294 I.P.C.) whereas in column (5)(ii)(c) sl. nos.(i), (ii), (iv), (v), (vi) and (xii), he has declared six cases under section 294 of the I.P.C. are pending against him;

(h) Similarly, the Respondent in column (5)(ii)(d) has declared five charges related to cheating and dishonestly inducing delivery of property (section 420 I.P.C.) whereas in column (5)(ii)(c) sl. nos.(iii), (vii) to (x) and (xiii), he has declared six cases under section 420 of the I.P.C. are pending against him;

(i) The Respondent in column (5)(ii)(d) has declared five charges related to punishment of criminal conspiracy (section 120B I.P.C.) wherein in column (5)(ii)(c) sl. nos. (iii), (vii) to (x) and (xiii), he has declared six cases under

section 120-B of the I.P.C. are pending against him;

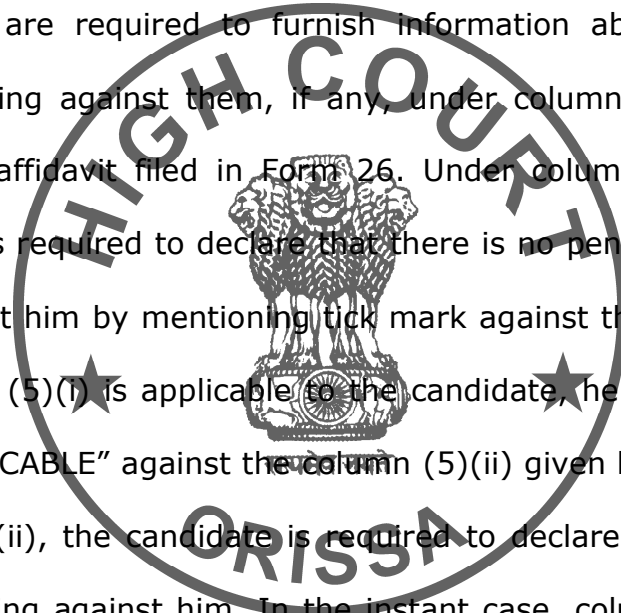
(j) The Respondent in column (5)(ii)(d) has declared two charges related to mischief by injury to public road, bridge, river, channel (section 143 I.P.C.) whereas in column (5)(ii)(c) sl. nos. (i), (iv) and (v), he has declared three cases under section 143 of the I.P.C. are pending against him;

(k) The Respondent in column (5)(ii)(d) has declared two charges related to mischief by doing any act in respect of any public property (section 7/3 and 7/4 of P.D.P.P. Act) whereas in column (5)(ii)(c) sl. nos. (i), (ii), (xii), he has declared three cases under the P.D.P.P. Act;

(l) The Respondent in column (5)(ii)(c) sl. nos. (iii), (vii) to (x) and (xiii) has declared about the cases pending against him under section 13(2) read with section 13(1)(d) of P.C. Act, 1988 but has not declared about the same in column (5)(ii)(d) of the affidavit.

According to the Respondent, he has disclosed all the necessary information in respect of the criminal cases pending against him in his affidavit filed in Form 26. There is no concealment of information or false information provided by the Respondent in the said affidavit, rather he has declared all

particulars in respect of all the criminal cases pending against him as required under law and prescribed under the format of the Form 26 affidavit. On the other hand, the Election Petitioner has made above allegations very tactfully on false and frivolous grounds, without disclosing the basic material facts as to what were the information required to be disclosed under law in column (5) of the Form 26 affidavit. All the nominated candidates are required to furnish information about criminal cases pending against them, if any, under column (5) of their respective affidavit filed in Form 26. Under column (5)(i), the candidate is required to declare that there is no pending criminal case against him by mentioning tick mark against the column. If the column (5)(i) is applicable to the candidate, he has to write "NOT APPLICABLE" against the column (5)(ii) given below. Under column (5)(ii), the candidate is required to declare the criminal cases pending against him. In the instant case, column (5)(i) is not applicable for the Respondent, hence he has mentioned "Not Applicable" against the column (5)(i) and on the other hand against column (5)(ii), he has put tick mark declaring thereby that criminal cases are pending against him. Under the column (5)(ii)(a), the candidate is required to declare "FIR No. with name and address of the police station concerned". Under the



column (5)(ii)(b), the candidate is required to declare "Case No. with Name of the Court". Under the column (5)(ii)(c), the candidate is required to furnish information about "Section(s) of concerned Acts/Codes (give no. of the Section, e.g. Section.....of I.P.C. etc.)." Under the column (5)(ii)(d), the candidate is required to furnish information about "Brief description of offence". Under the column (5)(ii)(e), the candidate is required to furnish information about "Whether charges have been framed (mention YES or NO)". Under the column (5)(ii)(f), the candidate is required to furnish information to the effect that "If answer against (e) above is YES, then to give the date on which charges were framed". Under the column (5)(ii)(g), the candidate is required to furnish information as to "Whether any Appeal/Application for revision has been filed against the proceedings (Mention YES or No)". According to the Respondent, the Election Petitioner, while making allegations under paragraph-7(C) of the election petition, has deliberately suppressed the above important material facts which are laid down/prescribed under the column (5)(ii) in its clauses (a) to (g) and as such those allegations do not disclose complete cause of action.

According to the Respondent, the allegations made under paragraph-7(C) of the election petition as enumerated under (a) to (l) above, are bereft of material facts, do not disclose complete cause of action, wholly unnecessary, frivolous, scandalous, vexatious and tend to prejudice, embarrass the fair trial of the case with ulterior political motive which is otherwise an abuse of the process of the Court. It is further stated:-

(a) The Respondent has correctly mentioned the F.I.R. No., date of F.I.R. and name of the police station in column (5)(ii)(a) vide Sl. No.(vi) i.e. F.I.R. No.136/2012, dated 24.09.2012 at Baliana police station. There is no allegation about the corresponding entries/information furnished in respect of the said F.I.R. under columns (5)(ii)(b) to (5)(ii)(g). The only discrepancy as alleged is that mentioning of Baliana police station, Cuttack whereas in the district of Cuttack, there is no Baliana police station. The said allegation is made without any pleading to the effect that on account of such typographical mistake as to how the result of the election, insofar as it concerns the returned candidate, has been materially affected. Even if the district of the Baliana police station has been wrongly mentioned as Cuttack District in place of Khordha District, but the same is inconsequential, immaterial and a mere

typographical error and the said mistake cannot be a ground on basis of which the election is to be declared void and be set aside. The electors of the Constituency in general are well informed that Baliana police station comes under Khordha district and as such on account of mentioning of the name of the district as Cuttack in place of Khordha, the same does not create any serious confusion or misinformation in the minds of the electors;

(b) Similarly, the Respondent has correctly disclosed under column no.(5)(ii)(a) regarding pendency of F.I.R. No.34 dated 06.09.2007 in Vigilance Police Station. There is no allegation with respect to all other corresponding information furnished under column nos. (5)(ii)(b) to (5)(ii)(g) against the said F.I.R. number. The only allegation is made pointing out the typographical error with respect to place of the police station as 'Cuttack' instead of 'Bhubaneswar', without any pleading to the effect that on account of such typographical mistake as to how the result of the election, insofar as it concerns the returned candidate, has been materially affected. Such typographical error as alleged is inconsequential and immaterial and the said error cannot be said to be a ground on basis of which the election is to be declared void and be set aside;

(c) The allegation to the effect that the Respondent has not disclosed pendency of T.R. No.41/2013 in the Court of Special Judge, Vigilance, Bhubaneswar against him and others is entirely false, concocted, unnecessary, frivolous and scandalous inasmuch as the said allegation is bereft of the material fact to the effect that the Respondent has disclosed the said T.R. No.41/2013 pending before the Court of Special Judge, Vigilance under column No.(5)(ii)(b) in its sl. no.(iii) along with all other corresponding information in respect of the said pending case which have been furnished correctly in column nos.(5)(ii)(c) to (5)(ii)(g). There is no pleading of the material fact as to how on account of such allegation, the result of the election in so far as it concerns the returned candidate, has been materially affected;

(d) Similarly, the allegation made with respect to the declaration made in column (5)(ii)(b) sl. no.(ix) by the Respondent about the G.R. Case No.680/2012 pending in the Court of S.D.J.M., Bhubaneswar instead of Court of J.M.F.C.(O), Bhubaneswar, is not worth acceptable as because the source of information of such allegation has not been disclosed by the Election Petitioner. There is also no allegation made with respect to the corresponding information furnished against the said pending case under column nos.(5)(ii)(a), (5)(ii)(c) to (5)(ii)(g).

Such allegation made in the election petition is bereft of the material fact as to how on account of mentioning the name of the Court as S.D.J.M., Bhubaneswar instead of J.M.F.C.(O), Bhubaneswar, the result of the election, in so far as it concerns the returned candidate, has been materially affected;

(e) The allegation made to the effect that the F.I.R. Nos. given in column (5)(ii)(a) and the corresponding Case Nos. and the name of the Court declared in column no.(5)(ii)(b) and sections of the concerned Acts/Codes involved are false and misleading declarations, is wholly baseless, unnecessary and frivolous without pleading of the material facts disclosing/pointing out thereby any particular false and misleading declarations in those two columns and as such the same does not disclose any cause of action;

(f) The Respondent in column no.(5)(ii)(c) against the heading "Sections of the concerned Acts/Codes involved" has correctly furnished the required information vide its sl. nos. (v), (vi) and (xii) that section 341 of I.P.C. is involved in the pending cases against him. Similarly, the Respondent in column (5)(ii)(d) against the heading "Brief description of offence" has correctly disclosed that section 341 of I.P.C. relates to the offence of wrongful restraint. In the election petition, there is no other allegation(s) made with respect to the

information furnished by the Respondent in columns nos.(5)(ii)(a), (5)(ii)(b), (5)(ii)(e), (5)(ii)(f) and (5)(ii)(g) regarding charges/cases pending under section 341 of I.P.C. It is not mandatorily required to furnish number of charges/cases in columns (5)(ii)(c) and (5)(ii)(d) of Form 26 affidavit. Therefore, the allegation made by the Election Petitioner pointing out the number of charges/cases mentioned in columns (5)(ii)(c) and (5)(ii)(d) is inconsequential, unnecessary, frivolous, scandalous, vexatious, does not disclose any cause of action and as such legally not sustainable. There is no pleading of the material fact to the effect as to how on account of such allegation, the result of the election, in so far as it concerns the returned candidate, has been materially affected.

(g) The Respondent in column no.(5)(ii)(c) against the heading "Sections of the concerned Acts/Codes involved" has correctly furnished the required information vide its sl. nos. (i), (ii), (iv), (v), (vi) and (xii) that section 294 of I.P.C. is involved in the pending cases against him. Similarly, the respondent in column no.(5)(ii)(d) against the heading "Brief description of offence" has correctly disclosed that Section 294 of I.P.C. relates to the offence of obscene acts and songs. In the election petition, there is no other allegation(s) made with respect to the information furnished by the Respondent in

columns nos.(5)(ii)(a), (5)(ii)(b), (5)(ii)(e), (5)(ii)(f) and (5)(ii)(g) regarding charges pending under section 294 of I.P.C. It is not mandatorily required to furnish number of charges/cases in columns nos.(5)(ii)(c) and (5)(ii)(d) of Form 26 affidavit. Therefore, the allegation made by the Election Petitioner pointing out the number of charges/cases mentioned in columns (5)(ii)(c) and (5)(ii)(d) is inconsequential, unnecessary, frivolous, scandalous, vexatious, does not disclose any cause of action and as such legally not sustainable. There is no pleading of the material fact as to how on account of such allegation, the result of the election, in so far as it concerns the returned candidate, has been materially affected;

(h) The Respondent in column no.(5)(ii)(c) against the heading "Sections of the concerned Acts/Codes involved" has correctly furnished the required information vide its sl. nos. (iii), (vii) to (x) and (xiii) that section 420 of I.P.C. is involved in the pending cases against him. Similarly, the Respondent in column (5)(ii)(d) against the heading "Brief description of offence" has correctly disclosed that section 420 of I.P.C. relates to the offence of cheating and dishonestly inducing delivery of property. In the election petition, there is no other allegation(s) made with respect to the information furnished

by the Respondent in columns nos.(5)(ii)(a), (5)(ii)(b), (5)(ii)(e), (5)(ii)(f) and (5)(ii)(g) regarding charges pending under section 420 of I.P.C. It is not mandatorily required to furnish number of charges/cases in columns (5)(ii)(c) and (5)(ii)(d) of Form 26 affidavit. Therefore, the allegation made by the Election Petitioner pointing out the number of charges/ cases mentioned in columns (5)(ii)(c) and (5)(ii)(d) is inconsequential, unnecessary, frivolous, scandalous, vexatious, does not disclose any cause of action and as such legally not sustainable. There is no pleading of the material fact as to how on account of such allegation the result of the election, in so far as it concerns the returned candidate, has been materially affected;

(i) The Respondent in column (5)(ii)(c) against the heading "Sections of the concerned Acts/Codes involved" has correctly furnished the required information vide its sl. nos.(iii), (vii) to (x) and (xiii) that section 120B of I.P.C. is involved in the pending cases against him. Similarly, the Respondent in column (5)(ii)(d) against the heading "Brief description of offence" has correctly disclosed that section 120B of I.P.C. relates to the offence of criminal conspiracy. In the election petition, there is no other allegation(s) made with respect to the information furnished by the Respondent in

columns nos.(5)(ii)(a), (5)(ii)(b), (5)(ii)(e), (5)(ii)(f) and (5)(ii)(g) regarding charges pending under section 120B of I.P.C. It is not mandatorily required to furnish number of charges/cases in columns nos.(5)(ii)(c) and (5)(ii)(d) of Form 26 affidavit. Therefore, the allegation made by the Election Petitioner pointing out the number of charges/cases mentioned in columns nos.(5)(ii)(c) and (5)(ii)(d) is inconsequential, unnecessary, frivolous, scandalous, vexatious, does not disclose any cause of action and as such legally not sustainable. There is no pleading of the material fact as to how on account of such allegation the result of the election, in so far as it concerns the returned candidate, has been materially affected.

(j) The Respondent in column no.(5)(ii)(c) against the heading "Sections of the concerned Acts/ Codes involved" has correctly furnished the required information vide its sl. nos.(i), (iv) and (v) that section 143 of I.P.C. is involved in the pending cases against him. Similarly, the Respondent in column no.(5)(ii)(d) against the heading "Brief description of offence" has correctly disclosed that section 143 of I.P.C. relates to the offence for punishment whoever is a member of an unlawful assembly. Hence, the pleading made by the Election Petitioner to the effect that in column no.(5)(ii)(d), the

Respondent has declared two charges related to mischief by injury to public road, bridge, river, channel (section 143 I.P.C.), is out and out false, evasive, frivolous, vexatious and scandalous. In the election petition, there is no other allegation(s) made with respect to the information furnished by the respondent in columns (5)(ii)(a), (5)(ii)(b), (5)(ii)(e), (5)(ii)(f) and (5)(ii)(g) regarding charges pending under section 143 of I.P.C. It is not mandatorily required to furnish number of charges/cases in columns (5)(ii)(c) and (5)(ii)(d) of Form 26 affidavit. Therefore, the allegation made by the Election Petitioner pointing out the number of charges/cases mentioned in columns (5)(ii)(c) and (5)(ii)(d) is inconsequential, unnecessary, frivolous, scandalous, vexatious, does not disclose any cause of action and as such legally not sustainable. There is no pleading of the material fact to the effect that as to how on account of such allegation, the result of the election, in so far as it concerns the returned candidate, has been materially affected;

(k) The Respondent in column (5)(ii)(c) against the heading "Sections of the concerned Acts/Codes involved" has correctly furnished the required information vide its sl. nos.(i), (ii), (xii) that sections 7/3 and 7/4 of P.D.P.P. Act are involved in the pending cases against him. Similarly, the Respondent in column no.(5)(ii)(d)

against the heading "Brief description of offence" has correctly disclosed that sections 7/3 and 7/4 of P.D.P.P. Act relate to the offence of mischief by doing any act in respect of any public property. In the election petition, there is no other allegation(s) made with respect to the information furnished by the Respondent in columns nos.(5)(ii)(a), (5)(ii)(b), (5)(ii)(e), (5)(ii)(f) and (5)(ii)(g) regarding charges pending under Sections 7/3 and 7/4 of P.D.P.P. Act. It is not mandatorily required to furnish number of charges/cases in columns nos.(5)(ii)(c) and (5)(ii)(d) of Form 26 affidavit. Therefore, the allegation made by the election petitioner pointing out the number of charges/cases mentioned in columns nos.(5)(ii)(c) and (5)(ii)(d) is inconsequential, unnecessary, frivolous, scandalous, vexatious, does not disclose any cause of action and as such legally not sustainable. There is no pleading of the material fact as to how on account of such allegation, the result of the election, in so far as it concerns the returned candidate, has been materially affected;

(I) The further allegation to the effect that the Respondent in column no.(5)(ii)(c) sl. nos. (iii), (vii) to (x) and (xiii) has declared about the cases pending against him under section 13(2) read with section 13(1)(d) of P.C. Act, 1988 but has not declared about the same in column

(5)(ii)(d) of the affidavit, is not worth acceptable and legally sustainable. The offence under section 13(2) read with section 13(1)(d) of P.C. Act, 1988 relate to criminal misconduct by a public servant and as such the Respondent being not a public servant till declared elected, was not required under law to furnish the description of the offence which relates to a public servant inasmuch as such offences is not applicable to him. There is no pleading of the material fact as to how on account of such allegation, the result of the election, insofar as it concerns the returned candidate, has been materially affected.

Paragraph-7(D) of the election petition:

According to the Respondent, under paragraph-7(D) of the election petition, the Election Petitioner has made following allegations:-

- (a) The Respondent in the affidavit, though has mentioned about the Account No.13770100031593 (joint account) in the Federal Bank Limited, B.K. Road, Cuttack, but he has not disclosed the name and other details of the joint account holder of the said bank account and has not indicated about the extent of ownership in the said bank account;
- (b) The Respondent in the affidavit, though has mentioned about the Account No.10861745745

(joint account) in S.B.I., Main Branch, Badambadi, Cuttack, but has not disclosed the name and other details of the joint account holder of the said bank account and has not indicated about the extent of ownership in the said bank account;

(c) In column no.(7)(iii), the Respondent has declared about the investment made in shares of different companies but has not declared the book value of shares as per the books of the company;

(d) In column no.(7)(iv), the Respondent is required to declare the details of investments in NSS, Postal Savings, Insurance Policies and in any financial instruments in Post Office or Insurance Company and the amount, but the respondent has not given the details of investment made in his and his spouse's insurance policies. The Respondent is required to give details separately in respect of each investment;

(e) The Respondent has given loans to six companies but the details of the same have not been given.

According to the Respondent, all the above allegations/pleadings are bereft of material facts and the same do not disclose complete cause of action inasmuch as those allegations are wholly unnecessary, frivolous, vexatious,

scandalous and tend to prejudice the fair trial of the case and as such the pleadings made under paragraph-7(D) of the election petition are liable to be struck down being hit by Order-VI Rule 16 of the C.P.C. on the grounds/provisions of law as described herein below:-

(a) The allegation/pleading as enumerated under (a) above is bereft of following material facts-

(i) It has not been pleaded/disclosed in the election petition as to whether the candidate is required under the law to give the details of the joint account holder or not. There is no such legal provision for disclosure of the details of the joint account holder in affidavit in Form 26;

(ii) While making such allegation, the election petitioner has not disclosed/pleaded the column number of the affidavit in which the Respondent has furnished such information;

(iii) The Election Petitioner has suppressed the material fact that under column (7)(A)(ii), the candidate is required to furnish information about "Details of deposit in Bank accounts (FDRs, Term Deposits and all other types of deposits including saving accounts), Deposits with Financial Institutions, Non-banking Financial

Companies and Cooperative Societies and the amount in each such deposit”;

(iv) Though the Respondent has disclosed the amount available in the said account, the same has not been disclosed/pleaded by the election petitioner;

(v) The Election Petitioner has suppressed the very important material fact that the said bank account is a joint account along with the spouse of the Respondent namely Firdousia Bano and the said bank account is opened with the operational instruction “EITHER OR SURVIVOR”;

(vi) There is no pleading to the effect that on account of such non-mentioning of the extent of ownership in the said bank account, the electors have been misled and the result of the election, in so far as it concerns the returned candidate has been materially affected;

(b) The allegation/pleading as enumerated under (b) above is bereft of following material facts-

(i) The averments made with respect to name of the branch i.e. S.B.I., Main Branch, Badambadi is wrong. It is worthwhile to submit here that the respondent in his affidavit has mentioned the said bank account as S.B.I., Main Branch, Chandini Chowk, Cuttack;

(ii) It has not been pleaded/disclosed in the election petition as to whether the candidate is required under the law to give the details of the joint account holder or not. In fact, there is no such legal provision for disclosure of the details of the joint account holder in affidavit in Form 26;

(iii) While making such allegation, the Election Petitioner has not disclosed/pleaded the column number of the affidavit under which the respondent has furnished such information;

(iv) The Election Petitioner has suppressed the material fact that under column (7)(A)(ii), the candidate is required to furnish information about "Details of deposit in Bank accounts (FDRs, Term Deposits and all other types of deposits including saving accounts), Deposits with Financial Institutions, Non-banking Financial Companies and Cooperative Societies and the amount in each such deposit";

(v) Though the Respondent has disclosed the amount available in the said account, the same has not been disclosed/pleaded by the election petitioner;

(vi) The Election Petitioner has suppressed the very important material fact that the said bank account is a joint account along with the spouse

of the respondent namely Firdousia Bano and the said bank account is opened with the operational instruction "EITHER OR SURVIVOR";

(vii) There is no pleading to the effect that on account of such non-mentioning of the extent of ownership in the said bank account, the electors have been misled and the result of the election, in so far as it concerns the returned candidate, has been materially affected.

(c) The allegation/pleading as enumerated under (c) above is bereft of following material facts-

(i) The Election Petitioner has suppressed the material fact that under column (7)(A)(iii), the candidate is required to furnish information about "Details of investment in Bonds, debentures/shares and units in companies/ Mutual funds and others and the amount";

(ii) Though the Respondent has mentioned the names of companies wherein he has made investments, the Election Petitioner has not disclosed the same in his election petition;

(iii) Though the Respondent has mentioned the amount in rupees in respective companies, the Election Petitioner has not disclosed the same in his election petition;

(iv) There is no pleading of the material fact to the effect that under column (7)(A) Note-3, the candidate is instructed to furnish information about "Value of Bonds/Share Debentures as per current market value in Stock Exchange in respect of the listed companies and as per books in case of non-listed companies should be given";

(v) There is no pleading to the effect that the companies mentioned in column (7)(A)(iii) wherein the respondent has made investment, are not listed companies but non-listed companies;

(vi) There is no pleading to the effect that the amount shown against respective companies is not the book value of the shares;

(vii) There is no pleading about the numbers of shares owned by the Respondent in different companies;

(viii) There is no pleading to the effect that on account of such non-mentioning of the book value of shares as per the books of the companies, the electors have been misled and the result of the election in so far as it concerns the returned candidate, has been materially affected.

(d) The allegation/pleading as enumerated under (d) above is bereft of following material facts-

(i) Though the Respondent in his affidavit in Form 26 under column (7)(A)(iv) has disclosed the names of insurance companies, policy nos., policy date and the surrender value of such policies made in his name and in name of his spouse, such material information/facts have not been pleaded in the election petition;

(ii) There is no pleading to the effect that on account of such non-mentioning of details of investments made in Respondent's and his spouse's insurance policies, the electors have been misled and the result of the election, in so far as it concerns the returned candidate, has been materially affected.

(e) The allegation/pleading as enumerated under (e) above is bereft of following material facts-

(i) There is no pleading showing that under which column of the affidavit, the Respondent has furnished information about the loans given to six companies;

(ii) Though the Respondent under column (7)(A)(v) has mentioned the names of the companies/entity/firm along with the amount of

loans given to respective companies/entity/firm, the same has not been pleaded/disclosed in the election petition;

(iii) There is no pleading to the effect that on account of such allegation, the result of the election, in so far as it concerns the returned candidate, has been materially affected.

Paragraph-7(E) of the election petition:

According to the Respondent, under paragraph-7(E) of the election petition, the election petitioner has made following allegations with respect to non-agriculture land owned by the Respondent and his spouse:-

(a) In column 7(B)(ii), the Respondent has declared about the non-agriculture land in District-Cuttack, Mouza-Patpur, Khata No.15-D1, Plot No.114, 116, 112, 113. There is no mouza known as Patpur in district Cuttack, so the Khata No. and Plot No. described therein are all false declarations;

(b) The Respondent has declared about the non-agriculture land of his spouse in district Cuttack, Mouza-Patpur, Khata No.16-D1, Plot No.111/1048. There is no mouza known as Patpur in district Cuttack, so the Khata No. and Plot No. described therein are all false declarations deliberately made by the Respondent to misled the voters;

(c) The Respondent has further declared about the mouza Unit-13, Chandinichowk, Khata No.799, Plot No.220 and 221 but there is no Plot No.221 in Khata No.799 as per the R.O.R. downloaded from the official website i.e. bhulekh.

According to the Respondent, all the above allegations/pleadings are bereft of material facts, wholly unnecessary, scandalous, frivolous, vexatious and tend to prejudice the fair trial of the case, which are nothing but otherwise an abuse of the process of the Court and as such the pleadings/allegations made under paragraph-7(E) of the election petition are liable to be struck down being hit by Order-VI Rule 16 of the C.P.C. on the grounds as described herein below:-

(a) The allegation/pleading as enumerated under (a) above is bereft of following material facts-

(i) Under column 7(B)(ii) of the affidavit filed in Form 26, though the Respondent has given the details of land particulars such as area i.e. total measurement in sq. ft., whether inherited property or not, date of purchase, cost of land at the time of purchase and investment made therein by way of development, construction etc., approximate current market value with respect to such land, the same have not been

disclosed/pleaded in the election petition except pointing out the typographical error occurs in the name of the mouza typed as "Patpur" in place of "Patapur". In absence of above material facts in the pleadings, though the same are very much available in record i.e. the affidavit in Form 26, the allegation does not constitute any complete cause of action and as such the same is liable to be struck out;

(ii) Though there absolutely no confusion likely to arise to understand that the mouza "Patpur" and mouza "Patapur" is one and the same mouza in Cuttack district, the same material fact has been suppressed by the election petitioner deliberately;

(iii) There is no pleading that on account of mentioning the name of the mouza "Patpur" in place of "Patapur", as to how the result of the election, in so far as it concerns the returned candidate, has been materially affected.

(b) The allegation/pleading as enumerated under (b) above is bereft of following material facts-

(i) Under column 7(B)(ii) of the affidavit filed in Form 26, though the Respondent has given the details of the land particulars belonging to his spouse such as area i.e. total measurement in sq. ft., whether inherited property or not, date of purchase, cost of land at the time of purchase

and investment made thereon by way of development, construction etc., approximate current market value with respect to such landed property, the same have not been disclosed/pleaded in the election petition except pointing out the typographical error occurring in the name of the mouza typed as "Patpur" in place of "Patapur". In absence of above material fact in the pleading, though the same as very much available in record i.e. the affidavit in Form 26, the allegation does not disclose any complete cause of action and as such the same is liable to be struck out:

(ii) Though there is absolutely no confusion likely to arise to understand that the mouza "Patpur" and the mouza "Patapur" is one and the same mouza in Cuttack district, the same material fact has been suppressed by the Election Petitioner deliberately;

(iii) There is no pleading that on account of mentioning the name of mouza "Patpur" in place of "Patapur" as to how the result of the election, in so far as it concerns the returned candidate, has been materially affected.

(c) The allegation/pleading as enumerated under (c) above is bereft of following material facts-

(i) Though the election petitioner has pleaded that the R.O.R. downloaded from the official website i.e. bhulekh in respect of the Khata No.799 of Mouza Unit-13, Chandinichowk, he has not filed the said downloaded R.O.R. along with the election petition in utter violation of the provisions contained in Order-VII Rule 14 of C.P.C., as such the allegation with respect to Khata No.799 cannot be entertained and is liable to be struck out;

(ii) Though the respondent in his affidavit filed in Form 26 has given the details of the land particulars such as area i.e. measurement in sq. ft., whether inherited property or not, date of purchase, cost of the land at the time of purchase, investment made therein by way of development, construction etc., approximate current market value, the same have not been disclosed/pleaded in the election petition. In absence of above material facts in the pleadings, though the same are very much available on record i.e. the affidavit in Form 26, the allegation does not disclose any complete cause of action and as such the same is liable to be struck out;

(iii) Though the Election Petitioner has alleged that there is no plot no.221 in Khata no.799 at mouza Unit-13, Chandinichowk, he has not

mentioned/disclosed the correct Khata no. under which plot no.221 comes inasmuch as the name of the district under which the above said mouza, khata, plot comes has not been disclosed;

(iv) There absolutely no pleading made by the election petitioner to the effect that on account of such absence of plot no.221 in khata no.799 as alleged, as to how the result of the election, in as far as it concerns the returned candidate, has been materially affected.

Paragraph-7(F) of the election petition:

According to the Respondent, under paragraph-7(F) of the election petition, the Election Petitioner has made following allegations:-

(a) In para (7)(B)(iv) the Respondent has declared about the residential building known as "City Shelter" in the district of Cuttack, Mouza: Cuttack Town, Unit No.15, Plot No.1882/3019, 2743, 1882/3020. Ground Floor flat Nos.1/A, 2/B, F/5. In the above declaration, the Respondent has not declared the Khata no. of the above said plot nos. whereas in the declaration made with respect to his spouse, he has declared in serial no.2 that Khata no.04/79, 04-80, Plot no.1882/3019, 1882/3020 and in serial no.3, he has mentioned Khata no.992 with

respect to same plot nos. i.e. Plot no.1882/3019, 1882/3020, 2743. The Respondent has mentioned about the above said plots in three Khatas which are false declarations as all the above plots cannot be recorded in three different Khata of same Mouza;

(b) The Respondent has not declared in his affidavit filed in Form 26 along with his nomination paper about the loans taken by the companies in which he himself and his spouse are the directors. The Respondent's company has taken huge amounts of loans from Odisha Rural Housing Development Corporation when the Respondent himself was the Managing Director of M/s. Metro Builders Pvt. Ltd. The Respondent has suppressed to disclose the above facts in the affidavit filed in Form 26;

(c) In column (11) of Part B of the affidavit, the Respondent is required to declare the abstract of the details given in (1) to (10) of Part A and in column 8(i), he is to declare the purchase price of self-acquired immovable properties of himself and his spouse. The Respondent while declaring the purchase price of self-acquired immovable property of his spouse has declared "NOT APPLICABLE". He has not declared the purchase price of the self-acquired properties by his spouse. He has also not declared the development/construction cost of immovable

property after purchase by his spouse. The Respondent has also not declared in Part B column (8)(iii) about the approximate current price and the total value of self-acquired assets by his spouse.

According to the Respondent, all the allegations as enumerated under (a), (b) and (c) above are wholly unnecessary, frivolous, vexatious, scandalous and tend to prejudice the fair trial of the case inasmuch as such allegations are bereft of material facts and do not disclose complete cause of action and as such the same are liable to be struck down on the grounds described herein below:-

(a) The allegation/pleading as enumerated under (a) above is bereft of following material facts-

(i) The Election Petitioner has not pleaded about the details of information required to be furnished under column (7)(B)(iv). As per the format of the Form 26 affidavit under column 7(B), every nominated candidate has to furnish "Details of Immovable assets". Under column 7(B)(iv) as per the format of Form 26 affidavit, the candidate has to furnish information about "Residential Buildings (including apartment) Locations(s) survey Number(s)". A bare perusal of the allegation made in the election petition, it

would be clearly evident that the above material facts regarding information required to be furnished are completely absent and not at all pleaded.

(ii) Though the Respondent has furnished required information in column 7(B)(iv) such as location, plot nos., name of the apartment i.e. "City Shelter", Flat nos. owned by him in City Shelter apartment at Ground floor, 1st floor, 2nd floor and 3rd floor, area i.e. total measurement in sq. ft., whether inherited property or not, date of purchase, cost of property at the time of purchase, investment on the land by way of development, construction, approximate current market value with respect to his immovable property situated in the apartment "City Shelter", these material facts have not been disclosed by the election petitioner in his pleadings;

(iii) A bare reference to the information furnished by the respondent with respect to the apartment "City Shelter" situated at Cuttack Town, Unit No.15 along with its flat nos. and floor nos. owned by the Respondent and by his spouse will make it abundantly clear that the required information i.e. "Residential buildings (including apartment) location, survey number(s)" have been furnished and there is no concealment of the required information;

(iv) The allegation made by the Election Petitioner to the effect that the declarations made by the Respondent are false declarations, without any pleading of material facts are not legally acceptable and as such the same is liable to be struck down;

(v) There is absolutely no pleading made by the Election Petitioner to the effect that on account of such allegation, the result of the election, in so far as it concerns the returned candidate, has been materially affected.

(b) The allegation/pleading as enumerated under (b) above is bereft of following material facts-

(i) There is no pleading in the election petition disclosing the names and address of the companies in which the Respondent and his spouse are the directors;

(ii) The quantum of loans taken by above such companies are not disclosed/pleaded in the election petition;

(iii) The loan account number and date of sanction of the loan and the names and addresses of the financial institutions/banks from where the loans have been taken by above such companies are not mentioned/pleaded in the election petition;

(iv) The shares owned by the Respondent and by his spouse in above such companies are not disclosed/pleaded in the election petition;

(v) It has been alleged that M/s. Metro Builders Pvt. Ltd., of which the Respondent was the Managing Director, has taken huge amounts of loans from Odisha Rural Housing Development Corporation, which has been suppressed by the Respondent in his affidavit filed in Form 26. While making such allegation, the Election Petitioner has completely failed to disclose/plead the vital material facts to the effect that for which period the Respondent was the Managing Director of M/s Metro Builders Pvt. Ltd., when the loan was taken by M/s. Metro Builders Pvt. Ltd. from Odisha Rural Housing Development Corporation, what is the loan account number(s) sanctioning such huge amounts of loans, what is the amounts of loans outstanding as on the date against M/s. Metro Builders Pvt. Ltd., whether the Respondent has any personal liability/ accountability with respect to such loans, whether M/s. Metro Builders Pvt. Ltd. is a separate entity in the eyes of law or not, whether at present the Respondent has any share and position in M/s. Metro Builders Pvt. Ltd. or not, whether loans taken by M/s. Metro Builders Pvt. Ltd. have been repaid or not. When the Election Petitioner on one hand admits that

the Respondent was the Managing Director of M/s. Metro Builders Pvt. Ltd., how on the other hand the Election Petitioner pleads that it is petitioner's company etc.;

(vi) The Election Petitioner has also failed to plead that on account of above such allegations as to why and how the result of the election, in so far as it concerns the returned candidate, has been materially affected.

(c) The allegation/pleading as enumerated under (c) above is bereft of following material facts-

(i) Part B of the affidavit consists of eleven columns i.e. column (1) to (11). The column number (11) of Part B in the format of the affidavit requires disclosure of information regarding highest educational qualification of the candidate. Therefore, the allegation with respect to column (11) of Part B of the affidavit filed in Form 26 by the Respondent is not correct;

(ii) There is no column 8(i) or 8(iii) under Part B of the affidavit in Form 26. Therefore, the allegations made by the Election Petitioner with respect to column 8(i) and 8(iii) are liable to be discarded and struck down;

(iii) The Respondent under column 8(A) has given the total value of his moveable assets and

his spouse's moveable assets clearly mentioning the amounts as Rs.5,29,98,893/- and Rs.50,74,701/- respectively. Similarly, under column 8(B), the Respondent has disclosed the total value of his immovable assets and total value of his spouse's immovable assets clearly mentioning the amount as Rs.7,44,39,768/- and Rs.4,64,23,000/- respectively. Therefore, the Respondent has complied with the requirement of law by furnishing the information about his total assets (movable and immovable) and his spouse's assets (movable and immovable). The Election Petitioner has made allegations suppressing these material facts in his election petition;

(iv) Further, the Election Petitioner while making such bald allegations has completely failed to plead as to how on account of such allegations the result of the election, in so far as it concerns the returned candidate, has been materially affected.

Paragraph-7(G) of the election petition:

According to the Respondent, under paragraph-7(G) of the election petition, the Election Petitioner has repeated the allegations that the Respondent has not submitted his nomination paper as required under law in the prescribed form and that he has not filed the affidavit in Form 26 giving true and

correct declarations about his criminal cases, assets (both movable and immovable) and liabilities of self and spouse for which his nomination papers ought to have been rejected by the Returning Officer as the respondent has not complied with the requirement of section 33 of the 1951 Act.

According to the Respondent, such allegations in paragraph-7(G) of the election petition are wholly unnecessary, superfluous, frivolous, scandalous, vexatious and tend to prejudice fair trial of the case inasmuch as the allegations are bereft of material facts and do not disclose complete cause of action.

Paragraph-7(H) of the election petition:

According to the Respondent, under paragraph-7(H) of the election petition, the Election Petitioner has repeated the same allegations to the effect that the Respondent has not filed the nomination paper in the prescribed Form 2B and has not fully disclosed about the criminal cases pending against him. The Respondent has also not disclosed his assets (both movable and immovable) correctly and the liabilities of himself and his spouse in the affidavit filed in Form 26 along with his nomination paper. The Returning Officer should have rejected the nomination papers of the Respondent as the same was not filed in the

prescribed Form 2B and whatever has been filed is also with blank particulars, but the Returning Officer illegally and improperly accepted the nomination papers of the Respondent though the same were not in the prescribed Form 2B.

According to the Respondent, such allegations in paragraph-7(H) of the election petition are bereft of material facts and that do not disclose complete cause of action inasmuch as the same are wholly unnecessary, scandalous, frivolous, vexatious and tend to prejudice, embarrass the fair trial of the case and made with ulterior political motive to harass the Respondent and those are nothing but an abuse of the process of the Court on the grounds as described herein below:-

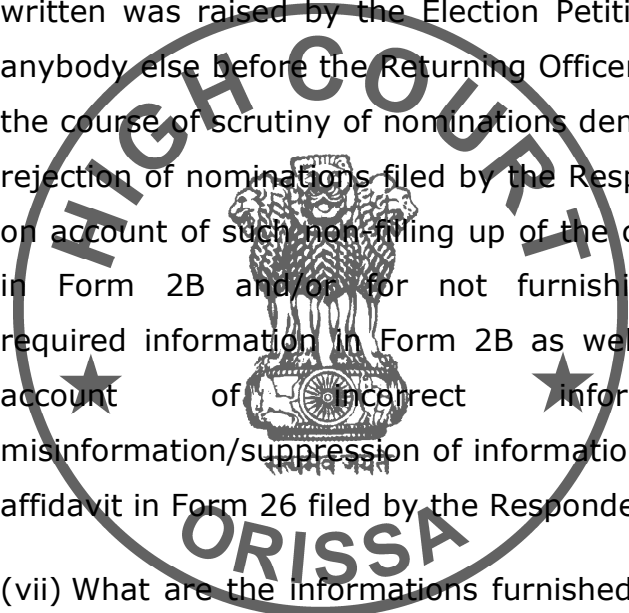
(i) As to why and how the nomination Form 2B filed by the Respondent is to be treated that the same is not in the prescribed Form 2B?

(ii) What are the columns of Form 2B filed by the Respondent have not been filled up and the same have been left blank?

(iii) What are the informations required to be furnished in Form 2B and under which columns of Form 2B, the Respondent has not furnished such informations and left the same blank?

(iv) What are the consequences prescribed under law if those columns have not been filled up and have been left blank in the prescribed Form 2B?

(v) As to whether non-filling of such columns in Form 2-B filed by the Respondent render the Respondent disqualified to contest the election?

(vi) As to whether any objection either orally or written was raised by the Election Petitioner or anybody else before the Returning Officer during the course of scrutiny of nominations demanding rejection of nominations filed by the Respondent on account of such non-filing up of the columns in Form 2B and/or for not furnishing the required information in Form 2B as well as on account of  incorrect information/misinformation/suppression of information in the affidavit in Form 26 filed by the Respondent?

(vii) What are the informations furnished by the Respondent in his affidavit in Form 26 which are not correct?

(viii) What are the correct informations which have been suppressed by the Respondent in his Form 26 affidavit?

(ix) What are the material informations which have been suppressed by the Respondent with respect to criminal cases pending against him?

(x) What are the moveable assets and immovable assets which have not been disclosed correctly by the Respondent in his affidavit filed in Form 26?

(xi) What are the liabilities which have not been disclosed correctly and/or have been suppressed by the Respondent in his affidavit filed in Form 26?

(xii) As to why and how on account of the alleged blank particulars available in nomination Form 2-B along with the incorrect information or suppression of information in the affidavit in Form 26 filed by the Respondent, the result of the election in so far as it concerns the returned candidate, has been materially affected, on the basis of which the election of the Respondent is liable to be declared void and be set aside?

According to the Respondent, the Returning Officer after due scrutiny of the nomination paper in Form 2B including the affidavit in Form 26 filed by the Respondent in accordance with provisions of law in its proper perspective and after being fully satisfied to the effect that the nomination paper in Form 2B and affidavit in Form 26 filed by the Respondent have been filled up furnishing all material information as required under law, rightly and properly accepted the nomination of the Respondent.

The Election Petitioner having been failed to raise his allegations/objections, if any, to the nomination of the Respondent at the proper stage, at the proper time and before the proper forum as envisaged under the law and after being defeated in the election from the Respondent as per the mandate of the electors in democratic process, raising such allegations/objections only to fulfill his political vendetta against the Respondent with an ulterior intention to harass the Respondent and keep him engaged in unnecessary litigation so that the Respondent fails to perform his duties wholeheartedly in public interest for the development and welfare of his constituency. The election petition is filed by the Election Petitioner with ulterior political motive only to harass the Respondent which is nothing but an attempt to abuse of the process of this Court.

Paragraph-7(I), 7(J) of the election petition:

According to the Respondent, under Paragraph-7(I) and Paragraph-7(J), the Election Petitioner has once again repeated the same allegations with respect to non-filing of Form 2B i.e. the nomination form as per the prescribed form and filing of the affidavit in Form 26 dated 03.04.2019 along with the nomination on 02.04.2019. According to the Respondent, on the basis of the stands taken/points raised in the averments made in

preceding paragraphs, the allegations/pleadings made by the Election Petitioner under paragraph-7(I) and Paragraph-7(J) of the election petition are bereft of material facts and that do not disclose complete cause of action inasmuch as such allegations/pleadings are wholly unnecessary, frivolous, vexatious, scandalous and tend to prejudice, embarrass the fair trial of the case which is otherwise an abuse of the process of this Court and as such the pleadings/allegations made in Paragraph-7(I) and Paragraph-7(J) of the election petition are liable to be struck down being hit by Order VI Rule 16 of the C.P.C.

Issues framed:

4. On the basis of pleadings of the parties, the following issues were framed:-

1. Whether the election petition as laid down is maintainable in law or not?
2. Whether the Election Petitioner has cause of action to file the election petition or not?
3. Whether the election petition is liable to be dismissed under section 86(1) of the R.P. Act, 1951 for non-compliance of section 81(3) of the R.P. Act, 1951 or not?

4. Whether striking/deletion of PART-II of his nomination in Form-2B by the sole Respondent in pursuance to the instruction given in the prescribed nomination Form-2B renders the nomination of the sole Respondent liable for rejection of his nomination or not?

5. Whether the sole Respondent has furnished all the required information as required in PART-III of nomination Form-2B or not?

6. Whether the sole Respondent has furnished all the required information as required in PART-IIIA of Nomination Form-2B or not?

7. Whether the alleged defects as pointed out by the Election Petitioner regarding deletion of PART-II of nomination Form-2B as well as with respect to PART-III and PART-IIIA of nomination Form-2B do not constitute any substantial defect and as such the nomination filed by the sole Respondent is rightly accepted by the Returning Officer as prescribed under section 36(4) of the R.P. Act, 1951 or not?

8. Whether the Respondent filed his nomination papers in violation of section 33 of the R.P. Act, 1951?

9. Whether the Respondent has filed his nomination papers before the Returning Officer in the prescribed Form-2B?

10. Whether PART-III of Form-2B of the nomination papers filed by the Respondent is in the prescribed Form?

11. Whether the Respondent has filled up PART-IIIA of the nomination papers filed by him before the Returning Officer of 90-Barabati Cuttack Assembly Constituency and as to whether Column nos.3 to 9 of PART-IIIA are in the prescribed Form-2B?

12. Whether the nomination papers of the Respondent was liable to be rejected by the Returning Officer as the same was not in the prescribed Form-2B and as to whether the Returning Officer illegally and improperly accepted the nomination papers filed by the Respondent in violation of section 33 of the R.P. Act, 1951 read with Rule 4 of the Conduct of Election Rules, 1961?

13. Whether the Returning Officer should have rejected the nomination of Respondent in exercise of power under section 36 of the R.P. Act, 1951 at the time of scrutiny of the nomination papers?

14. Whether on account of the alleged defects as pointed out by the Election Petitioner under paragraph 7(A) of the Election Petition, the result of the election in so far as it concerns the

returned candidate/sole Respondent has been materially affected or not?

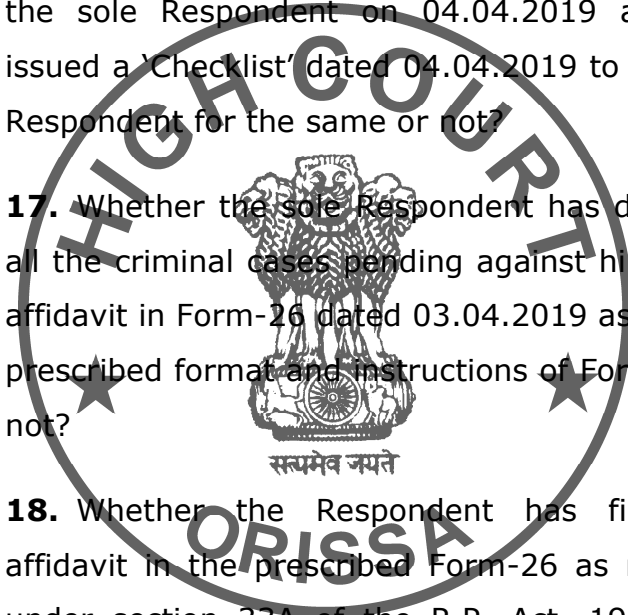
15. Whether the sole Respondent has filed his affidavit in Form-26 dated 03.04.2019 along with his nomination papers on 02.04.2019 or has filed the said affidavit on 04.04.2019?

16. Whether the Returning Officer has received the affidavit in Form-26 dated 03.04.2019 from the sole Respondent on 04.04.2019 and has issued a 'Checklist' dated 04.04.2019 to the sole Respondent for the same or not?

17. Whether the sole Respondent has disclosed all the criminal cases pending against him in his affidavit in Form-26 dated 03.04.2019 as per the prescribed format and instructions of Form-26 or not?

18. Whether the Respondent has filed the affidavit in the prescribed Form-26 as required under section 33A of the R.P. Act, 1951 read with Rule 4A of the Conduct of Election Rules, 1961?

19. Whether the affidavit dated 03.04.2019 in Form-26 filed along with the nomination papers on 02.04.2019 is valid and legal in the eyes of law?



20. Whether the Returning Officer should have rejected the nomination papers filed on 02.04.2019 along with the affidavit dated 03.04.2019 being non-est in the eyes of law but the same was illegally and improperly accepted by the Returning Officer of 90-Barabati Cuttack Assembly Constituency?

21. Whether the Respondent has made proper and full declaration about the criminal cases pending against him in the affidavit filed in Form-26?

22. Whether the Respondent has disclosed the name and other details of the Joint Account Holder of the Bank account no.1377010031593 in the Federal Bank Ltd. and about the A/c. no.10861745745 in S.B.I. Main Branch, Cuttack in the affidavit filed in Form-26?

23. Whether the sole Respondent is required under law to disclose the name of the joint account holder of the bank accounts standing in his name in his Affidavit in Form-26 or not?

24. Whether the bank accounts as mentioned under paragraph-7(D) of the Election Petition stand in the name of the sole Respondent and his wife Firdousia Bano with operational instruction "Either or Survivor" or not?

25. Whether the Respondent has declared the book value of the shares as per the books of the company held by him in the affidavit filed in Form-26?

26. Whether the Respondent has furnished the details in the affidavit filed in Form-26 about the investment made in his name and his spouse's name in the insurance policies?

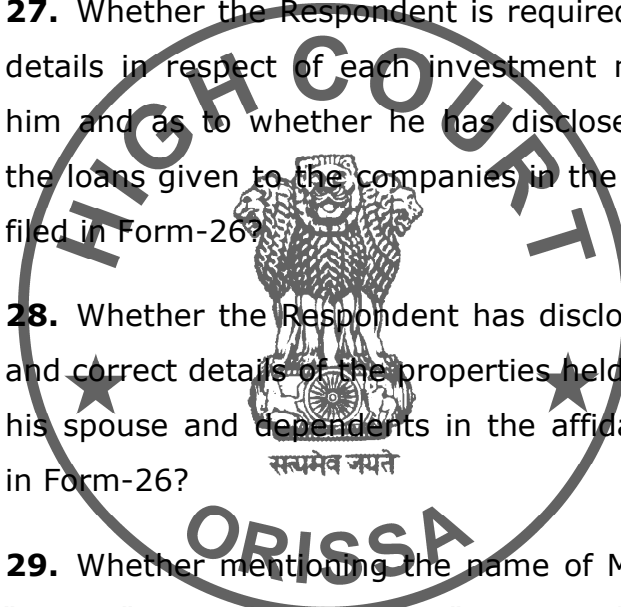
27. Whether the Respondent is required to give details in respect of each investment made by him and as to whether he has disclosed about the loans given to the companies in the affidavit filed in Form-26?

28. Whether the Respondent has disclosed true and correct details of the properties held by him, his spouse and dependents in the affidavit filed in Form-26?

29. Whether mentioning the name of Mouza as "Patpur" instead of "Patapur" in Cuttack district creates any confusion or not?

30. Whether the sole Respondent has correctly disclosed all the movable and immovable assets of self and his spouse in his Affidavit in Form-26 dated 03.04.2019 or not?

31. Whether the Respondent has disclosed about the loans taken by his company from



Orissa Rural Housing Development Corporation (OHRDC)?

32. Whether the Respondent has declared the purchase price and development/ construction cost of immovable properties of his spouse in the affidavit filed in Form-26?

33. Whether the result of the election has been materially affected insofar as it concerns the returned candidate/ sole Respondent on account of the allegations made in the Election Petition or not?

34. Whether the Returning Officer has rightly and lawfully accepted the nomination of the sole Respondent or not?

35. Whether the sole Respondent has been declared duly elected as MLA from 90-Barabati Cuttack Assembly Constituency by securing lawful valid votes or not?

36. Whether the election of the Respondent from the 90-Barabati Cuttack Assembly Constituency is to be declared as void?

37. To what relief the Election Petitioner is entitled to?

38. Whether the Election Petitioner has made out a case and is entitled for any reliefs as sought for in his Election Petition or not?

5. In order to prove its case, the Election Petitioner examined three witnesses including himself as P.W.1. P.W.2 Dipankar Acharya is an Advocate, who stated that he had downloaded copies of nomination papers along with the affidavits filed on 02.04.2019 by the Respondent before the Returning Officer of the Constituency from the web portal of Election Commission of India. P.W.3 Sukanta Kumar Pradhan is the Returning Officer in the General Assembly Election of the Constituency held in the year 2019.

The election petitioner exhibited forty nine documents.

The Respondent examined five witnesses including himself as R.W.1. R.W.2 Santosh Kumar Lenka is a lawyer practising at different Courts of Cuttack and Bhubaneswar, who stated that during the last General Assembly Election held in the year 2019, on request of the Respondent, he was looking after the preparation of his affidavit in Form 26, particularly filling up his pending criminal cases in Column No.5 of the said affidavit in Form 26, R.W.3 Prashanta Kumar Mohanty, is a lawyer practising at different Courts of Cuttack and Bhubaneswar, who stated that during the last General Assembly Election held in the year 2019, on request of the Respondent, he was looking after the

preparation of his affidavit in Form 26, particularly filling up movable and immovable assets, liabilities etc. of the Respondent, his spouse Firdousia Bano and his dependant daughter Nayeema Tazeen in the Form 26, R.W.4 Sourjya Prakash Mohapatra is a Chartered Accountant by profession, who stated that on the request of the Respondent, he prepared his financial statement and his spouse Firdousia Bano. R.W.5 Sofia Firdous is the daughter of the Respondent and also the authorised representative of the Respondent who attended the scrutiny of nominations on his behalf on 05.04.2019 before the Returning Officer (P.W.3) during the last General Assembly Election held in the year 2019.

The Respondent exhibited one hundred fifty one documents.

6. In a democratic set up, the election of a returned candidate should not be made easily vulnerable to vague allegations or to averments made in an election petition which is not substantiated or supported by positive, cogent and reliable evidence. The verdict given by the majority of voters in a constituency in favour of an elected candidate to represent a constituency in a State Legislative Assembly or Parliament cannot be lightly annulled or negated in the absence of specific,

acceptable and convincing evidence in support of the grounds raised in an election petition. (**Ref:- Tek Chand -Vrs.- Dile Ram : (2001) 3 Supreme Court Cases 290**). Election of a returned candidate cannot be set aside on presumptions, surmises or conjectures. There must be clear and cogent proof in support of the allegations. (**Ref:- Uma Ballav Rath -Vrs.- Maheshwar Mohanty : (1999) 3 Supreme Court Cases 357**). An election petition must clearly and unambiguously set out all the material facts which the petitioner is to rely upon during the trial, and it must reveal a clear and complete picture of the circumstances and should disclose a definite cause of action. One cannot file an election petition based on frivolous grounds. The facts presented must be clear, concise and unambiguous. An election result, where the people elect their representatives cannot be taken lightly. For an election result to be annulled, there must be positive evidence to prove illegality of the election. The natural corollary is that the person, who files an election petition, must have a clear and definite case, to prove that the election was illegal. (**Ref:- M. Chandra -Vrs.- M. Thangamuthu & Another : (2010) 9 Supreme Court Cases 712**). It is settled law that in an election petition, the burden of proof lies upon the election petitioner to prove and substantiate

his allegations in order to get the relief(s) sought for. It is necessary so that the purity of the election process is maintained. What evidence would be sufficient to prove a particular fact depends upon the circumstances of each case. When the evidence adduced is capable of drawing an inference either way, the view that is favourable to the returned candidate will have to be preferred.

7. Mr. Milan Kanungo, learned Senior Advocate being ably assisted by Mr. Gopal Agarwal emphatically contended in his own inimitable elegant style that there are sufficient materials on record to substantiate that nomination of the Respondent have been improperly and illegally accepted and thus, the entire process of election to the Constituency is vitiated. The nomination papers are not in the prescribed Form 2B and the Respondent has filed false affidavit in Form 26 along with the nomination papers and therefore, the result of the election of the Constituency being materially affected is to be declared void and to be set aside.

Mr. Bidyadhar Mishra, learned Senior Advocate being ably assisted by Mr. Tarini Kanta Biswal, on the other hand, argued that in view of the facts/pleadings, both documentary and oral evidences, the conclusion is irresistible that the Election

Petitioner has signally failed to prove his allegations made in the election petition and therefore, the election petition is liable to be dismissed with exemplary cost.

8. Adverting to the contentions raised and keeping in view the principles laid down in the matter of appreciation of evidence in an election dispute case, let me discuss and decide all the issues framed with reference to the evidence on record, in detail.

Issue Nos.1, 2 & 3.

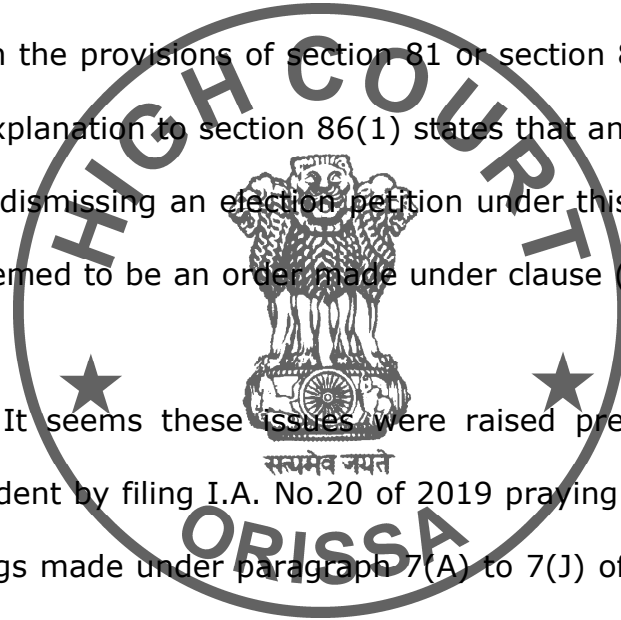
Issue nos.1, 2 and 3 are whether the election petition as laid down is maintainable in law or not, whether the election petitioner has cause of action to file the election petition or not and whether the election petition is liable to be dismissed u/s 86(1) of the R.P. Act, 1951 for non-compliance of section 81(3) of the R.P. Act, 1951 or not.

The learned counsel for the Respondent did not advance any argument regarding issue no.(1) i.e. maintainability of election petition and issue no.(2) i.e. cause of action to file the election petition nor made any comments on these two issues in his written note of submission.

Section 81(3) of the R.P. Act, 1951 prescribes that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

Section 86(1) of the R.P. Act, 1951 prescribes that the High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117. The Explanation to section 86(1) states that an order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

It seems these issues were raised preliminarily by the Respondent by filing I.A. No.20 of 2019 praying to strike out the pleadings made under paragraph 7(A) to 7(J) of the election petition with a further prayer to reject the election petition at the threshold in its entirety for want of cause of action without entering into the merits of the case. The said I.A. was dismissed by order dated 20.06.2022 with a finding that dismissal of election petition at the threshold for want of cause of action is not tenable in the eye of law. The order dated 20.06.2022 passed in the said I.A. was challenged by the Respondent before



the Hon'ble Supreme Court in SLP(C) No.12653 of 2022, but the Hon'ble Court refused to interfere with the order passed by this Court and dismissed the SLP vide order dated 29.07.2022.

After dismissal of I.A. No.20 of 2019, the Respondent again filed I.A. No.19 of 2022 praying to dismiss the election petition u/s 86(1) of the R.P. Act, 1951 on account of non-compliance of provision u/s 117 of the R.P. Act, 1951. During the hearing of the I.A., a report was called for from the learned Registrar (Judicial) of this Court as to whether cash of Rs.2,000/- (rupees two thousand) has been deposited on 03.07.2019 and the challan as has been annexed to the election petition was issued on the very day or not and filed with the election petition on that day or not and it was also directed to be indicated in the report as to whether Rule 1 of Chapter XXII of the Rules of High Court of Orissa, 1948 has been followed or not. Basing on the reports of the Cashier and Superintendent, M.J.C. Section, the learned Registrar (Judicial) reported that a cash of Rs.2,000/- (rupees two thousand) had been deposited on 03.07.2019 with the Cashier, the challan was issued on 03.07.2019 and it was filed with the election petition on 03.07.2019 and thus Rule-1 of Chapter-XXII of the Rules of the High Court of Orissa, 1948 had been followed while filing the Election Petition. Accordingly, this

Court by order dated 23.09.2022 dismissed the same holding that filing of this I.A. is an attempt just to delay the trial of the election petition.

During argument, it was submitted on behalf of the Respondent on issue no.3 that, the election petition is liable to be dismissed for non-compliance of section 81(3) and section 117 of the R.P. Act, 1951 as the copy of challan served on the Respondent is not the exact and true copy of the challan appended to the original election petition. The challan served on the Respondent was xeroxed before the deposit was made.

On the other hand, it is argued on behalf of the Election Petitioner that after receipt of election petition along with copy of the challan, the Respondent filed the written statement and he has not raised the plea that the averments made in para 9 of the election petition, that "At the time of presenting the election petition, the Election Petitioner has deposited a sum of Rs.2,000/- only towards security for cost of the petition as required u/s 117 of the R.P. Act, 1951 and in accordance with the Rules of the High Court along with the Election Petition" are false and the copy of the challan served on the Respondent is not exact and true copy of the challan and has also not raised the plea that on account of non-service of exact

and true copy of the challan, the Respondent is prejudiced in any manner. Section 117 of the R.P. Act, 1951 mandates that at the time of presenting an election petition, the petitioner shall deposit in the High Court in accordance with the rules of High Court a sum of Rs.2,000/- (rupees two thousand) as security for the costs of the petition. Section 81(3) of the R.P. Act, 1951 mandates only service of exact and true copy of the election petition on the Respondent which has been served and similarly, the xerox copy of the challan of deposit of a sum of Rs.2,000/- has also been served and therefore, non-compliance of provision under section 81(3) of the R.P. Act, 1951 as contended by the Respondent is not sustainable.

It is further argued on behalf of the Election Petitioner that the Respondent filed I.A. No.20 of 2019 under Order VI Rule 16 and Order 7 Rule 11 r/w Order 7 Rule 14 C.P.C. r/w sections 83, 86 and 87 of the R.P. Act, 1951 praying to dismiss the election petition at the threshold for non-compliance of section 83 of the R.P. Act, 1951. In the said I.A also, the Respondent had not raised any plea regarding the service of exact and true copy of challan along with the election petition. Subsequently, the Respondent again filed I.A No.19/2022 u/s 86(1) of the R.P. Act, 1951 for dismissal of the election petition

on the ground of non-compliance of provision contained u/s 117 of the R.P. Act, 1951 and after hearing, this Court by order dated 23.09.2022 dismissed the same.

Rule-6 of Chapter XXXIII of Orissa High Court Rules, 1948 which deals with the Rules to regulate proceedings under section 80A of the R.P. Act, 1951 states that the election petition shall be presented along with the necessary copies. All copies of the petition shall conform to the original, page by page.

Adverting to the contentions raised by the learned counsel for the parties, it is not in dispute that the challan of Rs.2,000/- showing deposit of security for costs of the petition is an integral part of the election petition and without the said challan, the election petition is incomplete. According to the learned counsel for the Respondent, the requirement of section 81(3) of the R.P. Act, 1951 is also applicable to the challan filed along with the election petition. It is urged that a bare comparison of the original challan (Ext.AD/1) with that of Ext.AB/2 and Ext.AC/2, it will be abundantly clear that Ext.AB/2 and Ext.AC/2 are not true copy of Ext.AD/1 inasmuch as Ext.AD/1 contains the "Received Payment stamp" upon the endorsement of the Cashier showing receipt of Rs.2000/- whereas Ext.AB/2 and Ext.AC/2 do not contain the said

“Received Payment stamp”. The second copy of the Challan available in Court record after Ext.AD/1 contains the signature of the Accountant as well as the “Received Payment stamp” upon the endorsement of the Cashier showing receipt of Rs.2000/- whereas Ext.AB/2 and Ext.AC/2 do not contain the signature of the Accountant as well as the said “Received Payment stamp”.

A bare perusal of Ext.AD/1 challan appended to the original election petition available in Court record and Ext.AB/2 and AC/2 i.e. challan served on the Respondent shows that the amount, the signature of the cashier with date, the challan number are there and the only missing thing is the seal ‘received payment’. It is also not the case of the Respondent that deposit of a sum of Rs.2,000/- by way of challan has not been made. The Respondent has also not stated anything that as to how he is prejudiced due to non-availability of seal on the challan served on him.

Learned counsel for the Election Petitioner placed reliance in the cases of **T.M. Jacob -Vrs.- C. Poulouse and Others reported in (1999) 4 Supreme Court Cases 274, M. Karunanidhi -Vrs.- H.V. Hande & Others reported in (1983) 2 Supreme Court Cases 473, M.Y. Ghorpade -Vrs.- Shivaji Rao M. Poal and Others reported in (2002) 7**

**Supreme Court Cases 289 and A. Madan Mohan -Vrs.-
Kalavakunta Chandra Sekhara reported in (1984) 2
Supreme Court Cases 288.**

In the case of **T.M. Jacob** (supra), the Hon'ble Supreme Court held as follows:-

9. After leave was granted by this Court, the following order was made on 18-12-1997:

"The main point urged by the learned counsel for the appellant is that a copy of the affidavit supplied to the appellant together with the notice of the election petition is not a true copy inasmuch as it does not indicate the name and designation of the Notary nor does it bear the seal and stamp of the Notary. On this basis, it is contended that there is non-compliance of Section 81(3) because of which the election petition is liable to be dismissed at the threshold under Section 86(1) of the Representation of the People Act. Shri Sorabjee, learned counsel for the appellant places reliance on the decision in **Dr Shipra -Vrs.- Shanti Lal Khoiwal : (1996)5 SCC 181** particularly the opinion of Justice Paripoornan therein read with that of Justice K. Ramaswamy. Shri Sorabjee submits that even though from the supplementary opinion of Justice

Bharucha, contained in para 17 of the Report, identity on this point may not be explicit but there being no reservation in the opinion of Justice Bharucha on this point, this view is to be construed as the unanimous decision of the three-Judge Bench.

Having heard Shri Sorabjee, we are not too sure that the principle indicated in the said decision can apply to the facts of the present case but certain wide observations, in the opinion of Justice Paripoornan and Justice K. Ramaswamy, may support the appellant's contentions. In our opinion, the matter would, therefore, require reconsideration by a larger Bench to decide whether even in a case like the present one, the decision in **Dr. Shipra -Vrs.- Shanti Lal Khoiwal** can apply.

The papers be laid before the Chief Justice for constitution of a larger Bench."

xxx

xxx

xxx

21. Reverting now to the facts of the present case. A perusal of the copy of the affidavit served on the appellant shows that the copy of the affidavit supplied to the appellant contained the endorsement that the affidavit had been duly affirmed, signed and verified by Respondent 1 before a Notary. Under the affirmation by the

Notary, the words, "sd/- Notary" were also written. What was, however, found missing in the copy of the affidavit was the name and address of the Notary as well as the stamp and seal of the Notary before whom the affidavit had been so affirmed and who had attested the affidavit.

22. The defect found in the present case is almost identical to the defect which had been found in the copy of the affidavit supplied to the first respondent in **Anil R. Deshmukh** case. The defect is materially different from the defect found in **Dr. Shipra** case where the true copy of the election petition furnished by the election petitioner to the successful candidate did not show that the affidavit filed in support of the allegation of corrupt practices had been duly sworn or affirmed and verified by the election petitioner before a Notary, whose attestation was also found missing.

xxx

xxx

xxx

30. The precise objection of Mr. Harish Salve, learned Senior Counsel based on Section 81(3) of the Act as already noticed is that the true copy of the affidavit filed in support of the allegations of corrupt practice in Form 25 as required by Rule 94-A had not been served on the appellant inasmuch as in the copy served on the appellant, the name and other particulars of the Notary and the seal and stamp of the

Notary, which had been affixed on the affidavit filed along with the election petition, were conspicuous by their absence. According to Mr. Salve, the variation between the affidavit filed by the election petitioner in support of the allegations of corrupt practice and the copy served on the appellant had rendered the copy as not a "true copy" of the original and notwithstanding the difference between **Dr. Shipra** case and the present one, the election petition ought to have been dismissed for non-compliance with Section 81(3) of the Act. For what follows we are not persuaded to agree.

31. Section 81 of the Act deals with the presentation of election petitions. Sub-section (1) of Section 81 provides that an election petition calling in question any election may be presented on one or more of the grounds specified in Section 100(1) and Section 101 to the High Court by any candidate at such election or by any elector within forty-five days from the date of the election of the returned candidate.

Some of the relevant provisions of the Act are:

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

XXX

XXX

XXX

33. Does the word "copy" occurring in Section 81(3) of the Act mean an absolutely exact copy or does it mean a copy so true that nobody could by any possibility misunderstand it. This matter is no longer res integra. In **Murarka Radhey Shyam Ram Kumar -Vrs.- Roop Singh Rathore** a Constitution Bench of this Court elaborately dealt with this question after referring to a catena of authorities. It was held that the test to determine whether a copy was a true one or not was to find out whether any variation from the original was calculated to mislead a reasonable person. The Constitution Bench found as untenable the contention that since copies of the petition served on the returned candidate did not contain the signatures of the petitioner below the word "petitioner", on the copies of the petition served on the respondent, they had ceased to be true copies of the original petition, attracting the consequences of Section 86(1) of the Act. The Bench opined:

"Having regard to the provisions of Part VI of the Act, we are of the view that the word 'copy' does not mean an absolutely exact copy. It means a copy so true that nobody can by any possibility misunderstand it. The test whether the

copy is a true one is whether any variation from the original is calculated to mislead an ordinary person. Applying that test we have come to the conclusion that the defects complained of with regard to Election Petition No. 269 of 1962 were not such as to mislead the appellant; therefore there was no failure to comply with the last part of sub-section (3) of Section 81. In that view of the matter sub-section (3) of Section 90 was not attracted and there was no question of dismissing the election petition under that sub-section by reason of any failure to comply with the provisions of Section 81."

The Bench also opined:

"When every page of the copy served on the appellant was attested to be a true copy under the signature of the petitioner, a fresh signature below the word 'petitioner' was not necessary. Sub-section (3) of Section 81 requires that the copy shall be attested by the petitioner under his own signature and this was done. As to the second defect the question really turns on the true scope and effect of the word 'copy' occurring in sub-section (3) of Section 81. On behalf of the appellant, the argument is

that sub-section (3) of Section 81 being mandatory in nature, all the requirements of the sub-section must be strictly complied with and the word 'copy' must be taken to be an absolutely exact transcript of the original. On behalf of the respondents the contention is that the word 'copy' means that which comes so near to the original as to give to every person seeing it the idea created by the original. Alternatively, the argument is that the last part of sub-section (3) dealing with a copy is merely directive, and for this reliance is placed on the decision of this Court in **K. Kamaraja Nadar -Vrs.- Kunju Thevar [A.I.R. 1958 S.C. 687 : 1959 S.C.R. 583]**. We are of the view that the word 'copy' in sub-section (3) of Section 81 does not mean an absolutely exact copy, but means that the copy shall be so true that nobody can by any possibility misunderstand it (see Stroud's Judicial Dictionary, Third Edn., Vol. 4, p. 3098). In this view of the matter it is unnecessary to go into the further question whether any part of sub-section (3) of Section 81 is merely directory."

34. Similar view was reiterated by another Constitution Bench in **Ch. Subbarao -Vrs.- Member, Election Tribunal, Hyderabad** wherein it was held that the expression "copy"

occurring in Section 81(3) of the Act did not mean an exact copy but only one so true that no reasonable person could by any possibility misunderstand it as not being the same as the original. Agreeing with the view of the Constitution Bench in **Murarka Radhey Shyam Ram Kumar** case the Constitution Bench in **Ch. Subbarao** case ruled that substantial compliance with Section 81(3) was sufficient and the petition could not be dismissed where there had been substantial compliance with the requirements of Section 81(3) of the Act, in limine, under Section 81(1) of the Act. We are in respectful agreement with the view expressed by the Constitution Bench in **Murarka Radhey Shyam Ram Kumar** case as well as in **Ch. Subbarao** case.

35. The object of serving a "true copy" of an election petition and the affidavit filed in support of the allegations of corrupt practice on the respondent in the election petition is to enable the respondent to understand the charge against him so that he can effectively meet the same in the written statement and prepare his defence. The requirement is, thus, of substance and not of form.

36. The expression "copy" in Section 81(3) of the Act, in our opinion, means a copy which is substantially so and which does not contain any

material or substantial variation of a vital nature as could possibly mislead a reasonable person to understand and meet the charges/allegations made against him in the election petition. Indeed a copy which differs in material particulars from the original cannot be treated as a true copy of the original within the meaning of Section 81(3) of the Act and the vital defect cannot be permitted to be cured after the expiry of the period of limitation.

37. We have already referred to the defect which has been found in the copy of the affidavit served on the appellant in the present case. There is no dispute that the copy of the affidavit served on the appellant contained the endorsement to the effect that the affidavit had been duly signed, verified and affirmed by the election petitioner before a Notary. Below the endorsement of attestation, it was also mentioned:

sd

Notary

There, however, was an omission to mention the name and particulars of the Notary and the stamp and seal of the Notary in the copy of the affidavit served on the appellant. There was no other defect pointed out either in the memo of objection or in CMP No. 2903 of 1996 or even during the course of arguments in the High Court or before us. Could this omission be

treated as an omission of a vital or material nature which could possibly mislead or prejudice the appellant in formulating his defence? In our opinion: No. The omission was inconsequential. By no stretch of imagination can it be said that the appellant could have been misled by the absence of the name and seal or stamp of the Notary on the copy of the affidavit, when endorsement of attestation was present in the copy which showed that the same had been signed by the Notary. It is not denied that the copies of the election petition and the affidavit served on the appellant bore the signatures of Respondent 1 on every page and the original affidavit filed in support of the election petition had been properly signed, verified and affirmed by the election petitioner and attested by the Notary. There has, thus, been a substantial compliance with the requirements of Section 81(3) read with the proviso to Section 83(1)(c) of the Act. Defects in the supply of true copy under Section 81 of the Act may be considered to be fatal, where the party has been misled by the copy on account of variation of a material nature in the original and the copy supplied to the respondent. The prejudice caused to the respondent in such cases would attract the provisions of Section 81(3) read with Section 86(1) of the Act. The same consequence would

not follow from non-compliance with Section 83 of the Act.

38. We are unable to agree with Mr. Salve that since proceedings in election petitions are purely statutory proceedings and not "civil proceedings" as commonly understood, there is no room for invoking and importing the doctrine of substantial compliance into Section 86(1) read with Section 81(3) of the Act. It is too late in the day to so urge. The law as settled by the two Constitution Bench decisions of this Court referred to above is by itself sufficient to repel the argument of Mr. Salve. That apart, to our mind, the legislative intent appears to be quite clear, since it divides violations into two classes — those violations which would entail dismissal of the election petition under Section 86(1) of the Act like non-compliance with Section 81(3) and those violations which attract Section 83(1) of the Act, i.e., non-compliance with the provisions of Section 83. It is only the violation of Section 81 of the Act which can attract the application of the doctrine of substantial compliance as expounded in **Murarka Radhey Shyam** and **Ch. Subbarao** cases. The defect of the type provided in Section 83 of the Act, on the other hand, can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure. This position

clearly emerges from the provisions of Sections 83(1) and 86(5) of the Act which read thus:

“83. Contents of petition.- (1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

* * *

86. Trial of election petitions.-

(5) The High Court may, upon such terms as to costs and otherwise as it may deem fit, allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such manner as may in its opinion be necessary for ensuring a fair and effective trial of the petition, but shall not allow any amendment of the petition which will

have the effect of introducing particulars of a corrupt practice not previously alleged in the petition.”

39. Applying the test as laid down in **Murarka Radhey Shyam Ram Kumar** case to the fact situation of the present case, we come to the conclusion that the defects complained of in the present case were not such as could have misled the appellant at all. The non-mention of the name of the Notary or the absence of the stamp and seal of the Notary in the otherwise true copy supplied to the appellant could not be construed to be an omission or variation of a vital nature and thus the defect, if at all it could be construed as a defect, was not a defect of any vital nature attracting the consequences of Section 86(1) of the Act. Under the circumstances, it must be held that there was no failure on the part of the election petitioner to comply with the last part of sub-section (3) of Section 81 of the Act and, under the circumstances, Section 86(1) of the Act was not attracted and the election petition could not have been dismissed by reason of the alleged failure to comply with the provisions of Section 81 of the Act. In this connection, it is also relevant to note that the appellant, neither in the memo of objections nor in the written objections or in CMP No. 2903 of 1996 has alleged that he had been misled by the absence

of the name, rubber stamp and seal of the Notary on the copy of the affidavit supplied to him or that he had been prejudiced to formulate his defence. Even during the arguments, learned counsel for the appellant was not able to point out as to how the appellant could have been prejudiced by the alleged omissions on the copy of the affidavit served on him.

40. In our opinion, it is not every minor variation in form but only a vital defect in substance which can lead to a finding of non-compliance with the provisions of Section 81(3) of the Act with the consequences under Section 86(1) to follow. The weight of authority clearly indicates that a certain amount of flexibility is envisaged. While an impermissible deviation from the original may entail the dismissal of an election petition under Section 86(1) of the Act, an insignificant variation in the true copy cannot be construed as a fatal defect. It is, however, neither desirable nor possible to catalogue the defects which may be classified as of a vital nature or those which are not so. It would depend upon the facts and circumstances of each case and no hard and fast formula can be prescribed. The tests suggested in **Murarka Radhey Shyam** case are sound tests and are now well settled. We agree with the same and need not repeat those tests. Considered in this background, we are of the opinion that the

alleged defect in the true copy of the affidavit in the present case did not attract the provisions of Section 86(1) of the Act for alleged non-compliance with the last part of Section 81(3) of the Act and that there had been substantial compliance with the requirements of Section 81(3) of the Act in supplying 'true copy' of the affidavit to the appellant by the respondent."

In the case of **M. Karunanidhi** (supra), the Hon'ble Supreme Court held as follows:

3. At the last general election to the State Legislative Assembly of Tamil Nadu from the Anna Nagar Assembly Constituency No. 8 held in May 1980, the appellant, M. Karunanidhi, leader of the Dravida Munnetra Kazhagam Party, contested as a candidate of that Party and secured 51290 votes. As against this, the respondent Dr. H.V. Hande sponsored as a candidate by the All India Anna Dravida Munnetra Kazhagam secured 50591 votes. On June 1, 1980 the appellant, M. Karunanidhi, was consequently declared elected by a margin of 699 votes. The last date for filing an election petition to challenge his election was July 16, 1980. On July 14, 1980 the respondent, Dr. H.V. Hande, filed an election petition under Section 81 read with Section 100 of the Representation of the People Act, 1951 (for the sake of brevity hereinafter referred to as "the Act") challenging

the election of the appellant on various grounds. The election petition was accompanied by a pre-receipted challan prepared by the Accounts Department of the High Court on the basis of a lodgment schedule initialled by the Assistant Registrar II, High Court, showing that a sum of Rs.2,000/- had been credited on July 11, 1980, to the account of the Registrar, High Court, Madras, in the Reserve Bank of India, Madras, as security for costs along with the lodgment schedule signed by the Assistant Registrar II.

xxx

xxx

xxx

5. On October 30, 1980 the appellant filed his written statement. He pleaded, inter alia, that the election petition was liable to be dismissed in limine under sub-section (1) of Section 86 due to non-compliance with the requirements of sub-section (1) of Section 47 of the Act read with Rule 8 of the Madras High Court (Election Petitions) Rules, 1967, for the reason that there was no deposit of Rs.2,000/- in cash in the High Court as security for costs, and also for non-compliance with the requirements of sub-section (3) of Section 81 of the Act as the copy of the election petition served on the appellant was not accompanied by a copy of the photograph of the alleged fancy banner annexed to the petition, as alleged in para 18(b) of the petition. The appellant accordingly raised a preliminary

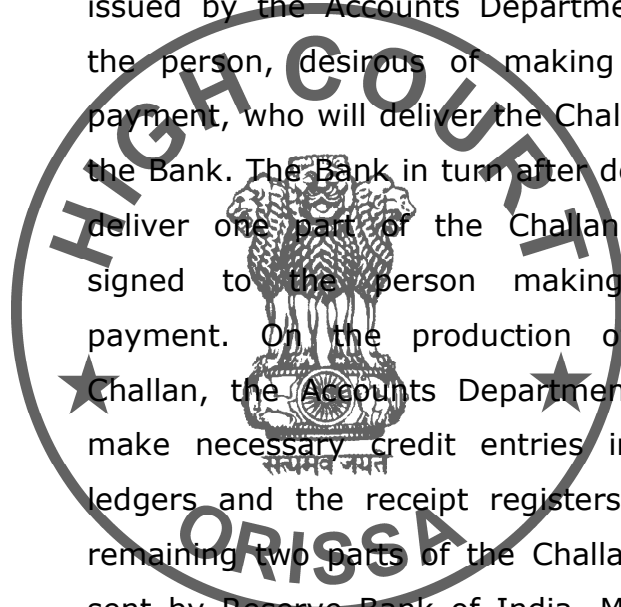
objection as to the maintainability of the election petition.

6. The High Court by its order dated December 1, 1980, overruled both the preliminary objections. In regard to the objection based on sub-section (1) of Section 117 of the Act read with Rule 8 of the Madras High Court (Election Petitions) Rules, 1967 (for short "the Election Petitions Rules"), the High Court held that a sum of Rs.2,000/- as security amount had been deposited by the respondent in the Reserve Bank of India to the credit of the Registrar, High Court, at the instance of the High Court, and in accordance with the procedure followed for deposit of amounts in court. In reaching that conclusion, the High Court relied upon the lodgment schedule presented by K. Subramaniam, counsel for the respondent, which had been prepared in the Registry by the Assistant Registrar II, and the challan in triplicate prepared by the Accounts Department of the High Court and signed by the official referee specifying the amount and the date within which it had to be deposited. It held that the requirements of sub-section (1) of Section 117 of the Act read with Rule 8 of the Election Petitions Rules for the making of the deposit of Rs.2,000/- as security for costs in the High Court were mandatory but the manner of making such deposit was directory and as the

amount of Rs.2,000/- had, in fact, been deposited to the credit of the Registrar, High Court, within the time allowed therefor, there was substantial compliance with the requirements of sub-section (1) of Section 117 of the Act. As regards the objection based on the non-supply of a copy of the photograph of the fancy banner adverted to in para 18(b), the High Court relying upon the decision of this Court in **Sahodrabai Rai Vrs.- Ram Singh Aharwar** held that the banner could not be treated to be an integral part of the election petition but was merely a piece of evidence as to the nature and type of fancy banners erected by the appellant and therefore failure to supply a copy of the photograph to the appellant did not amount to a breach of the provisions contained in sub-section (3) of Section 81 of the Act. These findings were reached by the High Court on the basis of the affidavits filed by the parties and the material on record. The High Court had also before it a report from the Registry as to the procedure followed with regard to Court deposits:

“Any person desirous of paying money into Court shall present a lodgement schedule, duly vouched by the concerned Section regarding the quantum and the time limit, and initialled by the Officers of Original Side or Appellate Side as the case may be, to

the Accounts Department for the issue of a Challan to enable the party to make the payment into Reserve Bank of India, Madras to the credit of the case concerned. On the presentation of the lodgement schedule to the Accounts Department a Challan in triplicate specifying the amount and the date within which it should be paid will be issued by the Accounts Department to the person, desirous of making such payment, who will deliver the Challan to the Bank. The Bank in turn after deposit deliver one part of the Challan duly signed to the person making the payment. On the production of the Challan, the Accounts Department will make necessary credit entries in the ledgers and the receipt registers. The remaining two parts of the Challan are sent by Reserve Bank of India, Madras to Pay and Accounts Office, which in turn sends one part of it to this Office. Sometimes it takes about one or two months to receive the said Challan from the Pay and Accounts Office. In cases where advocates do not produce one part of Challan in Accounts Department, credit entries are made on the strength of the Challan from Pay and Accounts



Office and the pass book from the Reserve Bank of India, Madras.

Official receipt for such deposits are issued under the signature of the Assistant Registrar (Original Side) for Original Side Deposits and of the Deputy Registrar for Appellate Side Deposits to such of those parties who produce one part of the Challan and make a request for official receipt to that effect.

It is also submitted that Accounts Department will not receive cash without specific orders to that effect.

This is the procedure that is being followed by the Accounts Section of High Court with regard to Court Deposits.”

7. It is against this order of the High Court that this appeal was filed. The appeal was first heard in April 1981, and this Court by its Order dated April 2, 1981, remitted back the issue with regard to the alleged non-compliance with the requirements of sub-section (1) of Section 117 read with Rule 8 of the Election Petitions Rules to the High Court for a decision afresh, as it was felt that the point raised was primarily a matter of evidence, but the parties had unfortunately not led any evidence on the point. It accordingly directed the High Court to record the evidence that may be adduced as regards the practice and procedure followed by the High Court in regard to the making of an election

petition under Section 81 of the Act and the manner in which the security amount of Rs.2,000/- was deposited in the High Court in compliance with the requirements of sub-section (1) of Section 117 of the Act read with Rule 8 of the Election Petitions Rules.

8. After the issue was remitted, the High Court allowed the parties to lead their evidence both oral as well as documentary and has recorded its findings dated July 20, 1981. The High Court adhered to its earlier view that on a construction of sub-section (1) of Section 117 of the Act, the factum of making of deposit of Rs.2,000/- as security for costs in the High Court was mandatory but the manner of making such deposit was directory and further held that although there was no strict or literal compliance with the requirements of Rule 8 of the Election Petitions Rules, there had been substantial compliance with the requirements of sub-section (1) of Section 117 of the Act, in that the requisite amount of Rs.2,000/- had actually been deposited to the credit of the Registrar, High Court, in the Reserve Bank of India on July 11, 1980, that is, before the election petition was filed on July 14, 1980, and the same was available for payment of costs. In the connected cases also, the High Court reached the same conclusion after taking evidence of the respective parties.

xxx

xxx

xxx

42. The conclusion is irresistible that the words "copies thereof" in sub-section (3) of Section 81 read in the context of sub-section (2) of Section 83 must necessarily refer not only to the election petition proper but also to schedules or annexures thereto containing particulars of any corrupt practice alleged therein. That being so, we are constrained to reverse the judgment of the High Court insofar as it holds that the photograph of the fancy banner adverted to in para 18(b) could not be treated to be an integral part of the election petition but was merely a piece of evidence as to the nature and type of fancy banner erected by the appellant and therefore failure to supply a copy of the photograph to the appellant did not amount to a violation of the provisions of sub-section (3) of Section 81 of the Act.

43. For these reasons, all the appeals and special leave petitions except Civil Appeal No. 38(NCE) of 1981 must fail and are dismissed. Civil Appeal No. 38(NCE) of 1981 partly succeeds and is allowed. The judgment of the High Court holding that the amount of Rs.2000 having been deposited to the credit of the Registrar, High Court in the Reserve Bank of India on the strength of pre-receipted challans issued by the Accounts Department on the basis of a lodgment schedule, there was substantial compliance of the requirements of sub-section (1) of Section 117 of the Act, is upheld. But the judgment of the High Court is set aside insofar

as it holds that the failure to supply a copy of the photograph of the fancy banner referred to in para 18(b) along with a copy of the election petition to the appellant did not amount to a breach of the provisions contained in sub-section (3) of Section 81 of the Act, and instead we hold that the failure to do so amounted to non-compliance of sub-section (3) of Section 81 inasmuch as the photograph of the fancy banner was an integral part of the election petition and therefore the election petition must be dismissed summarily under sub-section (1) of Section 86 of the Representation of the People Act, 1951. We further direct that the High Court shall permit the appellant to withdraw the recrimination petition filed by him under Section 97 of the Act in terms of the undertaking given by learned counsel for the appellant during the course of the hearing of the appeal.”

In the case of **M.Y. Ghorpade** (supra), the Hon'ble Supreme Court was hearing the appeal against an order of the Karnataka High Court which had dismissed a preliminary objection raised by the respondent in the election petition (appellant before the Hon'ble Supreme Court) as to non-compliance of requirement under section 117 of the Act by the election petitioner. While adjudicating as to whether there has, in

fact, been non-compliance of section 117, the Hon'ble Apex Court observed as follows:-

"1...The only question that arises for consideration in the appeal is whether there has been non-compliance with Section 117 of the Act. Section 86 of the Act in Chapter III deals with the trial of election petition and Section 86(1) states that the High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117. Section 117 of the Act deals with the security for cost and reads thus:

"117. Security for costs.—(1) At the time of presenting an election petition, the petitioner shall deposit in the High Court in accordance with the Rules of the High Court a sum of two thousand rupees as security for the costs of the petition.

(2) During the course of the trial of an election petition, the High Court may, at any time, call upon the petitioner to give such further security for costs as it may direct."

xxx

xxx

xxx

5. Before examining the different decisions of this Court on which the parties have relied upon and looking at the provision of Section 117 of the Act, it is crystal clear to us that the aforesaid

provision requires deposit of Rs.2,000/- as security for the cost has to be made at the time of presenting an election petition. The object of having the aforesaid provision could be to discourage entertaining frivolous election petitions and to make provision for cost in favour of the parties who ultimately succeed in the election petition. Sub-section (2) of Section 117 authorises the High Court to call upon an election petitioner during the course of the trial of an election petition, to give such further security which may be necessary, depending upon the facts and circumstances of the case. It would, therefore, be apparent that the requirement of making a security deposit of Rs.2,000/- is mandatory and the same has to be made while presenting an election petition, but the mode of deposit as well as the person who could make a deposit has to be complied with in accordance with the rules of the High Court in question and, as such has been held to be directory in several decisions of this Court.

9. In **M. Karunanidhi -Vrs.- H.V. Hande** provisions of Section 117(1) of the Representation of the People Act directly came up for consideration. In this case the Assistant Registrar of the High Court directed that the amount of security be deposited to the credit of the Registrar of the High Court in Reserve Bank of India and in pursuance of the direction, the

election petitioner deposited the sum of Rs.2,000/- with a pre-receipted challan issued by the Accounts Department to the credit of the Registrar of the High Court and Reserve Bank of India had made the endorsement that it had received in cash. The contention of the applicant assailing the maintainability of the election petition was that there has been non-compliance with Section 117(1) of the Act inasmuch as Rule 8 of the Election Petitions Rules provides that money should be deposited in the High Court in cash and that Rule must be held to be forming a part of sub-section (1) of Section 117. It was thus contended that the deposit of money in Reserve Bank of India to the credit of the Registrar, High Court cannot be construed to be a compliance with the mandatory requirements of Section 117(1) of the Act. This contention was repelled by this Court and it was held that there was nothing wrong in the procedure adopted in making the deposit and when the amount so deposited with a pre-receipted challan issued by the Accounts Department to the credit of the Registrar, High Court and Reserve Bank of India made the endorsement (received in cash), it must be regarded that the payment was made in the High Court and the pre-receipted challan bearing the endorsement must be treated as the receipt of the Registrar. This Court relied upon the earlier decision of this Court in the case of **K.**

Kamaraja Nadar -Vrs.- Kunju Thevar which was a case under the provisions of Section 117 of the Act, as it stood prior to its amendment, wherein also the receipt showed that the deposit had been made but did not show that the deposit had been made in favour of the Secretary to the Election Commission. One of the questions that arose was whether the expression "in favour of the Election Commission", contained in Section 117, as it stood then, was mandatory in character or not, and this Court held that the first part of Section 117 though was mandatory, but not the later part. It is not necessary to multiply authorities on the point, but suffice it to say, that the sum of Rs.2,000/- must be deposited while filing an election petition and that is undoubtedly mandatory, but through whom the amount will be deposited etc. cannot be held to be mandatory. That being the position, and in the case in hand the evidence of the election petitioner as well as the evidence of Respondent 5 unequivocally pointing out that it is the election petitioner who deposited the amount of Rs.2,000/-, we see no infirmity with the conclusion of the High Court that there has been compliance with Section 117 of the Act and consequently the election petition has been rightly held to be maintainable and could not have been dismissed under Section 86 on the

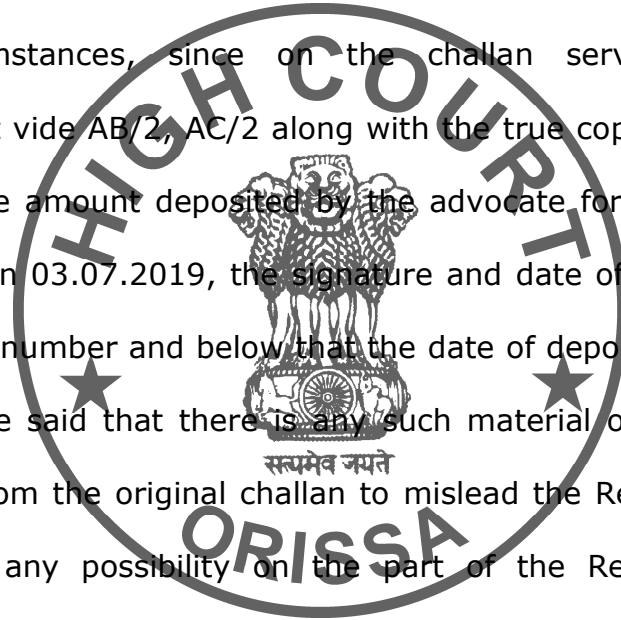
ground of non-compliance with Section 117 of the Act.”

Reliance is further placed in the cases of **A. Madan Mohan** (supra), wherein the Hon’ble Supreme Court considered as to whether or not the election petition was liable to be dismissed in limine u/s 86 of the R.P. Act, 1951 as the copies of the documents and schedules, though filed in Court along with the election petition, were not supplied to the returned candidate which amounts to a clear breach of mandatory provisions contained in section 81(3) of the Act. Answering the aforesaid question, the Hon’ble Supreme Court held as follows:-

“11. The counsel for the petitioner vehemently contended that as the schedules and other documents formed an integral part of the petition, the same should have been served on the petitioner (respondent in the High Court) before it could be said that the provisions of Sections 81 and 82 of the Act had been complied with. It was further argued that in the absence of such a compliance, the petition was liable to be rejected in limine under Section 86 of the Act. We are, however, unable to agree with this contention which does not at all flow from the plain and simple requirements of Sections 81 and 82. As indicated above, all that was necessary was done in this case and there was

no requirement that the documents or the schedules should also have been served on the petitioner because if they were filed in the Court it was always open to the petitioner to inspect them and find out the allegations made in the petition. We are unable to hold that the documents or the schedules formed an integral part of the petition.”

In view of the foregoing discussions and in the facts and circumstances, since on the challan served on the Respondent vide AB/2, AC/2 along with the true copy of election petition, the amount deposited by the advocate for the Election Petitioner on 03.07.2019, the signature and date of the cashier, the challan number and below that the date of deposit are there, it cannot be said that there is any such material or substantial variation from the original challan to mislead the Respondent or there was any possibility on the part of the Respondent to misunderstand it or that the Respondent had been prejudiced to formulate his defence by such service of challan and thus, the contentions raised on behalf of the Respondent that as per section 81(3) of the R.P. Act r/w Order 7 Rule 14 C.P.C, the election petition is liable to be dismissed on account of non-supply of the exact and true copy of the challan appended to the



election petition, being devoid of merits, stand rejected and the said plea is barred by the principles of constructive res judicata.

Thus, the issue nos.(1) to (3) are answered in favour of the Election Petitioner and against the Respondent.

9. **Issue Nos.4 to 14:-**

Before going to deal with all these eleven issues, it would be apt to discuss some of the relevant provisions of the Constitution of India, R.P. Act, 1951, Conduct of Election Rules, 1961 and Handbook for Returning Officer.

Article 173 of the Constitution of India deals with qualification for membership of the State Legislature. Article 191 of the Constitution of India deals with disqualifications for membership.

Section 33 of the R.P. Act, 1951 deals with presentation of nomination paper and requirements for a valid nomination. The relevant provision for this case i.e. sub-section (4) of section 33 reads as follows:-

“33(4). On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the

nomination paper are the same as those entered in the electoral rolls:

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."

Section 36 of the R.P. Act, 1951 which deals with scrutiny of nomination reads as follows:-

"36. Scrutiny of nomination.—(1) On the date fixed for the scrutiny of nominations under

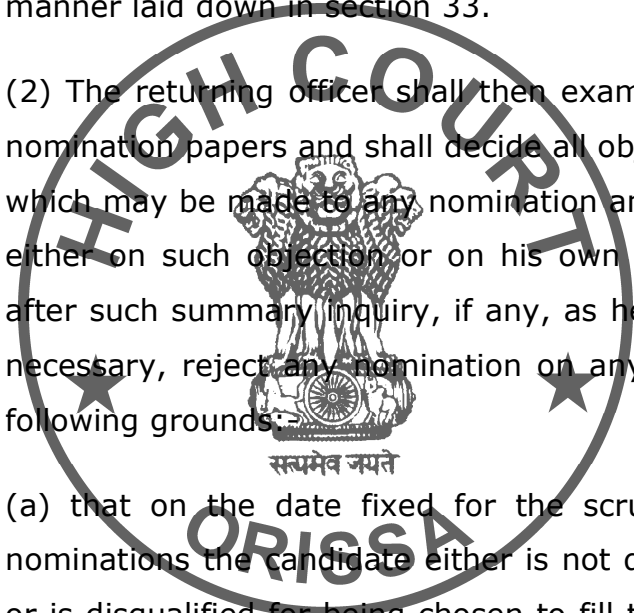
section 30, the candidates, their election agents, one proposer of each candidate, and one other person duly authorized in writing by each candidate but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities 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 authorize 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) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:

Provided that in case an objection is raised by the returning officer or is made by any other person the candidate concerned may be

allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

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

(7) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950).

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

Section 83 of the R.P. Act, 1951 deals with contents of election petition which reads as follows:-

“83. Contents of petition—(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.”

Section 100 of the R.P. Act. 1951 which deals with the grounds on which the election is to be declared void reads as follows:-

“100. Grounds for declaring election to be void.—(1) Subject to the provisions of subsection (2) if the High Court is of opinion—

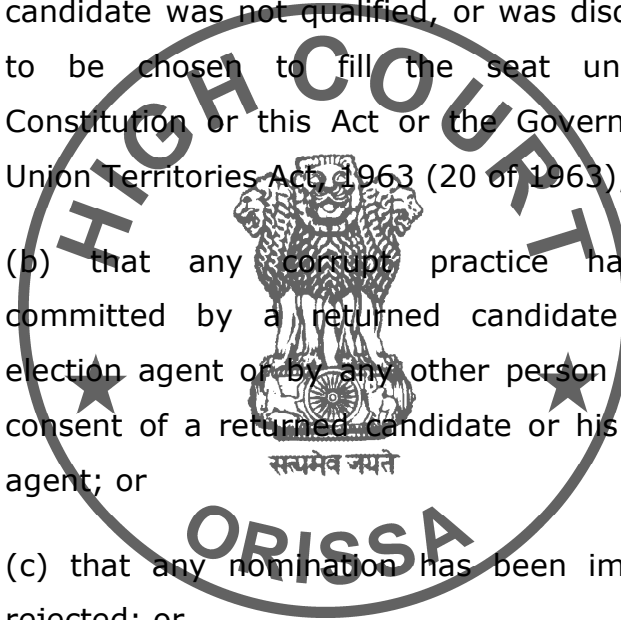
(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

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

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



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

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

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent other than his election agent, of any corrupt practice but the High Court is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the High Court may decide that the election of the returned candidate is not void.”

Clause 5.11 of Handbook for Returning Officer, February 2019, Document 23, Edition 1 (hereafter 'HBRO') (Ext. 38) at page 75 prescribes as follows:-

Preliminary Examination of Nomination Papers.-

Clause 5.11.1: As each Nomination Paper is filed, Returning Officer or the Specified Assistant Returning Officer, as the case may be, is required by law to examine it then and there from the technical stand point as required under section 33(4) of the Act, 1951. But Returning Officer is not required to hold any formal scrutiny of any nomination papers at this stage. This preliminary examination is restricted to entries relating to the name and electoral roll details relating to the candidate and the proposer(s) as given in the nomination paper(s) and those as entered in the electoral roll. The following aspects may be examined at this stage:

(i) if the candidate is an elector in Returning Officer's constituency, he should compare the

entries in the nomination paper with the entries in the electoral roll relating to the serial number and name of the candidate and his proposer/s.

xxx

xxx

xxx

(iv) Check whether the affidavit in revised Form 26 is duly filled up and attached along with the nomination paper. If not attached, Returning Officer or the Specified Assistant Returning Officer should bring it to his notice this requirement through a notice by way of the check list.

(v) Check whether all columns of the affidavit are filled up, as incomplete affidavits are liable to be rejected leading to rejection of nomination paper. In case any of the columns are left blank by the candidate, Returning Officer or the Specified Assistant Returning Officer will mention it in the checklist and hand it over to the candidate against proper receipt. In such cases the candidate will have opportunity to file a fresh affidavit complete in all respects by the time fixed for commencement of scrutiny.

Clause 5.13 of HBRO (Ext.38) at page 81 prescribes

as follows:-

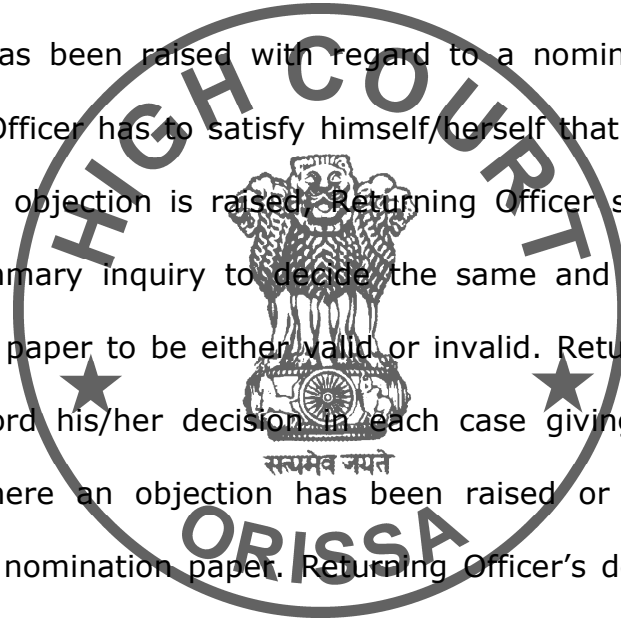
Discrepancies And Errors in Electoral Rolls.-

5.13.1 No misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposers 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 is commonly understood. 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 papers shall be overlooked. Returning Officer has no power in law to allow any other error to be corrected (See Section 33 (4) of RP Act, 1951).

5.13.2 Similarly, if there is a complaint regarding mismatch of photo in the photo electoral roll, Returning Officer shall overlook the same after satisfying himself/herself about the identity of the person through some other document produced by him.

5.13.3 Points, which Returning Officer is thus required to dispose off under Section 33(4) of the said Act, should invariably be disposed of at this stage. It will be undesirable for Returning Officer at the time of scrutiny to reject a nomination paper for defects, which could have been thus cured at the earlier stage of the presentation of the nomination paper.

Clause 6.6.1 of HBRO (Ext.38) states that even if no objection has been raised with regard to a nomination paper, Returning Officer has to satisfy himself/herself that it is valid in law. If any objection is raised, Returning Officer shall have to hold a summary inquiry to decide the same and to treat the nomination paper to be either valid or invalid. Returning Officer should record his/her decision in each case giving briefly the reasons where an objection has been raised or why he/she rejects the nomination paper. Returning Officer's decision could be challenged later in an election petition and hence the importance of recording a brief statement of reasons at this time. If Returning Officer accepts the nomination paper of a candidate overruling the objections raised by an objector, he may be supplied with a certified copy of his/her decision upon his request.



Clause 6.7 of HBRO (Ext.38) deals with presumption of validity and it reads as follows:-

"6.7.1 There is a presumption that every nomination paper is valid unless the contrary is prima facie obvious or has been made out. In case of a doubt as to the validity of a nomination paper, the benefit of such doubt must go to the candidate concerned and the nomination paper should be held to be valid. Remember that whenever a candidate's nomination paper is rejected without proper reason that can be a reason to set aside the election in an election petition. Returning Officer should adopt a comparatively liberal approach in dealing with minor technical or clerical errors. Sub-section (4) of Section 36 mandates that nomination paper shall not be rejected on a ground or defect which is not substantial."

Rule 4 of Conduct of Election Rules, 1961 (hereafter

'1961 Rules') prescribes as follows:-

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.

Thus, according to Rule 4 of 1961 Rules, failure to complete or defect in completing the declaration as to symbols in a nomination paper shall not be deemed to be a defect of substantial character. It is not that every defect such as deletion of Part II of nomination paper and not filing the Part III and III-A of the nomination paper in the prescribed Form 2B is not a defect of substantial character.

For the sake of convenience, and to avoid prolixity and unnecessary repetition, issues nos.4 to 14 which are interlinked with each other, are dealt with and answered together.

Issues nos.4 to 14 are extracted herein below for ready reference:-

"4. Whether striking/deletion of PART-II of his nomination in Form-2B by the sole Respondent in pursuance to the instruction given in the prescribed nomination Form-2B renders the nomination of the sole Respondent liable for rejection of his nomination or not?

5. Whether the sole Respondent has furnished all the required information as required in PART-III of nomination Form-2B or not?

6. Whether the sole Respondent has furnished all the required information as required in PART-IIIA of Nomination Form-2B or not?

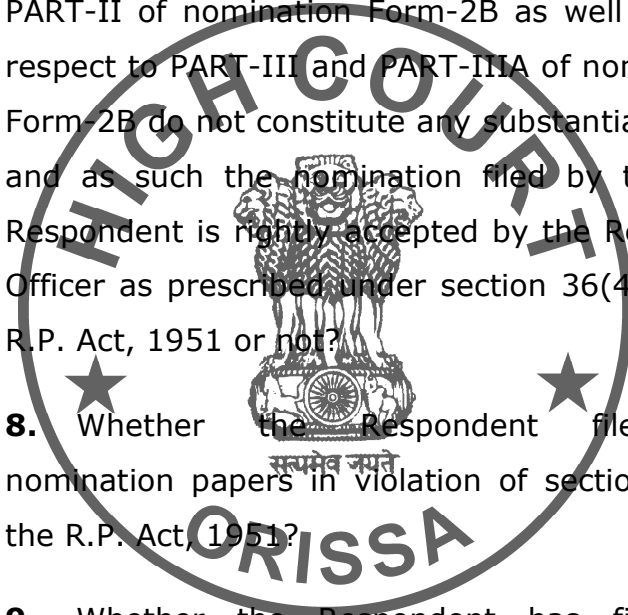
7. Whether the alleged defects as pointed out by the Election Petitioner regarding deletion of PART-II of nomination Form-2B as well as with respect to PART-III and PART-IIIA of nomination Form-2B do not constitute any substantial defect and as such the nomination filed by the sole Respondent is rightly accepted by the Returning Officer as prescribed under section 36(4) of the R.P. Act, 1951 or not?

8. Whether the Respondent filed his nomination papers in violation of section 33 of the R.P. Act, 1951?

9. Whether the Respondent has filed his nomination papers before the Returning Officer is in the prescribed Form-2B?

10. Whether PART-III of Form-2B of the nomination papers filed by the Respondent is in the prescribed Form?

11. Whether the Respondent has filled up PART-IIIA of the nomination papers filed by him before



the Returning Officer of 90-Barabati Cuttack Assembly Constituency and as to whether Column no.3 to 9 of PART-IIIA are in the prescribed Form-2B?

12. Whether the nomination papers of the Respondent was liable to be rejected by the Returning Officer as the same was not in the prescribed Form-2B and as to whether the Returning Officer illegally and improperly accepted the nomination papers filed by the Respondent in violation of section 33 of the R.P. Act, 1951 read with Rule 4 of the Conduct of Election Rules, 1961?

13. Whether the Returning Officer should have rejected the nomination of Respondent in exercise of power under section 36 of the R.P. Act, 1951 at the time of scrutiny of the nomination papers?

14. Whether on account of the alleged defects as pointed out by the Election Petitioner under paragraph 7(A) of the Election Petition, the result of the election in so far as it concerns the returned candidate/sole Respondent has been materially affected or not?"

Learned counsel for the Election Petitioner placed reliance in the case of **Jyoti Basu and others -Vrs.- Devi Ghosal and Others reported in (1982) 1 Supreme Court**

Cases 691, wherein the Hon'ble Supreme Court held as follows:-

"8. 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. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A Court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, Court is put in a strait-jacket. Thus the entire election process commencing from the issuance of the notification calling upon

a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a complete and self-contained code within which must be found any rights claimed in relation to an election or an election dispute..."

In the case of **Arikala Narasa Reddy -Vrs.-**

सत्यमेव जयते

Venkata Ram Reddy Reddygari and Another reported in (2014) 5 Supreme Court Cases 312, the Hon'ble Supreme

Court held as follows:-

"13. It is a settled legal proposition that the statutory requirements relating to election law have to be strictly adhered to for the reason that an election dispute is a statutory proceeding unknown to the common law and thus, the doctrine of equity, etc. does not apply in such dispute. All the technicalities

prescribed/mandated in election law have been provided to safeguard the purity of the election process and the Courts have a duty to enforce the same with all rigours and not to minimise their operation. A right to be elected is neither a fundamental right nor a common law right, though it may be very fundamental to a democratic set-up of governance. Therefore, answer to every question raised in election dispute is to be solved within the four corners of the statute.

xxx HIGH COURT xxx
 32. It is a settled legal proposition that the instructions contained in the Handbook for Returning Officer are issued by the Election Commission in exercise of its statutory functions and are therefore binding on the Returning Officers. Such a view stands fortified by various judgments of this Court in **Ram Sukh -Vrs.- Dinesh Aggarwal : (2009) 10 SCC 541** and **Uttamrao Shivdas Jankar -Vrs.- Ranjitsinh Vijaysinh Mohite Patil : (2009) 13 SCC 131.**"

In case of **Jaspal Singh -Vrs.- O.P. Babbar** reported in **2008 (101) Delhi Reported Journal 283**, the Hon'ble High Court of Delhi held that:

"32. A Statute is an edict of the Legislature and the conventional way of interpreting or construing a statute is to seek the 'intention' of its maker. A statute is to be construed according "to the intent of those who make it" and "the duty of the judicature is to act upon the true intention of the Legislature — *the mens or sententia legis*.

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

xxx


 The image shows the national emblem of India, which is the Lion Capital of Ashoka. Below the emblem is the motto 'सत्यमेव जयते' (Satyameva Jayate) in Devanagari script. The emblem is centered within a circular watermark that reads 'HIGH COURT' at the top and 'ORISSA' at the bottom.

xxx

xxx

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

45. To construe Section 33A of the R.P. Act, 1951 in any other manner would run contrary to the ratio of the decision of the Hon'ble Supreme Court in decision reported as **UOI -Vrs.- Association Democratic Reforms & Anr. : (2002) 5 SCC 294.**

xxx

xxx

xxx

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

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

Mr. Kanungo, learned Senior Advocate appearing for the Election Petitioner argued that the Election Petitioner being examined as P.W.1 has stated in his evidence affidavit (Ext.36) that the result of election so far as it relates to the Constituency in declaring the Respondent to have been elected as M.L.A. to the Odisha State Legislative Assembly has been materially affected on account of illegal and improper acceptance of nomination papers by the Returning Officer of the Constituency as the Respondent had not filed his nomination papers in the prescribed Form 2B and had filed false affidavit in Form 26 and as such the declaration by the Returning Officer that the respondent had been duly elected from the Constituency is void,

illegal, not legally sustainable and the same is liable to be set aside. He has further stated that the Respondent filed his nomination as Indian National Congress (I.N.C) candidate for the Constituency before the Returning Officer on 02.04.2019 but the same was not in the prescribed Form 2B. The Respondent suo moto deleted part II of the Form 2B in the nomination papers filed by him before the Returning Officer on 02.04.2019. The part III of Form 2B of the nomination paper filed by the Respondent is also not in the prescribed Form 2B. Part IIIA of the nomination paper filed by the Respondent has not been filled up by the Respondent. The columns of the part IIIA of the nomination paper has been left blank and columns from (3) to (9) are also not in the prescribed Form 2B. Thus, it was necessary for the Returning Officer to reject the nomination papers of the Respondent but the Returning Officer illegally and improperly accepted the nomination papers of the Respondent. The Returning Officer should have rejected the nomination of the Respondent at the time of scrutiny as the nomination papers filed by the Respondent were not in prescribed Form 2B. The illegal and improper acceptance of nomination papers of the Respondent has materially affected the result of the election so far as it concerns the returned candidate and as such the same is

liable to be set aside. In his evidence, the Election Petitioner has further stated that the non-filing of nomination papers in the prescribed statutory Form 2B and whatever has been filed with blank particulars materially affected the result of the election and as such the election of the Respondent declaring him as M.L.A. of the Constituency is to be declared void and is to be set aside. In the cross-examination, the Election Petitioner has stated that he has mentioned in his election petition that the Respondent suo moto deleted Part II of the Form 2B in the nomination paper filed by him before the Returning Officer on 02.04.2019. Instruction is available in the nomination paper in Form 2B to 'strike off Part-I or Part-II below whichever is not applicable'. Part-I is to be used by the candidate set up by recognized political party. He has further stated in the cross-examination that he had struck off Part-II in his nomination paper in Form 2B as Part-II of the nomination paper in Form 2B was not relevant for a candidate set up by recognized political party and since he had been set up by a recognized political party, he had struck off Part-II. He has further stated in the cross-examination that the Respondent was a candidate set up by recognized political party i.e. Indian National Congress and that the Respondent was required to fill up Part-I of his nomination paper in Form 2B. He has further

stated that after the result of the election was declared, it came to his knowledge that the nomination paper filed by the Respondent was not in the prescribed Form 2B and that the latter suo motu deleted Part-II of the Form 2B. He has further stated that a candidate could not delete Part-II of Form 2B in the nomination paper filed by him if he was set up by a recognized political party, only he has to strike off Part-II even if it was not relevant for him. He has further stated that in his nomination paper, he had struck off Part-II of Form 2B whereas the Respondent had deleted Part-II in his nomination paper in Form 2B. He has further stated that though in Part-III of Form 2B, the Respondent had given his assent to the nomination, but that was not in the prescribed format. He has further stated that there is no such item as c(ii) in Part-III in the nomination paper of the Respondent and he had totally deleted the same and changed the format of the prescribed nomination paper. He has further stated that in Part-III, at the end, instruction has been given by putting * to score out this paragraph, if not applicable and ** score out the words not applicable, however, in the nomination paper filed by the Respondent in Form 2B, this paragraph has been totally deleted which should not have been done and by doing so, the Respondent had changed the format. He has

further stated that the Respondent had not filled up Part IIIA at all in his nomination paper in Form 2B. Part IIIA of the nomination paper filed by the Respondent was not in proper format as prescribed by the Election Commission of India. He has further stated that in Ext.35 and Ext.1, the Respondent has mentioned as 'NA' while filling up Clauses (i) to (xii). While filling up item (2) of Part IIIA of Form 2B which requires a candidate to disclose as to whether he is holding any office of profit under the Government of India or State Government or not and if yes, the details of office held, the Respondent has simply mentioned 'No' against item (2) of Part IIIA and further mentioned 'N.A.' against the second line. He has further stated that against item (3) of Part-III A of Form 2B where the candidate is required to furnish information as to whether he has been declared insolvent by any Court or not, the Respondent has simply mentioned 'No' against item (3) of Part-III A of Form 2B in the first line and the second line of item (3) is totally missing in his nomination paper, which indicates that it is not as per the format prescribed in Form 2B by the Election Commission of India and the Respondent had created a nomination paper of his own. Against item (4) of Part-III A of Form 2B where the candidate is required to furnish information as to whether the candidate is under allegiance or

adherence to any foreign country or not, the Respondent in his nomination paper against item (4) of Part IIIA of Form 2B has mentioned 'No' and the second line of item (4) has been totally deleted. Against item (5) of Part-III A of Form 2B where the candidate is required to furnish information as to whether the candidate has been disqualified under section 8A of the R.P. Act, 1951 by an order of the President or not, the Respondent in his nomination paper against item (5) of Part IIIA of Form 2B has mentioned 'No' and the second line of item (5) has been totally deleted. Against item (6) of Part-III A of Form 2B where the candidate is required to furnish information as to whether the candidate was dismissed for corruption or for disloyalty while holding office under the Government of India or the Government of any State or not, the Respondent in his nomination paper against item (6) of Part IIIA of Form 2B has mentioned 'No' and the second line of item (6) has been totally deleted. Against item (7) of Part-III A of Form 2B where the candidate is required to furnish information as to whether he has any subsisting contract(s) with the Government either in individual capacity or by trust or partnership in which he has a share for supply of any goods to that Government or for execution of works undertaken by that Government or not, the Respondent in his nomination

paper against item (7) of Part IIIA of Form 2B has mentioned 'No' whereas the second line of item (7) has been totally deleted. Against item (8) of Part-III A of Form 2B where the candidate is required to furnish information as to whether he is a managing agent or Manager or Secretary of any company or Corporation (other than a co-operative Society) in the capital of which Central Government or State Government has not less than twenty-five percent share or not, the Respondent in his nomination paper against item (8) of Part IIIA of Form 2B has mentioned 'No' and the second line of item (8) has been totally deleted. Against item (9) of Part-III A of Form 2B where the candidate is required to furnish information as to whether the candidate has been disqualified by the Commission under section 10A of R.P. Act, 1951 or not, the Respondent in his nomination paper against item (9) of Part IIIA of Form 2B has mentioned 'No' and against the second line of item (9), he has mentioned 'N.A.'.

Mr. Kanungo, learned Senior Advocate drew the attention of this Court to the evidence of the Election Petitioner (P.W.1) wherein he has stated to a question put by the Court that if a candidate deleted some parts of the nomination paper and filed it only filling the necessary columns and giving

necessary information which was applicable to him and presented it before the Returning Officer, the latter has got no power under law to overlook the same and accept it even though the candidate had given all the required information which was applicable to him. The nomination papers filed by the Respondent, according to the Election Petitioner, were not received from the Returning Officer but the same had been created after downloading the same from the website of the Election Commission of India. According to him, if after downloading the same from the website, the Respondent would have filled up it accurately without deleting any of the columns/information then it would have matched like his (Election Petitioner) nomination paper but since the Respondent had created the nomination paper on his own, it was not legally acceptable. The Returning Officer, according to him, should not have accepted the nomination papers of the Respondent in the Form in which it were filed and the Returning Officer had failed in his duty in accepting such nomination papers of the Respondent.

Mr. Kanungo, learned Senior Advocate drew the attention of this Court to the evidence of the Returning Officer (P.W.3) who has stated in his evidence that there is a Part II in Annexure-11 marked as Ext.38/3 and Part II of Annexure-11 is

not there in Exts.39, 40, 41 and 42. In the nomination paper filed by the Respondent before him marked as Ext.39, clause (c)(ii) of Part III is not there even though the same is there in Annexure-11. He admits that the Respondent had not filed up columns under (i) to (xii) at page 3 of his nomination paper (Ext.39) and that he had accepted the nomination paper (Ext.39) wherein the columns under (i) to (xii) at page 3 were left blank. P.W.3 has further stated that the nomination papers filed by the Respondent in Ext.39, Ext.40, Ext.41 and Ext.42 were not exactly in the prescribed Form 2B as appended to the 1961 Rules in all respect. In the nomination papers in Ext.39, Ext.40, Ext.41 and Ext.42 filed by the Respondent, Part-II of Form 2B as appended to the 1961 Rules is not available, clause (c)(ii) of Part-III of Form 2B as appended to the 1961 Rules is not available. He has admitted that he had accepted the nomination papers in Ext.39, Ext.40, Ext.41 and Ext.42 filed by the Respondent even though it is not exactly the same as per the prescribed Form 2B as appended to the 1961 Rules. He has stated that as per the provision under sub-section (4) of Section 33 of the R.P. Act, 1951 including the proviso to such sub-section, as a Returning Officer, he had got discretion to accept the nomination papers of the Respondent in Ext.39, Ext.40,

Ext.41 and Ext.42 even though those were not exactly the same as Form 2B as appended to 1961 Rules. He admits that in view of the proviso to sub-section (4) of section 33 of the R.P. Act, 1951, the Returning Officer has only been given a discretion to overlook any misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper and no other things and except that provision, there is no other provision anywhere prescribed giving discretion to the Returning Officer for accepting a nomination paper which was not exactly the same as per Form 2B as appended to the 1961 Rules. Attention has been further drawn to the cross-examination of P.W.3 wherein he has stated that while downloading a nomination paper from the official website, it is legally not permissible for the candidate to make any alteration, deletion, modification, tampering of the same and file it after filling the same. He has further stated that in the official website of the Election Commission, the Form 2B in which the Respondent has filed his four sets of nomination papers bearing nos. 02/LA/2019 (Ext.39), 03/LA/2019 (Ext.40), 04/LA/2019 (Ext.41) and 05/LA/2019 (Ext.42) were not available in the manner those were filed. He further stated that in all the nomination papers, i.e. Ext.39, Ext.40, Ext.41 and Ext.42, Part II, Part-III-(c)(ii) and

in Part-III after its clause (e), the sub-para "*I further declare that I am a member of the**caste/tribe which is a scheduled** caste/tribe of the State ofin relation to(area) in that State" were found missing.

Mr. Mishra, learned Senior Advocate appearing for the Respondent on the other hand argued that the Returning Officer (P.W.3) has stated that in case it is found that the defect, if any, is not of a 'substantial character', the nomination papers of the candidate are to be accepted as valid and that he did not find any such defects of 'substantial character' in the nomination papers of the Respondent. It is argued that P.W.3 is the best person to judge the same after scrutiny who has stated to have meticulously followed the provisions laid down in the HBRO (Ext.38) and therefore, it cannot be accepted that there was any defect in it. In my humble view, in spite of such evidence adduced by P.W.3, this Court has got power to examine the nomination papers of the Respondent with reference to the evidence adduced by both the sides to see whether there is any defect of substantial character in it or not and whether those were rightly accepted by P.W.3 to be valid.

Learned counsel for the Respondent has tried to bring on record that whatever the Respondent has mentioned in

his nomination papers in Form 2B filed by him on 02.04.2019 vide Ext.39, Ext.40, Ext.41 and Ext.42 were required to be mentioned in it and accordingly, the Respondent had correctly mentioned the same. The issues in this case are whether the Respondent filed his nomination papers in the prescribed Form 2B; whether he could have deleted some parts, left some parts blank in his nomination papers and whether the Returning Officer was justified in accepting the nomination papers of the Respondent in the form it were filed and it is not the issue that whatever was mentioned by the Respondent in those four nomination papers stated to be in Form 2B were factually incorrect.

Learned counsel for the Respondent argued that the Returning Officer (P.W.3) has stated that before the commencement of scrutiny of nominations, the nomination papers and the affidavits filed by the Respondent were very much available in his office notice board, with the media persons, in the office of the District Election Officer, Cuttack and in the official website of the Election Commission of India for view of the general public and in spite of such availability, nobody including the Election Petitioner or his agents or any of his supporters raised any objection before him to the nomination

papers and affidavits filed by the Respondent before or during scrutiny of nominations. P.W.3 has further stated that he duly verified all the nomination papers filed by the respective candidates at the time of scrutiny and gave opportunity to all the persons present at the time of scrutiny to examine the nomination papers of any candidate they like and raise objection, if any and in spite of giving such opportunity, no one raised any objection to the nomination papers filed by the Respondent in any manner before him. In my humble view, non-raising of objection at that stage by the Election Petitioner does not debar him from raising the election dispute and to prove by adducing oral as well as documentary evidence as to what were the defects in the nomination papers filed by the Respondent. In other words, in absence of any objection at that stage by anybody cannot be ground to presume that the nomination papers of the Respondent were defect free. In the case of **Kisan Shankar Kathore -Vrs.- Arun Dattatray Sawant reported in (2014) 14 Supreme Court Cases 162**, the Hon'ble Supreme Court has held that it may not be possible, in all times, on the part of the Returning Officer for verifying veracity of the details submitted by a candidate and merely because the Returning Officer accepted the nomination, the High Court cannot be

stripped of its power of judicial review to ascertain the genuineness of the information provided in the nomination papers, if doubted later on. The Hon'ble Apex Court further observed as follows:-

"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."

Learned counsel for the Respondent further argued that in view of the pleadings in the written statement, both documentary as well as oral evidences adduced in course of the trial, coupled together with provisions of law prescribed under the Constitution of India, R.P. Act, 1951, Indian Evidence Act, 1872 and relevant paragraphs in the Handbook for Returning

Officer as well as case laws referred to above, the allegations of the Election Petitioner under Paragraph 7(A) of the election petition stand belied and the Election Petitioner has miserably failed to prove and establish his allegations as made in Paragraph 7(A) of his election petition to the effect that the nomination papers filed by the Respondent in Form 2B are not in prescribed Form 2B and the defects appearing in the nomination papers of the Respondent are defects of 'substantial character' for which acceptance of his nomination papers by the Returning Officer (P.W.3) is illegal and improper.

Mr. Mishra, learned Senior Advocate placed reliance in the case of **Ramesh Rout -Mrs.- Rabindra Nath Rout reported in (2012) 1 Supreme Court Cases 762**, wherein the Hon'ble Supreme Court held as follows:-

"20. Form 2-B under Rule 4 is in three parts. Part I is to be used by a candidate set up by a recognised political party. Part II is required to be filled by a candidate for election to the Legislative Assembly not set up by a recognised political party and it provides that there should be ten electors of the constituency as proposers. Part III of Form 2-B is a declaration to be made by the candidate giving assent to his nomination. Clause (b)(i) is applicable to a

candidate who has been set up by a recognised political party with a request that symbol reserved for such party be allotted to him. Clause (b)(ii), on the other hand is applicable to a candidate not set up by any registered recognised political party or a candidate who is contesting the election as an independent candidate. A recognised political party means a political party recognised by the Commission under the 1968 Order.

xxx

xxx

xxx

35. The controversy in the present case relates to a candidate set up by a recognised political party of the State and, therefore, the relevant form in this regard is Form 2-B. Form 2-B is in three parts. Part II is not relevant and, therefore, it is not necessary to refer to that. Part I and Part III of Form 2-B are relevant. Part I of Form 2-B is required to be completed by a candidate set up by a recognised political party. Part III of Form 2-B is a declaration to be made by the candidate giving assent to his nomination. The candidate is required to declare, in case of a candidate set up by a recognised State party in terms of Para b(i), "that I am set up at this election by the ... party, which is a recognised national party/State party in this State and that the symbol reserved for the above party be allotted to me". Para b(ii) of

Part III is applicable to a candidate set up by any registered unrecognised political party or a candidate who is contesting the election as an independent candidate.

36. A plain reading of the proviso that follows Rule 4 leaves no manner of doubt that a failure to complete or defect in completing, the declaration as to symbols in a nomination paper in Form 2-A or Form 2-B by a candidate set up by a recognised political party or a candidate set up by a registered unrecognised political party or a candidate who seeks to contest the election as an independent candidate is not a defect of substantial nature. It is not possible to catalogue defects contemplated by the proviso. However, to illustrate a few: wrong description of symbol, omission to fill blank space given in pro forma in respect of choice of symbols, selecting a symbol which is reserved, etc. fall in the category of defects not of a substantial character.”

Mr. Mishra, learned Senior Advocate placed further reliance in the case of **Shambhu Prasad Sharma -Vrs.- Charandas Mahant and others reported in (2012) 11 Supreme Court Cases 390**, the Hon’ble Supreme Court held as follows:-

“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.

19. In the case at hand, the appellant alleges that the affidavit did not in the prescribed format state whether the candidates had any outstanding liabilities qua financial institutions or the Government. Now a departure from the format may assume some importance if the appellant alleged that there were such outstanding liabilities which were concealed by the candidates. That, however, is not the case of the appellant. Any departure from the prescribed format for disclosure of information about the dues, if any, payable to the financial institutions or the Government will not be of much significance, especially when the declaration made by the returned candidate in his affidavit clearly stated that no such dues were recoverable from the deponent. The departure from the format was not, in the circumstances, of a substantial character on which the nomination papers of the returned candidate could be lawfully rejected by the Returning Officer.”

Adverting to the contentions raised by the learned counsel for the respective parties, let me discuss some relevant evidence on record, provisions of law and legal dictum to answer the issues.

P.W.3 has stated that after verifying the four sets of nomination papers filed by the Respondent in Form 2B, he found that the provisions under R.P. Act, 1951 have been strictly followed by the Respondent. He has further stated that deletion of Part II in the nomination paper in Form 2B by the Respondent is not a defect of 'substantial character'. According to P.W.3, the deletion of some lines in Part IIIA by the Respondent was not a defect of a 'substantial character'. He stated that during scrutiny of nominations, after due verification and scrutiny of all the four sets of nomination papers and the accompanying documents filed by the Respondent on 02.04.2019 and 04.04.2019, he found that there was no defect of a 'substantial character' in the same for which he accepted all the four sets of nomination papers of the Respondent as valid. He has further stated that in view of the proviso to sub-section (4) of Section 33 of the R.P. Act, 1951, he has been given discretion to overlook any misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper and no other

things. He has further stated that by exercising his power conferred under the proviso to sub-section (4) of section 33 of the R.P. Act, 1951, he had overlooked the alleged defects/deletion/omission in the nomination papers in Form 2B of the Respondent as the same were not defects of 'substantial character' and such alleged defects, deletion, omissions being coming under the category of 'misnomer, inaccurate description, clerical, technical or printing error'; as a Returning Officer, he had overlooked the same. He, however, admits that there is no other provision except proviso to sub-section (4) of Section 33 of the R.P. Act, 1951 for accepting a nomination paper which is not exactly the same as per Form 2B as appended to the 1961 Rules.

Attention has been drawn to the meaning of the word 'misnomer' as given in different dictionaries and Law Lexicon:

(a) Law Lexicon:

Misnomer – A wrong name

(b) Cambridge Dictionary:

Misnomer – a name that does not suit what it refers to

(c) Merriam Webster Dictionary:

Misnomer – the misnaming of a person in a legal instrument, a use of a wrong or inappropriate name, a wrong name or inappropriate designation.

(d) Collins Dictionary:

Misnomer - an incorrect or unsuitable name or term for a person or thing

(e) Oxford English-English-Oriya Dictionary:

Misnomer – name or description that is wrongly applied to something.

Attention has been drawn to the meaning of the phrase 'inaccurate description' as given in Law Lexicon and in different dictionaries:

(a) Law Lexicon: सत्यमेव जयते

Description- Description of a person is that which tells what he is, and where statute requires that the name, place of abode, and description of a person be given, and only the name and place of abode are given, there is a total commission of the description. It is not a mere case of inaccurate description.- R. V. Tungwell, L.R. 3 Q.B. 704.

(b) Collins Dictionary:

Inaccurate- not accurate; imprecise, inexact, or erroneous.

Inaccurate- If a statement or measurement is inaccurate.

Description- A description of someone or something is an account which explains what they are or what they look like.

Description- a statement or account that describes; representation in words, the act, process, or technique of describing

(c) Cambridge Dictionary:

Inaccurate- not completely correct or exact, or not able to do something correctly or exactly

Description- something that tells you what something or someone is like

(d) Merriam Webster Dictionary:

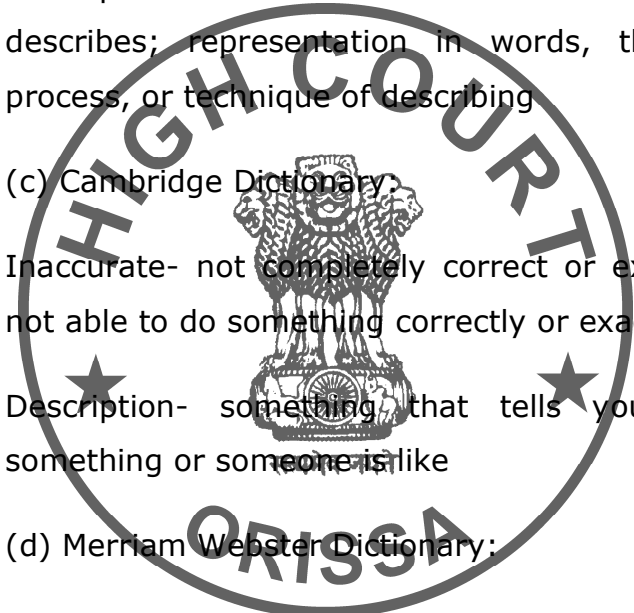
Inaccurate- not accurate, faulty

Description- an act of describing

(e) Longman Dictionary:

Inaccurate- not completely correct

Description- a piece of writing or speech that gives details about what someone or something is like



(f) Oxford English- English-Oriya Dictionary:

Inaccurate- not accurate (bhul, athik, trutipurna)

Description- describing (barnana, byakhyana)

Attention has been drawn to meaning of the phrase

'clerical error' as given in Law Lexicon:

Clerical error – Wharton defines a clerical error as an error in a document which can only be explained by considering it to be a slip or mistake of the party preparing or copying it. [Rosamma Purnose -Vrs.- Balakrishnan Nair, A.I.R. 1958 Ker. 154 at p. 157 : 1958 Ker. L.J. 261 : 1958 Ker. L.J. 1960]. Literally an error is said to be “clerical” where it is made by a clerk or some sub-ordinate agent, but actually, it means an error committed in the performance of clerical work, whether by the Court, the draftsman of the Act or by the clerk. It is an error which cannot reasonably be attributed to the exercise of judicial consideration or discretion. An ordinary mistake made by a clerk in copying a legal document. The Court may itself correct it without the motion by the parties. See Sec.152 CPC.

A “clerical error” is one made in transcribing or otherwise, and it must be apparent on the face

of the record; and therefore, capable of being corrected. It is in the nature of an inadvertent omission or mistake. The term "clerical error" which is amendable nunc pro tunc is distinguishable from a "judicial error" which can be corrected only on review or an appeal (cf. Court-fees Act, 1870.) – Mansha Ram L. Jagdish Rai -Vrs.- Tej Bhan L. Guditta Mal Sahney, A.I.R. 1962 Punj. 110 at p. 115 : I.L.R. (1961) 1 Punj. 728.

Attention has been drawn to meaning of the phrase 'technical error' as given in Law Lexicon:

Error- A mistaken judgment or incorrect belief as to existence or effect of matters of fact, or a false or mistaken conception or application of the law.

Such a mistaken or false conception or application of the law to the facts of a cause as will furnish ground for a review of the proceedings upon a writ of error; a mistake of law, or false or irregular application of it, such as vitiates the proceedings, and warrants the reversal of the judgment.

Error is also used as an elliptical expression for "writ of error"; as in saying that error lies; that a judgment may be reversed on error. – Black's Law Dictionary, p.637.

Error, defect or irregularity- Error, defect or irregularity in procedure or in law, not in matters of fact.- Sankali -Vrs.- Muralidhar, I.L.R. 12 All. 200 at p. 202.

Technical defect- It is not always easy to define what the expression "technical defect" means. A technical defect in law is one which may come within the four corners of it, but in fact it does not affect the merits of the case. It is a mistake which does not go to the core of the matter. Some rules are vital and go to the root of the matter; they cannot be broken; others are only directory and a breach of them can be overlooked provided there is substantial compliance with the rules read as a whole and provided no prejudice ensues – Gangadhar Dandwate -Vrs.- Premchand Kashyap, 1958 M.P.C. 334 at p. 336 : A.I.R. 1958 M.P. 182.

Attention has been drawn to meaning of the phrase

'Printing error' as given in different dictionaries:

(a) Collins Dictionary:

Printing error - a misprint or misspelling in a text

(b) Vocabulary.com:

Printing error – misprint - A mistake in anything that's printed is a misprint. You might also call it a typographical error.

After carefully going through the provision under sub-section (4) of section 33 of the R.P. Act, 1951, I find that it has no application to any omissions other than name of the candidate or his proposer or any other person or in regard to any place mentioned in the electoral roll or in the nomination paper. This provision empowers the returning officer to allow correction in misnomer or inaccurate description or clerical, technical or printing error in the aforesaid respect to be corrected and where necessary, to overlook such aspects. Under the proviso to sub-section (4) of section 33 of the R.P. Act, 1951, twice the words "any such" have been used prior to the words "misnomer, inaccurate description, clerical, technical or printing error" which relates to the name of the candidate, name of his proposer or name of any other person or in regard to any place, mentioned in the electoral roll or the nomination paper. If it does not come within any of these, neither the Returning Officer has got power to permit it to be corrected or to overlook the same. The Returning Officer has also stated that in view of the proviso to sub-section (4) of Section 33 of the R.P. Act, 1951, he has been given discretion to overlook any misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper and no other things. In my

humble view, the defects/deletion/omissions as appears in the nomination papers of the Respondent do not come under the category of "misnomer, inaccurate description, clerical, technical or printing error" which P.W.3 as Returning Officer could have overlooked exercising his power under the proviso to sub-section (4) of section 33 of the R.P. Act, 1951.

It has been suggested to the Respondent by the learned counsel for the Election Petitioner that 'strike off' and 'delete' are not one and the same thing and that at his whim and pleasure, the Respondent had created the nomination papers in Form 2B, which was not in consonance with the Form 2B prescribed under 1961 Rules of the Handbook for Returning Officer (Ext.38/3 of Ext.38). The Respondent has denied such suggestion. The Election Petitioner in his evidence has stated that a candidate cannot delete Part-II of Form 2B in the nomination paper filed by him if he is set up by a recognized political party, rather he is only required to strike off Part-II even if it is not relevant for him and that in his nomination paper, which was shown to him, he had struck off Part-II of Form 2B whereas the Respondent had deleted Part-II in his nomination paper in Form 2B. He has further stated that if after downloading from the website, the Respondent would have filled up the

nomination form accurately without deleting any of the column/information, then it would have matched like his (Election Petitioner) nomination paper but since the Respondent created the nomination paper on his own, it was not legally acceptable. He has further stated that if a candidate deletes some parts of the nomination paper and files it only filling the necessary columns and giving necessary information which is applicable to him and presents it before the Returning Officer, then the Returning Officer has got no power under law to overlook the same and accept it since the candidate has given all the required information which is applicable to him.

The meanings of the phrase 'STRIKE OFF' as given in different dictionaries placed by the learned counsel for the Respondent are quoted hereunder:-

(a) Collins Dictionary:

Strike off- 1. to separate, or remove, by or as by a blow or cut. 2. to remove from a record, list, etc.; erase; expunge.

(b) Oxford English – English – Oriya Dictionary:

Strike off- erase

(c) Oxford Advanced Learners' Dictionary:

Strike off- to remove somebody/something's name from something, such as the list of members of a professional group

(d) Oxford English Dictionary:

Strike off- To cancel by or as by a stroke of a pen; to remove from a list or record.

(e) Merrium Webster Dictionary:

Intransitive verb

Strike off- to delete something

Transitive verb

Strike off- Delete, Cancel

(f) Chambers 20th Century Dictionary:

Strike- to delete, cancel

Strike off- to erase from an account, to deduct, to remove (from a roll, register, etc.)

According to the learned counsel for the Respondent, in view of the above meanings in different dictionaries, it is abundantly clear that the meaning of the phrase 'strike off' in common parlance/common man's language is 'erase', 'delete', 'cancel' or 'remove'. Therefore, the deletion of Part II of Form 2B as has been done by the Respondent as per the instruction given in Form 2B itself is absolutely correct and the same is not a

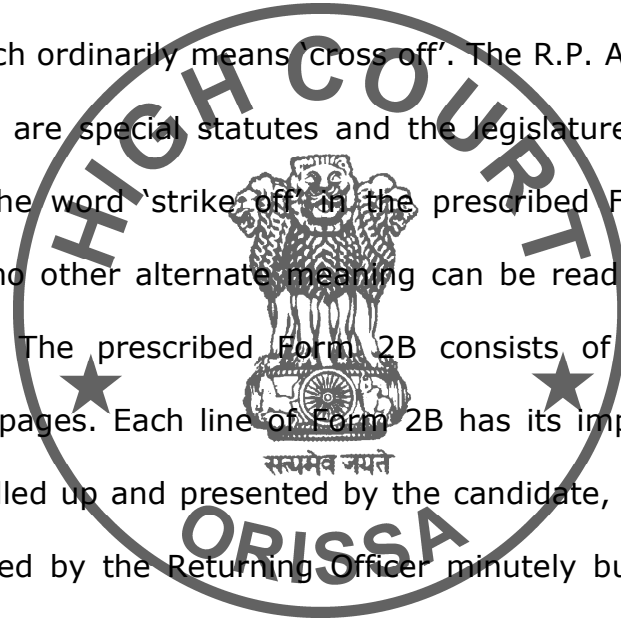
defect at all. In other words, it was argued on behalf of the Respondent that 'strike off' and 'delete' are one and same in view of the dictionary meanings and as Part II, III & IIIA of Form 2B were not relevant for the Respondent, the same have been rightly deleted from the nomination Form 2B of the Respondent.

Law is well settled that when a word is not defined in the Act itself, it is permissible to refer to the dictionaries to find out the general sense in which that word is understood in common parlance. However, in selecting one out of the various meanings of a word, regard must always be had to the context as it is the fundamental rule that the meaning of words and expressions used in an Act must take their colour from the context in which they appear. When the context makes the meaning of a word clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of. In the case of **State Bank of India -Vrs.- N. Sundara Money reported in A.I.R. 1976 S.C. 1111**, while speaking for the Bench, Hon'ble Justice V.R. Krishna Aiyar observed, "Dictionaries are not dictators of statutory construction where the benignant mood of a law and, more emphatically, the definition clause furnish a different denotation". In the case of **Commissioner of Income Tax, Orissa & Ors. -Vrs.- N.C.**

Budharaja and Company & Ors. reported in A.I.R. 1993

S.C. 2529, Hon'ble Justice B.P. Jeevan Reddy observed, "A statute cannot always be construed with the dictionary in one hand and the statute in the other. Regard must also be had to the scheme, context and to the legislative history."

In my considered opinion, the meaning of 'strike off' is to be given effect as per the intention of the legislature in the statute which ordinarily means 'cross off'. The R.P. Act, 1951 and 1961 Rules are special statutes and the legislature consciously has used the word 'strike off' in the prescribed Form 2B and therefore, no other alternate meaning can be read to the word 'strike off'. The prescribed Form 2B consists of a particular number of pages. Each line of Form 2B has its importance and after it is filled up and presented by the candidate, it is not only to be verified by the Returning Officer minutely but also to be kept in public domain. If the candidate is given liberty to delete the columns, lines at his whim and pleasure on the ground that those were not relevant for him, then the number of pages of Form 2B is likely to vary from candidate to candidate. On the other hand, if the Form 2B remains intact as appended to under 1961 Rules or Handbook for Returning Officer and the irrelevant columns are crossed off by the candidate or 'Yes', 'No' or 'Not



Applicable' etc. are mentioned at appropriate places, the Returning Officer would be in a better position to decide whether the nomination form has been properly filled up or not, whether some parts have been rightly left blank or any required data/information is missing.

Mr. Mishra, learned Senior Advocate for the Respondent argued that the Returning Officer at the time issuing checklist has not indicated the defect/deficiency in Form 2B. In my humble view, not indicating the deficiency in the checklist that the nomination papers filed by the Respondent is not in the prescribed Form 2B does not authorize the Respondent to file his nomination paper according to his own wishes by violating section 33(1) of R.P. Act, 1951 r/w Rule 4 of the 1961 Rules. According to Ext.38/2, Clause 5.5.1 of HBRO at page 70, the Returning Officer must ensure that the nomination papers are filed in the prescribed Form 2B. Though it is argued on behalf of the Respondent that it was not brought out from the evidence of the Returning Officer (P.W.3) that the nomination papers filed by the Respondent were not in the prescribed Form 2B and discretion lies on the Returning Officer to accept the nomination papers which are not in Form 2B, in my humble view, the above submissions made on behalf of the Respondent are not correct.

The Returning Officer has admitted that the nomination papers filed by the Respondent in Exts.39, 40, 41 and 42 are not exactly in the prescribed Form 2B as appended to the 1961 Rules and he has also admitted that he accepted the nomination papers filed by the Respondent which were not exactly the same as per prescribed Form 2B.

The learned counsel for the Respondent brought to the notice of this Court that some pleading on material facts are missing in Paragraph-7(A) of the election petition, there are vague and insufficient pleadings and it does not disclose concise statement of all material facts nor makes out a complete cause of action. He placed reliance in the cases of **Azhar Hussain -Vrs.- Rajiv Gandhi reported in 1986 (Supp.) Supreme Court Cases 315, Virender Nath Gautam -Vrs.- Satpal Singh and others reported in (2007) 3 Supreme Court Cases 617, Ram Sukh -Vrs.- Dinesh Aggarwal reported in (2009) 10 Supreme Court Cases 541, Jitu Patnaik -Vrs.- Sanatan Mohakud and others reported in (2012) 4 Supreme Court Cases 194 and Kanimozhi Karunanidhi -Vrs.- A. Santhana Kumar & others reported in (2023) SCC OnLine SC 573** on the issue of absence of specific pleadings in the election petition.

In the case of **Azhar Hussain** (supra), the Hon'ble Supreme Court held as follows:-

"11. In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil Procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. This Court in **Samant** case has expressed itself in no unclear terms that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. So also in **Udhav Singh** case the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a

particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail."

In the case of **Virender Nath Gautam** (supra), the Hon'ble Supreme Court held as follows:-

"1. This appeal is filed by the appellant against the judgment and order dated 20-12-2004 passed by the High Court of Himachal Pradesh, Shimla in Election Petition No. 2 of 2003. By the said order, the High Court upheld the preliminary objection raised by the first respondent that the election petition did not disclose material facts and was liable to be dismissed.

2. The case of the appellant is that the Election Commission of India notified the programme for the elections to the Legislative Assembly in the State of Himachal Pradesh scheduled to be held

in February 2003. As per the said notification, the last date of filing of nomination papers was 7-2-2003, scrutiny — 8-2-2003, date of withdrawal — 10-2-2003, date of polling — 26-2-2003 and of counting of votes — 1-3-2003. According to the appellant, he submitted his nomination paper as a candidate of Indian National Congress Party on 26-2-2003 from 32, Una Assembly Constituency. Respondent 1 was set up by Bhartiya Janata Party and contested the election from the said constituency. At the counting, according to the appellant, he secured 27,600 votes while the first respondent got 27,651 votes. Thus, by a small margin of 51 votes, the first respondent was declared successful candidate.

3. According to the appellant, there were several irregularities and illegalities as also discrepancies in the voters' list. Electronic voting machines which were employed were defective; many void votes had been polled; there were cases of double voting and all those illegalities vitiated the election and materially affected the result thereof. The appellant, therefore, filed an election petition on 10-4-2003. In the said petition, he alleged that one Tek Chand Thakur was the Returning Officer for the constituency in question. At the time of counting, the appellant requested the Returning Officer that he had

come to know that many void votes had been cast and they should be deleted from counting, but the Returning Officer expressed his inability and helplessness to do so stating that there was no such mechanism in the electronic voting machines.

4. In para 8 of the election petition, the appellant stated that as many as 188 votes had been wrongly counted though they were invalid/void votes. In the election petition itself, the appellant had given details of all such votes. He also stated that since the margin of votes between the defeated candidate and the returned candidate was only 51 votes and the wrong counting of votes amounted to 188 invalid/void votes, it had materially affected the result of the election.

5. In para 8(i), he stated that as many as 37 votes of dead persons have been cast and they should not have been counted. The appellant had given names of those dead persons along with numbers in the voters' list. Death certificates of 36 persons were filed as Annexures EP-3 to EP-38. He stated that the Gram Panchayat concerned had not issued death certificate in respect of one Mukesh Kumar. He, therefore, annexed death report along with a forwarding letter dated 7-4-2003 in respect of the deceased Mukesh Kumar issued by the

Senior Medical Officer, Zonal Hospital, Una district, Una. The appellant also stated that out of 37 votes, 30 votes had been polled in Booths Nos. 48 and 49, in the native village of the first respondent-turned candidate.

6. In para 8(ii), the appellant alleged that as many as 60 double votes had been cast which was in contravention of the provisions of Section 62(4) of the Representation of the People Act, 1951 (hereinafter referred to as "the Act"). Thus, 120 votes had been counted though voters were only 60. It was in violation of the statutory provision and those votes were, therefore, void. The details of those votes had also been mentioned in the election petition itself.

7. In para 8(iii), the appellant averred that 19 void votes had been polled. Even though all those persons cast their votes in Booths Nos. 76 and 63 of Kutlehar 33 Constituency, in Una 32 Constituency, the same voters had again cast their votes. The appellant has given details of those voters in the election petition. According to the appellant, the returned candidate was the beneficiary of those void votes and since the margin was small, the result had been materially affected.

8. In para 8(iv), the appellant had alleged that material irregularities had been committed by the Returning Officer while counting postal ballot papers. Six persons named in the petition had sent double postal ballot papers. So instead of six votes, twelve votes had been cast.

9. According to the appellant, irregularities and illegalities mentioned in para 8 had materially affected the result of the election. Had there been proper voting and counting, the appellant would have secured more number of votes than the first respondent. On the above grounds, a prayer was made by the appellant to call for the record of the electronic voting machines, to inspect all polled votes of 32, Una Assembly Constituency and of Booths Nos. 76 and 36 of Kutlehar 33 Assembly Constituency, to order re-counting, to set aside and declare election of the first respondent void and to declare the appellant as duly elected candidate from 32, Una Constituency. Other reliefs were also prayed for.

xxx

xxx

xxx

30. All material facts, therefore, in accordance with the provisions of the Act, have to be set out in the election petition. If the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by clause (a) of sub-section (1) of

Section 83 of the Act read with clause (a) of Rule 11 of Order 7 of the Code.

31. The expression "material facts" has neither been defined in the Act nor in the Code. According to the dictionary meaning, "material" means "fundamental", "vital", "basic", "cardinal", "central", "crucial", "decisive", "essential", "pivotal", "indispensable", "elementary" or "primary". [Burton's Legal Thesaurus (3rd Edn.), p. 349]. The phrase "material facts", therefore, may be said to be those facts upon which a party relies for his claim or defence. In other words, "material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be "material facts" would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party.

xxx

xxx

xxx

34. A distinction between "material facts" and "particulars", however, must not be overlooked. "Material facts" are primary or basic facts which must be pleaded by the plaintiff or by the

defendant in support of the case set up by him either to prove his cause of action or defence. "Particulars", on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. "Particulars" thus ensure conduct of fair trial and would not take the opposite party by surprise.

35. All "material facts" must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial."

In the case of **Ram Sukh** (supra), the Hon'ble Supreme Court held as follows:-

"22. As already stated, in the present case, the allegation of the election petitioner is that the Returning Officer failed to circulate the attested signatures of his election agent to various polling

stations and, therefore, failed to comply with Para 12 of Chapter VII of the Handbook for the Returning Officers. The pleadings in the election petition, in relation to Grounds (i) and (ii), extracted in para 3 above, were as under:

"11. That due to the aforesaid inaction of the Returning Officer the polling agent of the petitioner was not permitted to function till 3.00 p.m. by which time more than 80% polling was over. This inaction on the part of the Returning Officer materially affected the election as almost all other polling agents of the petitioner working in other polling stations got confused and supporters of the petitioner either returned back or voted for Congress candidate. सत्यमेव जयते

12. That the Returning Officer was duty-bound to send required Praroop of the petitioner and his agent's signature one day before the day of election which he did not do. Due to this inaction of the Returning Officer the election of 13 Laxman Chowk Legislative Assembly Constituency was materially affected."

23. There is no quarrel with the proposition that the instructions contained in the Handbook for

the Returning Officers are issued by the Election Commission in exercise of its statutory functions and are, therefore, binding on the Returning Officers. They are obliged to follow them in letter and spirit. But the question for consideration is whether the afore-extracted paragraphs of the election petition disclose material facts so as to constitute a complete cause of action. In other words, the question is whether the alleged omission on the part of the Returning Officer ipso facto "materially affected" the election result. It goes without saying that the averments in the said two paragraphs are to be read in conjunction with the preceding paragraphs in the election petition. What is stated in the preceding paragraphs, as can be noticed from Grounds (i) and (ii) reproduced above, is that by the time specimen signature of the polling agent was circulated 80% of the polling was over and because of the absence of the polling agent the voters got confused and voted in favour of the first respondent. In our opinion, to say the least, the pleading is vague and does not spell out as to how the election results were materially affected because of these two factors. These facts fall short of being "material facts" as contemplated in Section 83(1)(a) of the Act to constitute a complete cause of action in relation to the allegation under Section 100(1)(d)(iv) of the Act. It is not the case of the election

petitioner that in the absence of his election agent there was some malpractice at the polling stations during the polling.

24. It needs little reiteration that for the purpose of Section 100(1)(d)(iv), it was necessary for the election petitioner to aver specifically in what manner the result of the election insofar as it concerned the first respondent was materially affected due to the said omission on the part of the Returning Officer. Unfortunately, such averment is missing in the election petition.

25. In our judgment, therefore, the Election Tribunal/High Court was justified in coming to the conclusion that statement of material facts in the election petition was completely lacking and the petition was liable to be rejected at the threshold on that ground. We have, therefore, no hesitation in upholding the view taken by the High Court. Consequently, this appeal, being devoid of any merit, fails and is dismissed accordingly. Since the first respondent remained unrepresented, there will be no order as to costs."

In the case of **Jitu Patnaik** (supra), the Hon'ble Supreme Court held as follows:-

"41. Para 7(D) of the election petition reads as under:

"7. (D) The petitioner further gives a concise statement of material fact exposing a glaring instance of illegality deliberately committed by the counting personnel while recording the counting figure in Form 20 with respect to Booth No. 179, Urdu Madrasa Champua Alinagar Booth. The total number of voters as recorded in the electoral roll with respect to Booth No. 179 is 1109. Whereas in Form 17-C, certified copy, deliberately this figure has been shown wrongly as 1091. On the date of polling on a plain perusal of the register of voters maintained in Form 17-A, it will be abundantly clear that the total number of voters came to vote and signed 17-A Register is 1091 whereas in Form 17-C, certified copy, it has been deliberately shown as 772 making a deliberate suppression of 319 votes.

According to the information received by the election petitioner from his counting agents in Booth No. 179, the election petitioner has received 462 (four hundred sixty-two) votes. The said 462 votes are to be added to the total votes of the petitioner as stated in the preceding paragraph. Thus, the petitioner has received in total $27,410 + 73 + 462 + 02$ (postal ballots) = 27,947 votes and the first respondent having received 27,700 votes, the election petitioner has received 247 (two hundred forty-seven)

more votes than the first respondent and is entitled to be declared elected as MLA from '25-Champua' Assembly Constituency to Orissa State Legislative Assembly."

42. Mr. Mukul Rohatgi, learned Senior Counsel for the election petitioner submitted that the above pleadings are in two parts. The first part relates to suppression of 319 votes. This part begins with the start of Para 7(D) and ends with "... suppression of 319 votes". The second part relates to addition of 462 votes which is remaining part of Para 7(D). He would submit that all material facts concerning deliberate suppression of 319 votes have been pleaded in Para 7(D) and these facts constitute cause of action for declaring the election of the returned candidate to be void.

xxx

xxx

xxx

50. We now revert back to the pleadings set out in Para 7(D) as analysed above. There is no averment that the election petitioner or any of his polling agents had perused the register of voters maintained in Form 17-A. The basis of the knowledge that the register of voters maintained in Form 17-A records that 1091 voters came to vote is not disclosed at all. Moreover, there is no pleading that 1091 voters who came to vote at Booth No. 179 in fact voted. There is no merit in

the contention of Mr Mukul Rohatgi that the facts stated in Para 7(D) with regard to Form 17-A shall be established at the trial after Form 17-A is summoned by the Court. We are afraid that such fanciful imagination of proof at the trial cannot be a substitute of the pleading of material facts about the total number of voters who came to vote and in fact voted at Booth No. 179.

51. The averment that in Form 17-C, certified copy, it has been deliberately shown as 772 making a deliberate suppression of 319 votes hardly improves the pleading in the election petition. There is no averment that the election petitioner or his agents challenged Part II of Form 17-C before the authorities. At least, there are no facts pleaded concerning that.

52. There is no pleading that there was any challenge by the election petitioner or his agents in respect of the counting figure in Form 20. The only pleading is that the illegality has been deliberately committed by the counting personnel while recording the counting figure in Form 20 with respect to Booth No. 179. There is, thus, no disclosure of material facts in respect of the challenge to the correctness of Form 20 and Form 17-C.

53. The pleading of material facts with regard to suppression of 319 votes in Para 7(D) is also incomplete as it has not been disclosed as to who suppressed 319 votes; who was the counting agent present on behalf of the election petitioner at the time of counting; how 319 votes were suppressed and why re-counting was not demanded. Moreover, there is no express pleading as to how the result of the election has been materially affected by less counting of 319 votes."

In the case of **Kanimozhi Karunanidhi** (supra), the Hon'ble Supreme Court held as follows:-

"4. The Election petitioner/respondent no. 1 herein claiming to be a voter, has filed the Election Petition being no. 3/2019 before the High Court under Section 80, 80A, 100(1)(d)(iv) of the Representation of the People's Act, 1951 (hereinafter referred to as the RP Act) seeking declaration that the election of the returned candidate, i.e., the appellant herein, from No. 36, Thoothukudy Lok Sabha Constituency, in the Lok Sabha election conducted pursuant to the notification of the Chief Election Commissioner dated 19.03.2019 was void and liable to be set aside, on the ground that the information sought by the Election Commission of India in regard to the payment of income tax of her spouse was

not provided by her in the affidavit - Form no. 26 submitted along with the nomination papers, and thus had intentionally suppressed and not disclosed the same to the electors.

xxx

xxx

xxx

23. The law so far developed and settled by this Court with regard to the non-compliance of the requirement of Section 83(1)(a) of the RP Act, namely - "an Election petition must contain a concise statement of material facts on which the petitioner relies", is that such non-compliance of Section 83(1)(a) read with Order VII, Rule 11, CPC, may entail dismissal of the Election Petition right at the threshold. "Material facts" are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the Election petition on the basis of the facts pleaded in the petition. They must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure 1908. Material facts would include positive statement of facts as also positive statement of a negative fact.

xxx

xxx

xxx

28. The legal position enunciated in afore-stated cases may be summed up as under:—

i. Section 83(1)(a) of RP Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an Election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code.

ii. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgment of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.

iii. Material facts mean the entire bundle of facts which would constitute a complete cause of action. Material facts would include positive statement of facts

as also positive averment of a negative fact, if necessary.

iv. In order to get an election declared as void under Section 100(1)(d)(iv) of the RP Act, the Election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act, the result of the election, in so far as it concerned the returned candidate, was materially affected.

v. The Election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses it as a handle for vexatious purpose.

vi. An Election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under Clause (a) of Rule 11 of Order VII CPC read with the mandatory requirements enjoined by Section 83 of the RP Act.

29. In the light of the afore-stated legal position, let us see whether the respondent/election petitioner had complied with the requirements of Section 83(1)(a) of the RP Act, by stating "material facts" in the Election petition, constituting cause of action and the ground as contemplated in Section 100(1)(d)(iv) of the RP Act, for declaring the election of the Appellant-returned candidate to be void. The bone of contention raised by the learned counsel appearing for the respondent-election petitioner is that the Election Commission of India had called for the information prescribing the Form 26 in regard to status of filing of income tax return of candidates and their family members by exercising powers under Article 324 of the Constitution of India and in that the petitioner had provided information that her spouse was working as consultant at foreign country and earning salary against the column No. 8, Serial No. 9(b) and 9A(b), respectively under Part A of Form 26. Besides, she had mentioned "No" to the query regarding Income tax dues of her spouse, (mentioned as "Ethumilai" in Tamil language). She had further stated that her spouse had bank accounts in Singapore with deposit of dollars against column No. 7 Serial No. (ii) of column in Part A of Form 26 but had failed to disclose the status of filing income tax return of her spouse in the foreign country. He

therefore submitted that these material facts which have already been stated in the Election petition, were sufficient to constitute cause of action for filing Election petition under Section 100(1)(d)(iv) of the RP Act.

30. It may be noted the precise allegations made by the respondent-election petitioner in para 5 to 9 of his Election petition have already been reproduced hereinbefore, from which it clearly transpires that the election petitioner i.e., the respondent has made very bald and vague allegations without stating the material facts as to how there was non-compliance of any of the provisions of the Constitution of India or of the RP Act or of the rules made thereunder. If the averments made in the Election petition are read in juxtaposition to the information furnished by the appellant-returned candidate in Form No. 26, it clearly emerges that against the information sought about the PAN number of the spouse of the appellant, it has been stated that "No PAN No.", "Spouse K. Aravindhyan Foreign Citizenship". Against the information sought with regard to "The financial year for which the last income tax return has been filed", the information supplied by the appellant about her spouse is "Not applicable". The appellant has filled in all the columns of Form No. 26 by furnishing the information with regard to her

Permanent Account Number and status of filing of income tax return etc. and of her husband wherever applicable. If according to the respondent-election petitioner, the appellant-returned candidate had suppressed the Permanent Account Number of her spouse and also about the non-payment of income tax of her spouse in the foreign country, it was obligatory on the part of the Election petitioner to state in the Election petition as to what was the Permanent Account Number of the spouse of the returned candidate in India which was suppressed by her and how the other details furnished about her husband in the said Form No. 26 were incomplete or false.

31. Mere bald and vague allegations without any basis would not be sufficient compliance of the requirement of stating material facts in the Election Petition. As well settled not only positive statement of facts, even a positive statement of negative fact is also required to be stated, as it would be a material fact constituting a cause of action. The material facts which are primary and basic facts have to be pleaded by the Election petitioner in support of the case set up by him to show his cause of action and omission of a single material fact would lead to an incomplete cause of action, entitling the returned candidate to pray for dismissal of Election petition under

Order VII Rule 11(a) CPC read with Section 83(1)(a) of the RP Act.

32. It is also significant to note that an affidavit in Form 26 along with the nomination paper, is required to be furnished by the candidate as per Rule 4A of the said Rules read with Section 33 of the said Act. The Returning Officer is empowered either on the objections made to any nomination or on his own motion, to reject any nomination on the grounds mentioned in Section 36(2), including on the ground that there has been a failure to comply with any of the provisions of Section 33 of the Act. However, at the time of scrutiny of the nomination paper and the affidavit in the Form 26 furnished by the Appellant-returned candidate, neither any objection was raised, nor the Returning Officer had found any lapse or non-compliance of Section 33 or Rule 4A of the Rules. Assuming that the election petitioner did not have the opportunity to see the Form No. 26 filled in by the Appellant-returned candidate, when she submitted the same to the Returning Officer, and assuming that the Returning Officer had not properly scrutinized the nomination paper of the appellant, and assuming that the election petitioner had a right to question the same by filing the Election petition under Section 100(1)(d)(iv) of the said Act, then also there are

no material facts stated in the petition constituting cause of action under Section 100(1)(d)(iv) of the RP Act. In absence of material facts constituting cause of action for filing Election petition under Section 100(1)(d)(iv) of the said Act, the Election petition is required to be dismissed under Order VII Rule 11(a) CPC read with Section 13(1)(a) of the RP Act.

33. As elaborately discussed earlier, Section 83(1)(a) of RP Act mandates that an Election petition shall contain a concise statement of material facts on which petitioner relies, and which facts constitute a cause of action. Such facts would include positive statement of facts as also positive averment of negative fact. Omission of a singular fact would lead to incomplete cause of action. So far as the present petition is concerned, there is no averment made as to how there was non-compliance with provisions of the Constitution or of RP Act or of the Rules or Order made thereunder and as to how such non-compliance had materially affected the result of the election, so as to attract the ground under Section 100(1)(d)(iv) of the RP Act, for declaring the election to be void. The omission to state such vital and basic facts has rendered the petition liable to be

dismissed under Order VII, Rule 11(a) CPC read with Section 83(i)(a) of the RP Act, 1951.”

In the case of **Madiraju Venkata Ramana Raju -Vrs.- Peddireddigari Ramachandra Reddy & Others reported in (2018) 14 Supreme Court Cases 1**, the Hon’ble Supreme Court has held that the election petition will have to be read as a whole and cannot be dissected sentence-wise or paragraph-wise to rule that the same does not disclose a cause of action. Cause of action embodies a bundle of facts which may be necessary for the plaintiffs to prove in order to get a relief from the Court. It is further held that the pleadings of the election petition should be precise and clear containing all the necessary details and particulars as required by law. ‘Material facts’ would mean all the basic facts constituting the ingredients on the grounds stated in the election petition in the context of relief to declare the election to be void. It is well established that in an election petition whether a particular fact is material or not and as such required to be pleaded, is a question which depends on the nature of the grounds relied upon and the special circumstances of the case. Particulars, on the other hand, are the details of the case set up by the party.

After carefully going through the averments and pleadings, I find that the election petition reveals a clear and complete picture of the circumstances and also discloses a definite cause of action. There is no dispute on the proposition of law that the election petition must clearly and unambiguously set out all the material facts which the petitioner is to rely upon during the trial and that failure to plead material facts is fatal to the election petition and that one cannot file an election petition based on frivolous grounds rather the facts presented must be clear, concise and unambiguous. I am of the humble view that the Election Petitioner has pleaded all material facts in the election petition.

Every candidate contesting the General Assembly election of the Constituency held in the year 2019 was required to file their nomination papers in Form 2B only as appended to the 1961 Rules and not in any other form. In view of the foregoing discussions, I am of the humble view that during the trial, by adducing oral and documentary evidence, it has been proved by the Election Petitioner that the nomination papers filed by the Respondent were not in the prescribed Form 2B. Even the Returning Officer (P.W.3) has stated that nomination papers filed by the Respondent in Exts.39, 40, 41 and 42 were not exactly in

the prescribed Form 2B. Thus, the Returning Officer (P.W.3) has illegally and improperly accepted such nomination papers and the mandate of section 33 of the R.P. Act, 1951 read with Rule 4 of the 1961 Rules and the instructions issued by the Election Commission of India in exercise of power under Article 324 of the Constitution of India have been violated. The deletion of PART-II of the nomination in Form 2B by the Respondent in pursuance to the instruction given in the prescribed nomination Form 2B renders his nomination liable for rejection. The Respondent has not furnished all the required information as required in PART-III of nomination Form-2B. The Respondent has not furnished all the information as required in PART-IIIA of nomination Form 2B. The defects as pointed out by the Election Petitioner regarding deletion of PART-II of nomination Form 2B as well as with respect to PART-III and PART-IIIA of nomination Form 2B constitute a substantial defect and as such the nomination filed by the Respondent was not rightly accepted by the Returning Officer as prescribed under section 36(4) of the R.P. Act, 1951. The Respondent filed his nomination papers in violation of section 33 of the R.P. Act, 1951. Part-III and the column nos.(3) to (9) of Part-IIIA of Form 2B of the nomination papers filed by the Respondent were not in the prescribed Form.

The nomination papers of the Respondent were liable to be rejected by the Returning Officer as the same were not in the prescribed Form 2B. The Returning Officer illegally and improperly accepted the nomination papers filed by the Respondent in violation of section 33 of the R.P. Act, 1951 read with Rule 4 of the Conduct of Election Rules, 1961. The Returning Officer should have rejected the nomination of the Respondent in exercise of power under section 36 of the R.P. Act, 1951 at the time of scrutiny of the nomination papers. On account of the defects as pointed out by the Election Petitioner under paragraph 7(A) of the Election Petition, the result of the election, insofar as it concerns the returned candidate i.e. the Respondent, has been materially affected.

Accordingly, issue nos.4 to 14 are answered in favour of the Election Petitioner and against the Respondent.

10. **Issue Nos.15, 16, 19 & 20:-**

Issues nos. 15, 16, 19 and 20 which are interlinked with each other are now to be dealt with together. Such issues are extracted herein below for ready reference:-

15. Whether the sole Respondent has filed his affidavit in Form 26 dated 03.04.2019 along with

his nomination papers on 02.04.2019 or has filed the said affidavit on 04.04.2019?

16. Whether the Returning Officer has received the affidavit in Form 26 dated 03.04.2019 from the sole Respondent on 04.04.2019 and has issued a 'Checklist' dated 04.04.2019 to the sole Respondent for the same or not?

19. Whether the affidavit dated 03.04.2019 in Form 26 filed along with the nomination papers on 02.04.2019 is valid and legal in the eyes of law?

20. Whether the Returning Officer should have rejected the nomination papers filed on 02.04.2019 along with the affidavit dated 03.04.2019 being non-est in the eyes of law but the same was illegally and improperly accepted by the Returning Officer of 90-Barabati Cuttack Assembly Constituency?

Mr. Milan Kanungo, learned counsel for the Election Petitioner submitted that in para 7(B) of the election petition, it has been pleaded by the Election Petitioner that the Respondent has not filed the affidavit in prescribed Form 26 as required U/s.33A of the R.P. Act, 1951. According to section 33A, 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 of one year or more. The Respondent filed his nomination before the Returning Officer on 02.04.2019 along with the affidavit dated 03.04.2019 said to be in Form 26. The Respondent has submitted four sets of nomination papers with affidavit as per the information available in the web portal. The Election Petitioner downloaded the nomination papers and the affidavit filed by the Respondent from the web portal and came to know that the affidavit along with his nomination paper filed on 02.04.2019 is of dated 03.04.2019 which is a date subsequent to the filing of the nomination paper. Thus, the affidavit dated 03.04.2019 is no affidavit in the eye of law. The affidavit dated 03.04.2019 filed on 02.04.2019 by the Respondent is in contravention of the mandate of the law. The Returning Officer should have rejected the nomination papers filed by the Respondent on 02.04.2019 along with the affidavit dated 03.04.2019 but the same has not been done by the

Returning Officer at the behest of the Respondent and the Returning Officer has deliberately and illegally accepted the nomination paper dated 02.04.2019 along with the affidavit dated 03.04.2019 of the Respondent, though it was his duty to reject the same as the Respondent had filed the affidavit which is not a valid affidavit as required under law. Therefore, the nomination papers dated 02.04.2019 of the Respondent are invalid nomination and the votes received in favour of the Respondent cannot be treated as valid votes and thus, the result of election has been materially affected so far as it relates to the Constituency and as such the same is liable to be set aside.

Mr. Milan Kanungo, learned counsel argued that the Respondent in his written statement has pleaded that while making the above allegation under para 7(B) of the election petition, the Election Petitioner has wilfully and deliberately suppressed the material facts and the pleadings made thereunder do not disclose complete cause of action. The Respondent filed his affidavit in Form 26 dated 02.04.2019 along with his nomination papers on 02.04.2019. The Returning Officer (P.W.3) made preliminary examination and found that column/serial nos. 5, 6, 7 & 8 of the said affidavit in Form 26 were not properly mentioned. Therefore, P.W.3 issued

instructions to file a fresh/revised affidavit before the commencement of scrutiny of nominations and issued checklists dated 02.04.2019 to the Respondent. In due compliance to the instructions issued by P.W.3 under the checklist, the Respondent prepared a fresh/revised affidavit in Form 26 on 03.04.2019 and submitted the said revised affidavit before the Returning Officer on 04.04.2019. The Returning Officer upon receiving the revised affidavit dated 03.04.2019, issued a checklist to that effect to the Respondent on 04.04.2019.

To substantiate the above pleadings the Election Petitioner exhibited Exts.1 to 4, 32 to 35, 32/5 to 35/5, 32/6 to 35/6, 32/7 to 35/7, 32/8 to 35/8, 38, 38/5, 38/6, 39/1 to 39/4, 40/1 to 40/3, 41/1 to 41/3, 42/1 to 42/3, 43 to 46, 43/1 to 46/1, 47 & 47/1 and the Respondent exhibited Ext.W to W/12 and BL.

The relevant parts of Section 33A of the R.P. Act, 1951 reads as follows:-

"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.....

xxx

xxx

xxx

(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).

Rule 4A of the 1961 Rules prescribes as follows:-

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.

Clause 5.16.1 (Ext.38/6) at page 83 of Ext.38 (HBRO) prescribes, along with the nomination paper, every candidate is required to file an affidavit in Form 26, declaring information about criminal cases, assets, liabilities and educational qualifications. It further provides that each page of

the affidavit should be signed by the deponent concerned or the affidavit should bear on each page the stamp of the Notary/Oath Commissioner/Magistrate before whom the affidavit is sworn. The duly sworn affidavits should be on stamp paper of such denomination as prescribed under the State law of the State concerned. It would be for the Returning Officer to decide the validity of the affidavit in Form 26.

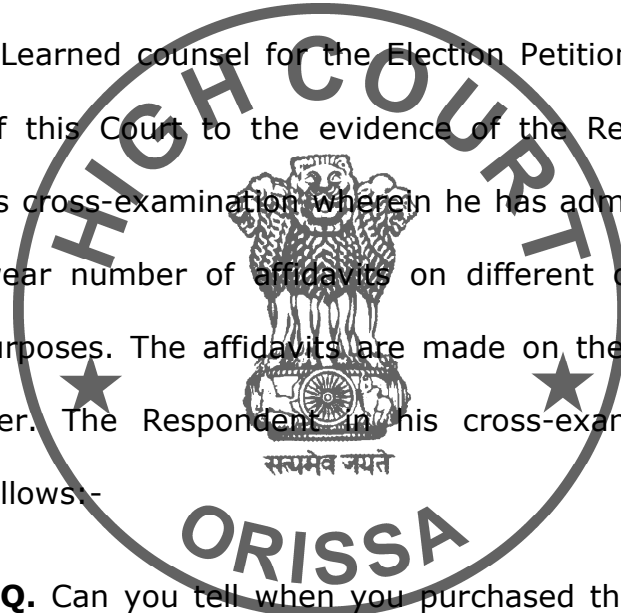
Learned counsel for the Election Petitioner drew the attention of this Court to the evidence of the Respondent as R.W.1 in his cross-examination wherein he has admitted that he used to swear number of affidavits on different occasions for different purposes. The affidavits are made on the non-judicial stamp paper. The Respondent in his cross-examination has stated as follows:-

Q. Can you tell when you purchased the stamp paper on which the affidavit in Form 26 was typed out as per Ext.43?

Ans. I do not remember.

Q. Can you tell who purchased the stamp paper?

Ans. I do not remember.



(After verifying Ext.43, the witness answers)

The Respondent has further stated that the stamp paper was purchased by Sk. Suleman on 30.03.2019 on his behalf. Ext.39/1 is the affidavit in Form 26 which was filed by him on 02.04.2019 along with his nomination paper. Ext.39/1 was typed on a plain paper. The Respondent in his cross-examination has further stated as follows:-

Q. Can you assign any reason as to why on 02.04.2019 you filed Ext.39/1 in plain paper even though you have purchased stamp paper on 30.03.2019?

Ans. My advocate can reply.

Q. After verifying Ext.39/1 and Ext.43, can you tell at what time you sworn the affidavits before Iqbal Bux, Notary Public, Cuttack Town, Regd. No.ON-23/98?

Ans. No. Neither the documents indicate the same nor I can recollect now.

Ext.40/1, Ext.41/1 and Ext.42/1 are the original affidavits in Form 26 which were typed in plain papers.

Q. Can you tell why you filed the revised affidavit original in Form 26 vide Ext.43 in stamp paper whereas the xerox attested true copies of

the revised affidavit in Form 26 vide Ext.44, Ext.45 and Ext.46 were filed on 04.04.2019?

Ans. Since there was no necessity of filing Ext.44, Ext.45 and Ext.46 in stamp papers along with the revised affidavit (original) in Form 26 vide Ext.43 and the Returning Officer was accepting the xerox attested true copies, I did not file the other three affidavits in original in stamp papers.

Learned counsel for the Election Petitioner drew the attention of this Court to the evidence of the Returning Officer (P.W.3) in which he has stated as follows:-

"13. It is prescribed that a stamp paper worth of Rs. 10/- is to be used for an affidavit purpose as per the State law. During my incumbency as Sub-Collector, Cuttack Sadar, number of persons have sworn affidavits before me using stamp papers of Rs. 10/-. I have never allowed any person to swear an affidavit before me by using plain paper. It is a fact that paragraph 5.16.1 of Chapter-V of Ext.38 indicates that the duly sworn affidavits should be on stamp paper of such denomination as prescribed under the State law of the State concerned. Paragraph 5.16.1 of Chapter-5 of Ext.38 is marked as Ext.38/6. It is a fact that the affidavits dated 02.04.2019 of the respondent filed along with

the nomination papers Ext.39, Ext.40, Ext.41 and Ext.42 are in plain papers. Ext.39/1 (23 sheets) (earlier marked as Y/2) is the plain paper affidavit filed along with Ext.39, Ext.40/1 (23 sheets) (earlier marked as Y/5) is the plain paper affidavit filed along with Ext.40, Ext.41/1 (23 sheets) (earlier marked as Y/8) is the plain paper affidavit filed along with Ext.41, Ext.42/1 (23 sheets) (earlier marked as Y/11) is the plain paper affidavit filed along with Ext.42.”

Q. It is put to you that the affidavits under Ext.39/1, Ext.40/1, Ext.41/1 and Ext.42/1 were not in consonance with the provision as contained in paragraph 5.16.1 of Chapter-5 of Ext.38?

Ans. I cannot say.

The witness (P.W.3) volunteered and stated that since the affidavits under Ext.39/1, Ext.40/1, Ext.41/1 and Ext.42/1 were incomplete, instruction was given to the Respondent to file revised affidavits, complete in all respect.

Mr. Kanungo, learned Senior Advocate submitted that Exts.39/1, 40/1, 41/1, 42/1 were the plain paper affidavits dated 02.04.2019 in Form 26 said to have been filed by the Respondent on 02.04.2019 along with his nomination papers and

Exts.39/2, 40/2, 41/2, 42/2 were the checklists said to be issued by the Returning Officer to the Respondent on 02.04.2019. The affidavits in Exts.39/1, 40/1, 41/1, 42/1 were plain paper affidavits which are not permissible under law. Ext. 38/6, i.e., clause 5.16.1 at page 83 of the HBRO (Ext.38) prescribes that the duly sworn affidavits should be on stamp paper of such denomination as prescribed under State law. Further, the affidavits Exts.39/1, 40/1, 41/1, 42/1 were not available on the website of Election Commission of India and there was no note on the website of the Election Commission of India indicating that the affidavit filed by the Respondent along with his nomination papers on 02.04.2019 were plain paper affidavits and were defective and the Respondent has been asked to file fresh/revised affidavit in Form 26 on duly stamped paper as mandated under clause 5.16.1 (Ext.38/6). The Returning Officer has also not brought to the notice of the Respondent through checklists Exts.39/2, 40/2, 41/2 and 42/2 that the affidavit filed in Form 26 was plain paper affidavit and he has been asked to file fresh affidavit on stamp paper as required under clause 5.16.3 at page 83 of Ext.38 (HBRO). Learned counsel further submitted that the Election Petitioner in his evidence affidavit (Ext.36) has stated that the Respondent had filed his nomination

papers before the Returning Officer on 02.04.2019 along with the affidavit dated 03.04.2019 in Form 26. The nomination papers and the affidavit filed by the Respondent on 02.04.2019 was uploaded by the Returning Officer of the Constituency and was available in public platform, i.e. web portal of the CEO, Odisha and subsequently, he found that the nomination papers and the affidavit dated 03.04.2019 uploaded on 02.04.2019 by the Returning Officer of the Constituency was not available in the web portal. The hyperlinks mentioned in the said IA clearly reveals that affidavit dated 03.04.2019 filed by the Respondent on 02.04.2019 along with his nomination papers were uploaded by the Returning Officer of the Constituency on 02.04.2019 in the web portal of the Election Commission of India. The downloaded copies of all the nomination papers and affidavit along with the date of uploading the same and the certificate in terms of section 65B of the Indian Evidence Act have been marked as Exts.32 to 35. The Election Petitioner has stated that the Respondent has submitted four sets of nomination papers with affidavit as per the information available in the aforesaid web portals and he downloaded the nomination papers and the affidavit filed by the Respondent from the aforesaid web portal and came to know that the affidavit filed on 02.04.2019 along

with his nomination papers is of dated 03.04.2019 which is a date subsequent to the filing of the nomination papers and thus, the affidavit dated 03.04.2019 filed along with the nomination papers dated 02.04.2019 is not a valid affidavit in the eye of law.

Learned counsel for the Election Petitioner argued that it was incumbent upon the Returning Officer to reject the nomination papers filed by the Respondent on 02.04.2019 along with the affidavit dated 03.04.2019, but the Returning Officer, at the behest of the Respondent, has deliberately, illegally and improperly accepted the nomination papers dated 02.04.2019 along with the affidavit dated 03.04.2019 of the Respondent. The improper acceptance of the nomination papers dated 02.04.2019 along with the affidavit dated 03.04.2019 are invalid nomination papers. He drew the attention of this Court to the cross-examination of the Respondent wherein he has stated as follows:-

"I have filed four sets of nomination papers to contest the election from 90-Barabati Cuttack Assembly Constituency held in the year 2019 which have already been marked as Ext.39, Ext.40, Ext.41 and Ext.42. Along with my nomination papers, I have filed four sets of

affidavits in Form 26, which have been marked as Ext.43, Ext.44, Ext.45 and Ext.46.”

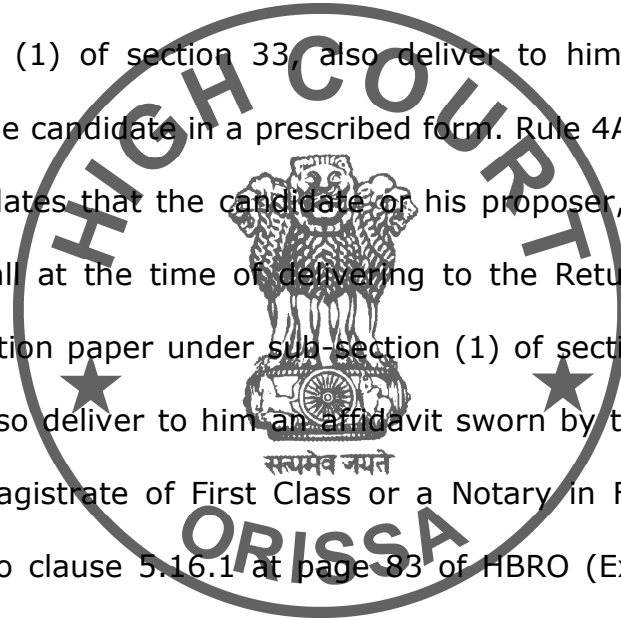
Learned counsel for the Election Petitioner argued that Exts.43 to 46 are the affidavit in Form 26 dated 03.04.2019 and the Respondent himself admits that he filed Exts.43 to 46 along with his nomination papers Exts.39 to 42. Exts.39 to 42 were filed on 02.04.2019 and along with the same, Exts.43 to 46 which are dated 03.04.2019 were filed. Such statement of the Respondent makes it clear that he has not filed the plain paper affidavit Exts.39/1 to 42/1 along with his nomination paper on 02.04.2019.

Learned counsel for the Election Petitioner drew the attention of this Court to the cross-examination of the Respondent wherein he has stated as follows:-

“Ext.43 is the original and final affidavit filed on 04.04.2019. Ext.44, Ext.45 and Ext.46 are not the original affidavits, but xerox copies of the affidavits, which have been attested by Notary as true copies. I have filed one original affidavit i.e. Ext.43 and three true copies of the affidavits i.e. Ext.44, Ext.45 and Ext.46 along with my nomination papers. The contents of all the affidavits, i.e. Ext.43, Ext.44, Ext.45 and Ext.46 are same. I cannot say whether a candidate is

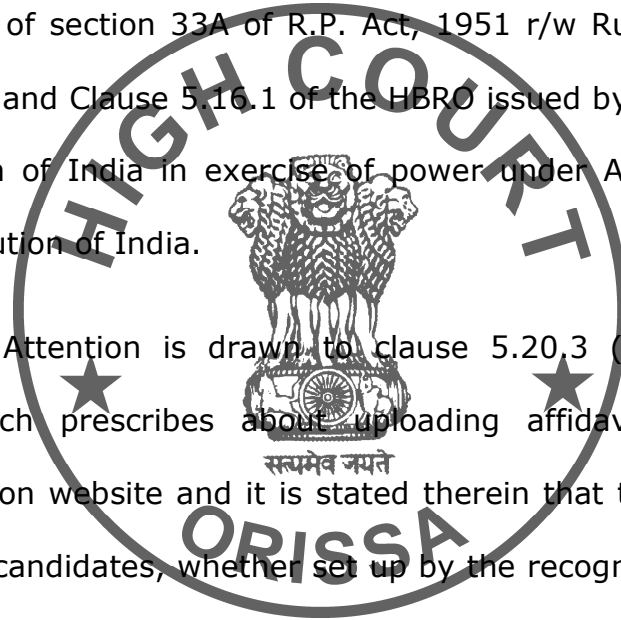
permitted to file true copy of the affidavit along with his nomination paper filed under sub-section (1) of section 33 of the R.P. Act before the Returning Officer.”

Learned counsel for the Election Petitioner argued that according to section 33A(2) of the R.P. Act, 1951, a 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. Rule 4A of the 1961 Rules mandates that the candidate or his proposer, as the case maybe, shall at the time of delivering to the Returning Officer the nomination paper under sub-section (1) of section 33 of the R.P. Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of First Class or a Notary in Form 26 and according to clause 5.16.1 at page 83 of HBRO (Ext.38/6), the duly sworn affidavit should be on stamp paper. The Act, rules and instructions of Election Commission never authorised the candidate to file plain paper affidavit or the xerox attested copies of the affidavit in Form 26 along with the nomination paper. So also, the Returning Officer is also not authorised to accept the plain paper affidavit or the xerox attested copies of the affidavit in Form 26 along with the nomination paper. Thus, acceptance of



the plain paper affidavit and/or the xerox attested copies of the affidavit in Form 26 under Ext. 44 to 46 by the Returning Officer is illegal and the nomination papers filed by the Respondent were to be rejected but the Returning Officer illegally and improperly accepted the same as such the entire process of election of the Respondent from the Constituency held in the year 2019 is vitiated and the same is to be declared as void for non-compliance of section 33A of R.P. Act, 1951 r/w Rule 4A of the 1961 Rules and Clause 5.16.1 of the HBRO issued by the Election Commission of India in exercise of power under Article 324 of the Constitution of India.

Attention is drawn to clause 5.20.3 (Ext.38/5) of Ext.38 which prescribes about uploading affidavits filed by candidates on website and it is stated therein that the affidavits filed by all candidates, whether set up by the recognized political parties or unrecognized political parties or independents shall be put up on the website soon after the candidates file the same and within 24 hours in any event. Even if any candidate withdraws his candidature, the affidavit already uploaded on the website shall not be removed. In cases, where columns are left blank in the affidavit and the notice is issued by Returning Officer for filing fresh and complete affidavit, the incomplete



affidavit may also be uploaded on the website with a note indicating that the affidavit is incomplete and the candidate has been issued notice. If and when the candidate files affidavit subsequently, the same should also be uploaded on the website immediately on the same day.

According to the learned counsel for the Election Petitioner, no such notice was given by the Returning Officer in checklist Exts.39/2, 40/2, 41/2 and 42/2 and no note was given on the website of Election Commission indicating that the affidavit filed by the Respondent in Form 26 was not duly stamped and the Respondent has been issued notice to this effect. Exts.1 to 4 are the downloaded copy of four sets of nomination papers dated 02.04.2019 along with the affidavit in Form 26 dated 03.04.2019 filed by the Respondent before the Returning Officer. The first page of the Exts.1 to 4 where candidate details have been mentioned clearly shows that the documents were uploaded on the website of Election Commission of India on 02.04.2019 so also the affidavit dated 03.04.2019 was also uploaded on 02.04.2019.

Exts.32 to 35 are the downloaded copies of the nomination papers dated 02.04.2019 filed by the Respondent along with the affidavit in Form 26 dated 03.04.2019 and

Exts.32/4, 33/4, 34/4 and 35/4 are the certificates u/s.65B of the Indian Evidence Act of Exts.32 to 35 given by P.W.2 Deepankar Acharya. Exts.32/5, 33/5, 34/5, 35/5, 32/6, 33/6, 34/6 and 35/6 of Exts.32 to 35 shows the date of uploading of the affidavit dated 03.04.2019 to be 2nd April, 2019.

Exts.32/7, 33/7, 34/7 and 35/7 exhibited by P.W.3 are the downloaded and printed copy of the document in Court as per order dated 03.05.2023 by the Court Master which shows the date of uploading of the affidavit and Exts.32/8, 33/8, 34/8, 35/8 are the relevant portion where it is mentioned "Affidavit uploaded: 2nd April, 2019."

Exts.39/5, 40/4, 41/4 and 42/4 are the downloaded and printed copies of the nomination papers by the Court Master in Court pursuant to the order dated 03.05.2023 and Exts.43/1, 44/1, 45/1 and 46/1 are the affidavits in Form 26 filed by the Respondent on 02.04.2019. The above documents show that the Respondent filed his four sets of nomination papers on 02.04.2019 along with the affidavit dated 03.04.2019.

Learned counsel for the Election Petitioner further argued that the Returning Officer (P.W.3) has stated that the nomination paper as well as the affidavit filed before him as a

Returning Officer by each contesting candidate whether it is in complete form or incomplete were uploaded by him in the website of the Election Commission of India during General Assembly Election of the Constituency held in the year 2019. He admits that only under his digital signature, which was approved by the Election Commission of India, such nomination paper as well as the affidavit filed by each contesting candidate were uploaded by him in the website of the Election Commission of India and that no other person except he could upload or remove any document already uploaded in the website of the Election Commission of India. Learned counsel for the Election Petitioner drew the attention of this Court to the following evidence of P.W.3 in which he has stated as follows:-

"It is a fact that the nomination paper in Form 2B as well as the affidavit in Form 26 which was delivered to me by the Respondent on 2nd April 2019 was uploaded by me in the website of the Election Commission of India on that day itself."

"Ext.32/5 is the same document which I now find on opening of the hyperlink of the web portal of the Election Commission of India provided in Ext.32 in Court."

"This is the same nomination paper in Form 2B, which was uploaded by me in the web portal of

the Election Commission of India which was filed before me by the Respondent on 02.04.2019 and numbered by me as 02/LA/2019 in Ext. 39, which I now find on opening the hyperlink provided in Ext.32.”

Q. Please verify the document which was opened as per the hyperlink provided in Ext.32 i.e. the nomination paper dated 02.04.2019 filed by the Respondent in Form 2B and answer whether the only affidavit in Form 26 which is appended to such nomination paper is dated 03.04.2019 or not?

Ans. Yes. That is the only affidavit available in the hyperlink.

“This is the affidavit dated 03.04.2019 filed by the Respondent in Form 26 marked as Ext.43 (earlier marked as Y/1) and at present this is the only affidavit which is available in the web portal of Election Commission of India.”

“This is the same nomination paper in Form 2B, which was uploaded by me in the web portal of the Election Commission of India which was filed before me by the Respondent on 02.04.2019 and numbered by me as 03/LA/2019 in Ext.40 (earlier marked as Y/3), which I now find on opening the hyperlink provided in Ext.33.”

“This is the affidavit dated 03.04.2019 filed by the Respondent in Form 26 marked as Ext.44 (earlier marked as Y/4) and at present this is the only affidavit which is available in the web portal of Election Commission of India. It is a fact that the affidavit marked as Ext.44 is a Xerox one attested by Notary Public, Cuttack Town to be the true copy. This is the same nomination paper in Form 2B, which was uploaded by me in the web portal of the Election Commission of India which was filed before me by the Respondent on 02.04.2019 and numbered by me as 04/LA/2019 in Ext.41 (earlier marked as Y/6), which I now find on opening the hyperlink provided in Ext.34.”

“This is the affidavit dated 03.04.2019 filed by the Respondent in Form 26 marked as Ext.45 (earlier marked as Y/7) and at present this is the only affidavit which is available in the web portal of Election Commission of India. It is a fact that the affidavit marked as Ext.45 is a Xerox one attested by Notary Public, Cuttack Town to be the true copy.”

“This is the same nomination paper in Form 2B, which was uploaded by me in the web portal of the Election Commission of India which was filed before me by the Respondent on 02.04.2019 and numbered by me as 05/LA/2019 in Ext.42

(earlier marked as Y/9), which I now find on opening the hyperlink provided in Ext.35.”

“This is the affidavit dated 03.04.2019 filed by the Respondent in Form 26 marked as Ext.46 (earlier marked as Y/10) and at present this is the only affidavit which is available in the web portal of Election Commission of India. It is a fact that the affidavit marked as Ext.46 is a xerox one attested by Notary Public, Cuttack Town to be the true copy. The nomination papers marked as Ext.39, Ext.40, Ext.41 and Ext.42 which are dated 02.04.2019 received by me on 02.04.2019 and uploaded by me in the web portal of the Election Commission of India on 02.04.2019. All the affidavits which were filed along with Ext.39, Ext.40, Ext.41 and Ext.42 by the Respondent were incomplete and those were also uploaded by me on 02.04.2019. The affidavits in Form 26 dated 03.04.2019 filed by the Respondent marked as Ext.43, Ext.44, Ext.45 and Ext.46 were received by me on 04.04.2019 and those were uploaded by me in the web portal of the Election Commission of India on 04.04.2019.”

Q. Can you show from the web portal of the Election Commission of India that the affidavit dated 03.04.2019 filed by the respondent Ext.43, Ext.44, Ext.45 and Ext.46 were uploaded by you on 04.04.2019?

Ans. While uploading the affidavit dated 03.04.2019 on 04.04.2019, the system was over-riding the earlier affidavit dated 02.04.2019 of the Respondent uploaded on 02.04.2019.

Q. Have you intimated about the over-riding of the earlier affidavit dated 02.04.2019 of the Respondent uploaded on 02.04.2019 when you uploaded the affidavit dated 03.04.2019 on 04.04.2019 to the District Election Officer, Chief Electoral Officer, Odisha and to the Election Commission of India?

Ans. Since it was a system based configuration, I felt no necessity of intimating the same to the District Election Officer, Chief Electoral Officer, Odisha and to the Election Commission of India.

Q. Can you show from the web portals of the Election Commission of India that you have uploaded the affidavit in Form 26 of the Respondent dated 02.04.2019 on 02.04.2019?

Ans. I cannot show just now.

Q. Whether in terms of the instruction imparted in paragraph 5.20.3 of the Handbook for Returning Officer marked as Ext.38/5, have you given a note that the Respondent has filed incomplete affidavit dated 02.04.2019 and he has been issued notice to file fresh affidavit in

Ext.32/5 while uploading the same in the web portals of the Election Commission of India?

Ans. I do not remember about the same now.

Q. Since you have received an incomplete affidavit dated 02.04.2019 in Form 26 on 02.04.2019, how you mentioned in Ext.32/5 in the current status as 'accepted'?

Ans. It was a system based configuration.

Q. While answering to a question put to you on 27.04.2023, you said that when you uploaded the affidavit dated 03.04.2019 on 04.04.2019 (Ext.43, Ext.44, Ext.45 and Ext.46), the system overrode the earlier affidavit dated 02.04.2019 of the Respondent uploaded on 02.04.2019. What does it mean that the system overrode the earlier affidavit? Whether the affidavit dated 02.04.2019 was completely removed from the system or it can be traced out?

Ans. The subsequent affidavit would prevail over the earlier affidavit and that is how I have used the term that the system overrode the earlier affidavit. So far as the second question is concerned, since it is a system generated aspect, I am not able to answer the same.

Q. Did you try to verify whether a person intending to verify the affidavit dated

02.04.2019 from the web portal, would be able to verify the same or not?

Ans. I have not checked that aspect at that point of time.

Q. Since in Clause 5.20.3 of Chapter-5 of the Handbook for the Returning Officer marked as Ext.38, there is a provision that while uploading the incomplete affidavit of a candidate on the website, you are also to give a note that the affidavit is incomplete and the candidate has been issued notice, whether in this particular case, you have followed that procedure?

Ans. Yes. I have uploaded the incomplete affidavit of the respondent dated 02.04.2019. I do not remember whether along with the incomplete affidavit, I have uploaded the note that the affidavit is incomplete one and the candidate has been issued notice.

Q. Whether on verification of the hyperlink, can you say whether you have uploaded the note that the affidavit dated 02.04.2019 is incomplete one and that you have given a note to the Respondent and that notice has been issued to him?

Ans. No I cannot do the same.

Q. Whether after 02.04.2019 till the election process was over, did you try to verify whether the affidavit dated 02.04.2019 filed by the Respondent and uploaded by you was available in the web portal of the Election Commission of India?

Ans. I have not verified.

Q. Whether any person can verify the affidavit dated 02.04.2019 filed by the Respondent and the declarations made therein which you stated to have uploaded on 02.04.2019 in the web portal of the Election Commission of India?

Ans. I cannot say.

Q. When you came to know that the system has overrode the affidavit dated 02.04.2019, did you take any step to ~~correct~~ the same and re-load the affidavit dated 02.04.2019 so that a voter can look into the same?

Ans. I have not done that.

“It is not a fact that I have not uploaded the affidavit in Form 26 of the respondent dated 02.04.2019 in the web portal of the Election Commission of India on 02.04.2019.”

Learned counsel for the Election Petitioner placed reliance on the judgment passed by the Hon’ble High Court of

Manipur in the case of **Houlim Shokhopao Mate -Vrs.- Lorho S. Pfoze & Ors. reported in MANU/MN/0165/2022** wherein it is observed as follows:-

"90. The learned senior counsel for the first respondent submitted that since there was defect in the nomination paper dated 21.03.2019, a revised nomination paper and the revised affidavit in Form 26 have been filed on 25.03.2019, which was accepted by the Returning Officer after scrutiny. The aforesaid contention of the first respondent has not been materially proved. This Court already came to the conclusion that only affidavit in Form 26 dated 21.3.2019 was uploaded officially and there is no record to show that affidavit in Form 26 dated 25.3.2019 of the first respondent was accepted by the Returning Officer and was uploaded in the website.

xxx

xxx

xxx

118. It is also clear that the affidavit which was said to be accepted by the Returning Officer has not been uploaded in the official website of the Election Commission of India as mandated under law. 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.

Additionally, the non-dissemination of the affidavit in Form 26 dated 25.3.2019 through the website materially affected the election of the first respondent.

xxx

xxx

xxx

124. The initial burden to prove the allegations made in the Election Petition although was upon the petitioner, but for proving the facts which were within the special knowledge of the first respondent, the burden was upon him in terms of Section 106 of the Evidence Act. It is also settled that when both parties have adduced evidence, the question of onus of proof becomes academic. Furthermore, an admission on the part of a party to the list shall be binding on him and in any event a presumption must be made that the same is taken to be established. The Exts.Z/4, to Z/9, which are admittedly filed by the first respondent before the Returning Officer and are admitted by him proves the allegation of the petitioner against the first respondent.

xxx

xxx

xxx

129. In the instant case, admittedly, the Returning Officer was in possession of two different nomination papers and affidavit in Form 26, thereby giving an advantage to the Returning Officer to compare the same to

ascertain the truthfulness of the information having been provided in both the Forms and upon finding that the later Form 26 has been improved upon and even the details of the jewellerys of the first respondent and his spouse has been mentioned in Form 26 dated 25.3.2019, the Returning Officer ought to have rejected the nomination paper, as there was an intentional omission not typographical error on the part of the first respondent in filing Form 26 dated 21.3.2019 which was the only Form put up for public view and uploaded on the website and not Form 26 dated 25.03.2019. In the preceding paragraph, this Court held that the non-dissemination of the affidavit in Form 26 dated 25.3.2019 through the website materially affected the election of the first respondent.

xxx

सत्यमेव जयते

xxx

xxx

132. This Court is of the view that the affidavit in Form 26 filed by the first respondent suffers from the defects of substantial character. The petitioner also established that the first respondent filed affidavit in Form 26 dated 21.3.2019 along with the nomination paper submitted by him. The only uploaded affidavit in Form 26 of the first respondent is dated 21.3.2019 and while filing nomination along with the affidavit in Form 26, the first respondent has failed to follow the instructions of the Election

Commission of India in relation to separate bank election expenditure. The act of the first respondent would amount to corrupt practice and therefore, it materially affected the result of the election of 2-Outer Manipur (ST) Parliamentary Constituency to the 17th Lok Sabha, 2019.”

In the present case, P.W.3, the Returning Officer has stated as follows:-

Q. Can you show any provision either from the Representation of the People Act, 1951, the Conduct of Elections Rules, 1961 and the Handbook for Returning Officer i.e. Ext.38 which permitted you as a Returning Officer to accept xerox attested copies of the affidavits under Ext.44, Ext.45 and Ext.46 along with the nomination paper Ext.40, Ext.41 and Ext.42 respectively?

Ans. Even after verifying Representation of the People Act, 1951, the Conduct of Elections Rules, 1961 and the Handbook for Returning Officer i.e. Ext.38, at present I am not getting the provision, which permitted me as a Returning Officer to accept xerox attested copies of the affidavits under Ext.44, Ext.45 and Ext.46 along with the nomination paper Ext.40, Ext.41 and Ext.42 respectively.

Learned counsel for the Election Petitioner argued that Exts.44, 45 and 46 are the xerox attested copies of the affidavit in Form 26 said to be filed by the Respondent on 04.04.2019 whereas neither under the R.P. Act, 1961 Rules nor the HBRO (Ext.38) authorizes P.W.3 to accept the xerox attested copies of the affidavit in Form 26. Thus, the acceptance of xerox attested copies of the affidavit in Form 26 along with the nomination papers of the Respondent is illegal.

So far as the check lists are concerned, learned counsel for the Election Petitioner argued that Exts.39/2, 39/3, 40/2, 41/2, 42/2 are the checklist dated 02.04.2019 said to have been issued by P.W.3 to the Respondent on 02.04.2019.

Clause 5.16.3 of HBRO (Ext.38) reads as follow:-

“If any candidate fails to file the said affidavit along with his nomination paper, Returning Officer should bring to his notice this requirement through the check list handed over to the candidates or proposers. The candidate should be asked to file duly sworn affidavit latest by 3.00 p.m. on the last date of filing nominations.”

Clause 5.11.4 of Ext.38 prescribes as follows:-

“In order to bring more transparency and to prevent cases of any mischief at any level, with regard to the documents, the Commission has decided to streamline the procedure as follows:

a) In respect of each candidate, the RO should maintain, in duplicate, the checklist of the documents/requirements to be fulfilled by the candidates, as per the list given above.

b) When a candidate files nomination paper, the Returning Officer or the Specified Assistant Returning Officer shall indicate in the second column of the check list whether the documents concerned have been filed or the other requirements fulfilled. If there is any defect or short coming in the documents, the same should be specified.

c) xxx xxx xxx

Once the Returning Officer records in the CHECK LIST prepared by him at the time of presentation of the nomination paper that a particular document/requirement has been filed/fulfilled he cannot later take the stand that the document was not in order (Civil Appeal No.4956 of 2010 - Ramesh Rout Vs. Ravindra Nath Rout [2012 (1) SCJ 567]). The Commission

has directed that while checking the documents filed with nomination paper and filling up the Check List, the Returning Officer or the Specified Assistant Returning Officer should also make an endorsement about defect, if any, noticed in the documents filed with the nomination papers. In cases where a candidate put up by a political party has either not filed Forms "A" and "B", or the Forms filed are not as per the requirements (not properly filled up or are not signed in original, etc.) while preparing Form 3A (Notice of Nomination) a mention to this effect shall be made under Column 6 with respect to such candidate. (ECI Instruction No 576/3/2013/ SDR dated 21.1.2013)

d) xxx xxx xxx

e) xxx xxx xxx सत्यमेव जयते

f) If and when a document is filed subsequent to filing of nomination, an acknowledgement to that effect should be issued to the candidates nearly mentioning the date and time at which it is filed. This should also be indicated in the appropriate place in the original checklist retained by the Returning Officer".

Clause 5.13.1 of Ext.38 prescribes as follows:-

"No misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposers 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 is commonly understood. 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 papers shall be overlooked. Returning Officer has no power in law to allow any other error to be corrected (See Section 33(4) of RP Act, 1951).

5.13.2 Similarly, if there is a complaint regarding mismatch of photo in the photo electoral roll, Returning Officer shall overlook the same after satisfying himself/herself about the identity of

the person through some other document produced by him.

5.13.3 Points, which Returning Officer is thus required to dispose off under Section 33(4) of the said Act, should invariably be disposed of at this stage. It will be undesirable for Returning Officer at the time of scrutiny to reject a nomination paper for defects, which could have been thus cured at the earlier stage of the presentation of the nomination paper.

Learned counsel for the Election Petitioner drew the attention of this Court to the following evidence of P.W.3:-

"As per the provision as contained in paragraphs 5.16.3 and 5.16.4 of Ext.38, as a Returning Officer, I have to prepare a checklist in duplicate and handover the same to the concerned candidate or his proposer bringing to his notice the requirement in the duly sworn affidavit. The original of the checklist is kept with the nomination paper and the duplicate of the same is handed over to the concerned candidate or his proposer. I have prepared this checklist dated 02.04.2019 marked as Ext.39/2 (one sheet), which is available along with Ext.39. It is a fact that in Ext.39/2 I have not indicated that the affidavit filed by the Respondent dated 02.04.2019 was in plain paper and that he was

instructed to file it in required stamp paper. xxx
xxx xxx From Ext.39/2, it appears that I have
prepared the same on 02.04.2019 at 11.45 a.m.
at Cuttack, which I have mentioned therein. As
per paragraph 5.16.4 of Ext.38, as a Returning
Officer, I am supposed to give notice to the
candidates if any column of the affidavit in Form
26 has been left blank or filled by just tick
mark/dash marking and in this case, I have
given notice to the respondent in that respect in
the checklist marked as Ext.39/2."

"The respondent had filed four sets of
nomination papers along with affidavit dated
02.04.2019 along with other documents on
02.04.2019 and I verified each of the
nomination paper so also the affidavit and
prepared the checklist separately with respect to
each set of nomination paper. After verifying the
nomination paper marked as Ext.39 along with
the affidavit marked as Ext.39/1 and other
accompanying documents, I prepared the
checklist marked as Ext.39/2. Thereafter, I
verified the nomination paper marked as Ext.40
along with the affidavit marked as Ext.40/1 and
other accompanying documents, I prepared this
checklist marked as Ext.40/2 (one sheet).
Thereafter, I verified the nomination paper
marked as Ext.41 along with the affidavit
marked as Ext.41/1 and other accompanying

documents, I prepared this checklist marked as Ext.41/2 (one sheet). Thereafter, I verified the nomination paper marked as Ext.42 along with the affidavit marked as Ext.42/1 and other accompanying documents, I prepared this checklist marked as Ext.42/2 (one sheet)."

"The Respondent had filed four sets of nomination papers along with four affidavits in Form 26 apart from other required documents and I have prepared four checklists after verifying the same."

"I prepared one checklist and then I proceeded to verify the 2nd set and in the like manner 3rd set and 4th set."

"It is a fact that in Ext.40/2, though I have put the date as 02.04.2019 under my signature above the writing 'signature of RO/ARO', but against the date, time and place, which is available below the 'signature of candidate', no date, time and place has been mentioned."

"The portion 'date, time and place', which is available below the 'signature of candidate' in Ext.39/2 has been filled up, is not in my handwriting and the same is marked as Ext.39/4".

"The checklist Ext.39/2 has been filled up by a team of officers, who were assisting me at the

relevant point of time and I have only put my signature and the date above the writing 'signature of RO/ARO' after due verification. I cannot say who has filled up the portion marked as Ext.39/4. The handwritings appearing in the check list Ext.39/2 are not mine. My team of officers has filled it up under my supervision and instruction."

"Ext.39/4 is the portion date, time and place below the signature of candidate in Ext.39/2 i.e., the checklist. The portion date, time and place below the signature of candidate in Ext.39/2 has been filled is not in my handwriting. The same has been filled up by team of officers assisting me. I cannot say who has filled up the portion marked as Ext.39/4"

"The checklists dated 02-04.2019, i.e. Ext.40/2, Ext.41/2 and Ext.42/2 have been filled up by a team of officers, who were assisting me at the relevant point of time under my instruction and supervision and I have only put my signature and the date above the writing 'signature of RO/ARO' after due verification. The date and time and place which are appearing below the 'signature of candidate' in Ext.40/2 have not been filled up and the same is marked as Ext.40/3. I cannot say who has filled up date and time and place which are appearing below the 'signature of candidate' in Ext.41/2 and the

same is marked as Ext.41/3. I cannot say who has filled up date and time and place which are appearing below the 'signature of candidate' in Ext.42/2 and the same is marked as Ext.42/3. Different officers of my team have filled up the handwritten portion of Ext.39/2, Ext.40/2, Ext.41/2 and Ext.42/2 under my supervision and instruction. I cannot recollect now as to who were the officers of my team were then who filled the handwritten portion of Ext.39/2, Ext.40/2, Ext.41/2 and Ext.42/2 under my supervision and instruction. I do not remember who were the officers and staff of my team then assisting me during the preparation of checklists under Ext.39/2, Ext.40/2, Ext.41/2 and Ext.42/2. It is a fact that in Ext.40/2, Ext.41/2 and Ext.42/2, I have not put a tick mark in Col. (b) under the headings of 'the following documents which have not been filed should be filed as indicated below' as I have done in Ext.39/2. It is a fact that in Ext.41/2 I have not put any mark in Columns (a), (b) and (c) under the headings of 'the following documents which have not been filed should be filed as indicated below. Since in Sl.No.1 of Ext.41/2, it has been indicated that the affidavit in Form 26 is not as per the prescribed format and Col. Nos.(5), (6), (7) and (8) not properly mentioned, there was no necessity of again specifying the same by filling up of Col. Nos.(a), (b) and (c) under the

headings of 'the following documents which have not been filed should be filed as indicated below.

Q. Why in Ext.39/2, you have put a tick mark in Co.(b) under the headings of 'the following documents which have not been filed should be filed as indicated below and not in Ext.40/2, Ext.41/2 and Ext.42/2?

Ans. I cannot assign any reason why it has been done like that.

"Ext.40/3 is the portion date, time and place below the signature of candidate in Ext.40/2 i.e., the checklist which have not been filled up."

"Ext.41/3 is the portion date, time and place below the signature of candidate in Ext.41/2 i.e., the checklist, the R.O., P.W.3 has stated that I cannot say who has filled up date, time and place appearing below the signature of candidate in Ext.41/2."

"Ext.42/3 is the portion date, time and place below the signature of candidate in Ext.42/2 i.e., the checklist, the R.O., P.W.3 has stated that I cannot say who has filled up date, time and place appearing below the signature of candidate in Ext.42/2."

"Ext.43 is the Original affidavit dated 03.04.2019. Exts.44, 45 & 46 are the xerox

attested copy of the affidavit dated 03.04.2019 filed by the Respondent said to be revised affidavit filed on 04.04.2019 and Ext.47 is the checklist dated 04.04.2019.”

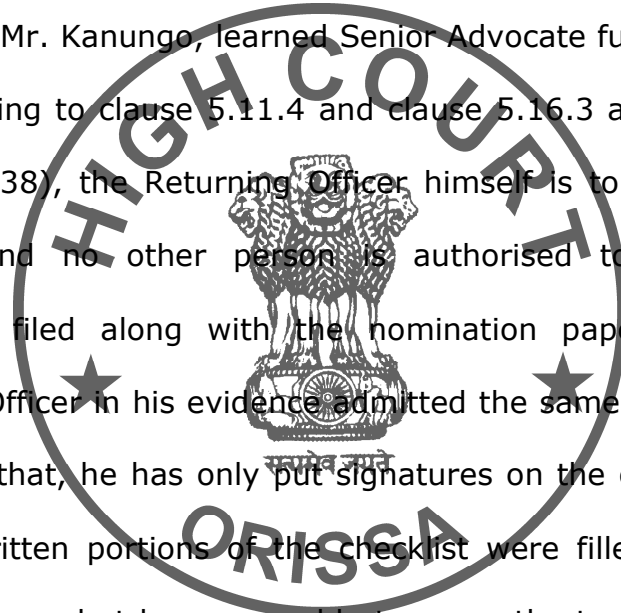
“It is a fact that after submission of the revised affidavit in Form 26 by the Respondent on 04.04.2019, I prepared a checklist of documents in duplicate. The original of the said checklist dated 04.04.2019 was kept with the nomination paper and the duplicate was handed over to the Respondent after taking his signature. The original checklist dated 04.04.2019 is marked as Ext.47.”

“In Ext.47, the serial numbers of four nomination papers i.e. 02, 03, 04 and 05/LA/2019/RO have been mentioned in the top by me. Again says, the same has been filled up by the team of officers, who were assisting me at the relevant point of time under my instruction and supervision.”

“The handwritten portion in Ext.47 has also been filled up by the team of officers. I have put only signature and date in Ext.47. The witness volunteers- After due verification, I put my signature and date in Ext.47. After due verification of Ext.43, Ext.44, Ext.45 and Ext.46, I instructed my team of officers to fill up checklist Ext.47 since I found that all the

columns are filled up. Only Ext.43 was the original one and Ext.44, Ext.45 and Ext.46 are the xerox attested copies of Ext.43. I cannot say who has filled up the date and time and place in Ext.47 which are appearing below the signature of candidate. The relevant portion is marked as Ext.47/1. I cannot say the name and designation of the officer or the staff of my team who filled up handwritten portion of Ext.47."

Mr. Kanungo, learned Senior Advocate further argued that according to clause 5.11.4 and clause 5.16.3 and 5.16.4 of HBRO (Ext.38), the Returning Officer himself is to prepare the checklist and no other person is authorised to verify the documents filed along with the nomination papers and the Returning Officer in his evidence admitted the same, whereas he has stated that, he has only put signatures on the checklist and the handwritten portions of the checklist were filled up by his team of officers but he was unable to name the team of officers who had filled up the same. Thus, the acceptance of nomination papers and the issuance of checklist by P.W.3 were not as per the instructions issued by the Election Commission of India in HBRO and hence, the statements made P.W.3 cannot be believed.



"This is the downloaded and printed copy of Ext.32/5 as per the order of this Court dated 03.05.2023 marked as Ext.32/7 and the relevant portion where it is mentioned 'Affidavit Uploaded: 2nd April 2019' is marked as Ext.32/8. This is the downloaded and printed copy of nomination paper Ext.39 as per the order of this Court dated 03.05.2023 marked as Ext.39/5. This is the downloaded and printed copy of the affidavit Ext.43 as per the order of this Court dated 03.05.2023 marked as Ext.43/1."

"This is the downloaded and printed copy of Ext.33/5 as per the order of this Court dated 03.05.2023 marked as Ext.33/7 and the relevant portion where it is mentioned 'Affidavit Uploaded: 2nd April 2019' is marked as Ext.33/8. This is the downloaded and printed copy of nomination paper Ext.40 as per the order of this Court dated 03.05.2023 marked as Ext.40/4. This is the downloaded and printed copy of the affidavit Ext.44 as per the order of this Court dated 03.05.2023 marked as Ext.44/1."

"This is the downloaded and printed copy of Ext.34/5 as per the order of this Court dated 03.05.2023 marked as Ext.34/7 and the relevant portion where it is mentioned 'Affidavit Uploaded: 2nd April 2019' is marked as Ext.34/8. This is the downloaded and printed copy of nomination paper Ext.41 as per the order of this

Court dated 03.05.2023 marked as Ext.41/4. This is the downloaded and printed copy of the affidavit Ext.45 as per the order of this Court dated 03.05.2023 marked as Ext.45/1.”

“This is the downloaded and printed copy of Ext.35/5 as per the order of this Court dated 03.05.2023 marked as Ext.35/7 and the relevant portion where it is mentioned 'Affidavit Uploaded: 2nd April 2019' is marked as Ext.35/8. This is the downloaded and printed copy of nomination paper Ext.42 as per the order of this Court dated 03.05.2023 marked as Ext.42/4. This is the downloaded and printed copy of the affidavit Ext.46 as per the order of this Court dated 03.05.2023 marked as Ext.46/1.”

“It is not a fact that in violation of the provisions contemplated under the Representation of the People Act, 1951, the Conduct of Elections Rules, 1961 and Handbook for Returning Officer (Ext.38), I accepted Ext.39, Ext.40, Ext.41 and Ext.42 and Ext.43, Ext.44, Ext.45 and Ext.46. It is not a fact that I have not received the affidavits of the respondent under Ext.39/1, Ext.40/1, Ext.41/1 and Ext.42/1 on 02.04.2019.”

Mr. Kanungo argued that pursuant to clause (c) of para 5.11.4 of Ext.38, the Returning Officer has to make an

endorsement in the notice of nomination in Form 3A (Ext.AK) that the affidavit filed by the Respondent in Form 26 was defective and the Respondent has been asked to file revised/fresh affidavit in Form 26. A bare perusal of Ext.AK i.e., notice of nomination in Form 3A discloses that the Returning Officer has not made any endorsement in Ext.AK. According to him, the Respondent has filed his nomination paper on 02.04.2019 along with the affidavit dated 03.04.2019 in Form 26 which is no affidavit in the eyes of law and the Returning Officer (P.W.3) has illegally and improperly accepted the nomination paper of the Respondent which materially affected the result of the election of the Constituency and accordingly, issues nos.15, 16, 19 & 20 are to be answered in favour of the Election Petitioner.

Mr. Bidyadhar Mishra, learned Senior Advocate for the Respondent argued that from the affidavits dated 03.04.2019 in Form 26, either downloaded copies filed on behalf of the Election Petitioner (Exts.1, 2, 3, 4, 32, 33, 34, 35) or downloaded in Court (Exts.43/1, 44/1, 45/1, 46/1) or originals produced by the District Election Officer, Cuttack (Exts.43, 44, 45, 46), it will be clearly evident that the affidavit in Form 26 dated 03.04.2019 filed by the sole Respondent is in prescribed

Form 26. Therefore, the allegation of the Election Petitioner that the Respondent has not filed the affidavit in prescribed Form 26 as required U/s.33A of the R.P. Act, 1951 is entirely a false and concocted allegation. The Election Petitioner even at the time filing of the election petition on 03.07.2019 was very much aware about the fact that the Respondent filed his nomination papers on 02.04.2019 along with four affidavits in Form 26 dated 02.04.2019 (Exts.39/1, 40/1, 41/1, 42/1) before the Returning Officer (P.W.3) and as the said affidavits in Form 26 dated 02.04.2019 were not in the prescribed format, the Returning Officer (P.W.3) gave instruction to the Respondent through 'Checklists' (Exts.39/2, 40/2, 41/2, 42/2) to file revised affidavit before commencement of scrutiny of nominations. Accordingly, the Respondent filed revised affidavits in Form 26 dated 03.04.2019 (Exts.43, 44, 45, 46) before the Returning Officer (P.W.3) on 04.04.2019 and upon receipt of the said revised affidavits in Form 26 dated 03.04.2019, the Returning Officer (P.W.3) granted a 'Checklist' on 04.04.2019 (Ext.47) to the Respondent. Therefore, while making the allegation to the effect that the Respondent has not filed the affidavit in the prescribed Form 26 as required under section 33A of the R.P. Act, 1951 has referred to the affidavits in Form 26 dated 02.04.2019

(Exts.39/1, 40/1, 41/1, 42/1) filed by the Respondent before the Returning Officer (P.W.3) on 02.04.2019. Thus, the case of the Election Petitioner that the Respondent filed his nomination before the Returning Officer on 02.04.2019 along with the affidavit dated 03.04.2019 said to be in Form 26, is entirely false and concocted allegation.

Learned counsel for the Respondent relied upon the following documents:

Ext.BL: The duplicate of the checklist dated 02.04.2019 handed over by the Returning Officer (P.W.3) to the respondent with respect to his 1st set of Nomination papers bearing Sl. No. 02/LA/2019, which was received by him on 02.04.2019 at 11.45 a.m.

Ext.CD: The duplicate of the checklist dated 02.04.2019 handed over by the Returning Officer (P.W.3) to the respondent with respect to his 2nd set of Nomination papers bearing Sl. No. 03/LA/2019.

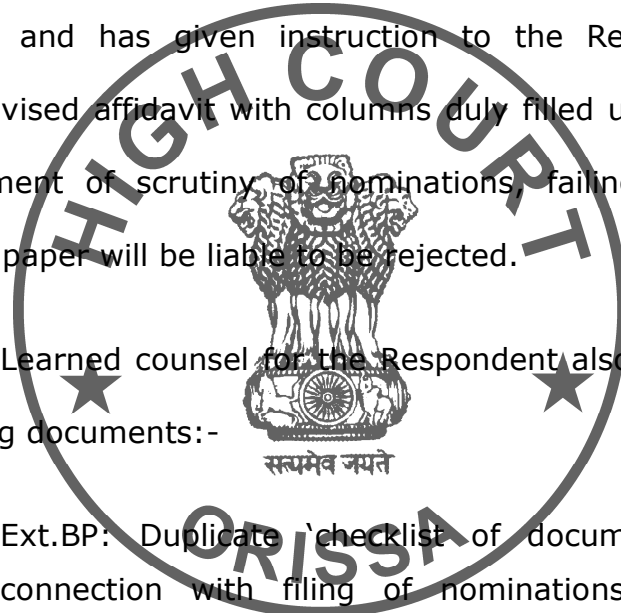
Ext.CU: The duplicate of the checklist dated 02.04.2019 handed over by the Returning Officer (P.W.3) to the respondent with respect to his 3rd set of Nomination papers bearing Sl. No. 04/LA/2019.

Ext.DL: The duplicate of the checklist dated 02.04.2019 handed over by the Returning Officer (P.W.3) to the respondent with respect to his 4th set of Nomination papers bearing Sl. No. 05/LA/2019.

In all these documents, the Returning Officer (P.W.3) at sl. no. (1) has endorsed that the affidavit in Form 26 is not in the prescribed format (column No. 5, 6, 7 & 8 not properly mentioned) and has given instruction to the Respondent to submit a revised affidavit with columns duly filled up before the commencement of scrutiny of nominations, failing which the nomination paper will be liable to be rejected.

Learned counsel for the Respondent also relied upon the following documents:-

Ext.BP: Duplicate 'checklist of documents in connection with filing of nominations' dated 04.04.2019 granted by the Returning Officer (P.W.3) to the respondent with respect to nomination papers Sl. Nos. 02, 03, 04, 05/LA/2019/RO acknowledging receipt of the revised affidavit in Form 26 dated 03.04.2019 on 04.04.2019 at 12.20 p.m. from the respondent.



In Ext.BP, the Returning Officer (P.W.3) at its sl. no.(1) has endorsed that all the columns of the affidavit in Form 26 are filled up and the same is sworn before Notary.

Ext.BQ: Forwarding letter of the respondent dated 03.04.2019 addressed to the Returning Officer (P.W.3) enclosing therein the revised affidavits in Form 26 dated 03.04.2019, submitted to the Returning Officer (P.W.3) on 04.04.2019. This document has been called for by this Court and produced by the District Election Officer, Cuttack.

Ext.DP/1: Original Affidavit in Form 26 dated 29.03.2019 of the candidate Priyadarshan Pavel available along with Ext.DP (Original Nomination Sl. No. 01/LA/2019). This document has been called for by this Court and produced by the District Election Officer, Cuttack.

Ext.DP/2: Original Checklist dated 29.03.2019 available along with Ext.DP (Original Nomination Sl. No. 01/LA/2019). This document has been called for by this Court and produced by the District Election Officer, Cuttack.

In Ext.DP/2, the Returning Officer (P.W.3) at its sl. no.(1) has endorsed that in the affidavit in Form 26 dated 29.03.2019 filed by the candidate Priyadarshan Pavel all columns

are not filled up, column 8(ii)(B) has been left blank and the Returning Officer (P.W.3) has given instruction to submit a revised affidavit with columns duly filled up before the commencement of scrutiny of nominations, failing which the nomination paper will be liable to be rejected.

Ext.DP/3: Original Revised Affidavit in Form 26 dated 30.03.2019 of the candidate Priyadarshan Pavel available along with Ext.DP (Original Nomination Sl. No. 01/LA/2019). This document has been called for by this Court and produced by the District Election Officer, Cuttack.

Ext.DP/4: Original Checklist dated 04.04.2019 granted by the Returning Officer (P.W.3) on 04.04.2019 at 1.30 p.m. showing receipt of revised Affidavit in Form 26 dated 30.03.2019 from the candidate Priyadarshan Pavel with respect to Nomination Sl. No. 01/LA/2019. This document has been called for by this Court and produced by the District Election Officer, Cuttack.

Ext.DU: Downloaded and printed copy of the cover page of the Election Commission of India along with the nomination paper in Form 2B and affidavit in Form 26 of the candidate Priyadarshan Pavel. (Downloaded and printed in Court on 20.07.2023)

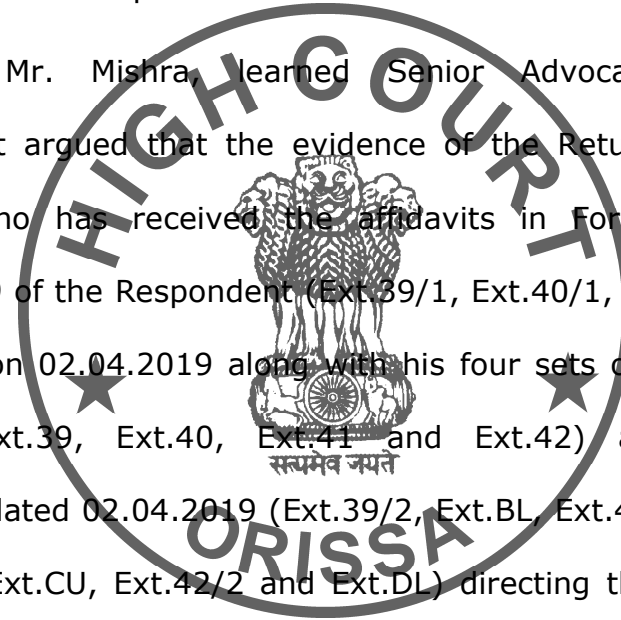
Ext.DU/1: The cover page of Ext.DU.

Ext.DU/2: The portion showing the affidavit uploaded on 29th March 2019 in Ext.DU.

Ext.DU/4: Downloaded and printed copy of the revised affidavit in Form 26 dated 30.03.2019 appearing under Ext.DU.

Ext.W: The I.A. No.24 of 2020 filed by the election petitioner.

Mr. Mishra, learned Senior Advocate for the Respondent argued that the evidence of the Returning Officer (P.W.3) who has received the affidavits in Form 26 dated 02.04.2019 of the Respondent (Ext.39/1, Ext.40/1, Ext.41/1 and Ext.42/1) on 02.04.2019 along with his four sets of nomination papers (Ext.39, Ext.40, Ext.41 and Ext.42) and granted checklists dated 02.04.2019 (Ext.39/2, Ext.BL, Ext.40/2, Ext.CD, Ext.41/2, Ext.CU, Ext.42/2 and Ext.DL) directing therein to the Respondent to submit revised affidavit in Form 26 and thereafter received the revised affidavits in Form 26 dated 03.04.2019 (Ext.43, Ext.44, Ext.45 and Ext.46) on 04.04.2019 and granted checklist dated 04.04.2019 (Ext.47 and Ext.BP) showing receipt of the revised affidavit in Form 26 dated 03.04.2019 on 04.04.2019 at 12.20 p.m. from the Respondent, is most vital. He



placed reliance on the following evidence of the Returning Officer (P.W.3), which is reproduced hereunder for ready reference:-

Q. Please verify Form 26 as appended to Conduct of Elections Rules, 1961 and answer whether the candidates contesting General Assembly Election of 90-Barabati Cuttack Assembly Constituency held in the year 2019 were required to file the affidavit in this particular Form 26 along with their nomination papers or not?

Ans. Yes.

Q. Whether all the candidates contesting the General Assembly Election of 90-Barabati Cuttack Assembly Constituency held in the year 2019 were required to file their affidavits in Form 26 along with their nomination papers in the prescribed Form which is available under Annexure-12 in the Handbook for the Returning Officers marked as Ext.38?

Ans. Yes. The Annexure-12 at pages 363 to 378 of Ext.38 is marked as Ext. 38/4 (8 sheets).

"As per paragraph 5.20.3 of Ext.38, the affidavits filed by all candidates, whether set up by the recognized political parties or unrecognized political parties or independents shall be put up on the website soon after the

candidates file the same and within 24 hours in any event. Even if any candidate withdraws his candidature, the affidavit already uploaded on the website shall not be removed.”

“In cases where columns are left blank in the affidavit and notice is issued by the Returning Officer for filing fresh and complete affidavit, the incomplete affidavit may also be uploaded on the website with a note indicating that the affidavit is incomplete and the candidate has been issued notice. If and when the candidate files affidavit subsequently, the same should also be uploaded on the website immediately on the same day.”

“The nomination paper as well as the affidavit filed before me as a Returning Officer by each contesting candidate whether it is in complete form or incomplete were uploaded by me in the website of the Election Commission of India during General Assembly Election of 90-Barabati Cuttack Assembly Constituency held in the year 2019. It is a fact that only under my digital signature, which was approved by the Election Commission of India, such nomination paper as well as the affidavit filed by each contesting candidate were uploaded by me in the website of the Election Commission of India. No other person except me can upload or remove any

document already uploaded in the website of the Election Commission of India.”

“It is a fact that the nomination paper in Form 2B as well as the affidavit in Form 26 which was delivered to me by the Respondent on 2nd April 2019 were uploaded by me in the website of the Election Commission of India on that day itself.”

Ext. 32/5 is the same document which I now find on opening of the hyperlink of the web portal of the Election Commission of India provided in Ext.32 in Court.”

“This is the same nomination paper in Form 2B, which was uploaded by me in the web portal of the Election Commission of India which was filed before me by the Respondent on 02.04.2019 and numbered by me as 02/LA/2019 in Ext.39, which I now find on opening the hyperlink provided in Ext.32.”

Q. Please verify the document which was opened as per the hyperlink provided in Ext.32 i.e. the nomination paper dated 02.04.2019 filed by the Respondent in Form 2B and answer whether the only affidavit in Form 26 which is appended to such nomination paper is dated 03.04.2019 or not?

Ans. Yes. That is the only affidavit available in the hyperlink.

"This is the affidavit dated 03.04.2019 filed by the Respondent in Form 26 marked as Ext.43 (earlier marked as Y/1) and at present this is the only affidavit which is available in the web portal of Election Commission of India."

"This is the same nomination paper in Form 2B, which was uploaded by me in the web portal of the Election Commission of India which was filed before me by the Respondent on 02.04.2019 and numbered by me as 03/LA/2019 in Ext.40 (earlier marked as Y/3), which I now find on opening the hyperlink provided in Ext.33."

"This is the affidavit dated 03.04.2019 filed by the Respondent in Form 26 marked as Ext.44 (earlier marked as Y/4) and at present this is the only affidavit which is available in the web portal of Election Commission of India. It is a fact that the affidavit marked as Ext.44 is a xerox one attested by Notary Public, Cuttack Town to be the true copy."

"This is the same nomination paper in Form 2B, which was uploaded by me in the web portal of the Election Commission of India which was filed before me by the Respondent on 02.04.2019 and numbered by me as 04/LA/2019 in Ext.41 (earlier marked as Y/6), which I now find on opening the hyperlink provided in Ext.34."

"This is the affidavit dated 03.04.2019 filed by the Respondent in Form 26 marked as Ext.45 (earlier marked as Y/7) and at present this is the only affidavit which is available in the web portal of Election Commission of India. It is a fact that the affidavit marked as Ext.45 is a xerox one attested by Notary Public, Cuttack Town to be the true copy."

"This is the same nomination paper in Form 2B, which was uploaded by me in the web portal of the Election Commission of India which was filed before me by the Respondent on 02.04.2019 and numbered by me as 05/LA/2019 in Ext.42 (earlier marked as X/9) which I now find on opening the hyperlink provided in Ext.35."

"This is the affidavit dated 03.04.2019 filed by the Respondent in Form 26 marked as Ext.46 (earlier marked as Y/10) and at present this is the only affidavit which is available in the web portal of Election Commission of India. It is a fact that the affidavit marked as Ext.46 is a Xerox one attested by Notary Public, Cuttack Town to be the true copy."

"The nomination papers marked as Ext.39, Ext.40, Ext.41 and Ext.42 which are dated 02.04.2019 received by me on 02.04.2019 and uploaded by me in the web portal of the Election Commission of India on 02.04.2019. All the

affidavits which were filed along with Ext.39, Ext.40, Ext.41 and Ext.42 by the Respondent were incomplete and those were also uploaded by me on 02.04.2019. The affidavits in Form 26 dated 03.04.2019 filed by the Respondent marked as Ext.43, Ext.44, Ext.45 and Ext.46 were received by me on 04.04.2019 and those were uploaded by me in the web portal of the Election Commission of India on 04.04.2019.”

Q. Can you show from the web portal of the Election Commission of India that the affidavit dated 03.04.2019 filed by the Respondent Ext.43, Ext.44, Ext.45 and Ext.46 were uploaded by you on 04.04.2019?

Ans. While uploading the affidavit dated 03.04.2019 on 04.04.2019, the system was over-riding the earlier affidavit dated 02.04.2019 of the respondent uploaded on 02.04.2019.

Q. Have you intimated about the over-riding of the earlier affidavit dated 02.04.2019 of the Respondent uploaded on 02.04.2019 when you uploaded the affidavit dated 03.04.2019 on 04.04.2019 to the District Election Officer, Chief Electoral Officer, Odisha and to the Election Commission of India?

Ans. Since it was a system based configuration, I felt no necessity of intimating the same to the District Election Officer, Chief Electoral Officer, Odisha and to the Election Commission of India.

Q. Can you show from the web portals of the Election Commission of India that you have uploaded the affidavit in Form 26 of the Respondent dated 02.04.2019 on 02.04.2019?

Ans. I cannot show just now.

Q. Whether in terms of the instruction imparted in paragraph 5.20.3 of the Handbook for Returning Officer marked as Ext.38/5, have you given a note that the Respondent has filed incomplete affidavit dated 02.04.2019 and he has been issued notice to file fresh affidavit in Ext.32/5 while uploading the same in the web portals of the Election Commission of India?

Ans. I do not remember about the same now.

Q. Since you have received an incomplete affidavit dated 02.04.2019 in Form 26 on 02.04.2019, how you mentioned in Ext.32/5 in the current status as 'accepted'?

Ans. It was a system based configuration.

Q. While answering to a question put to you on 27.04.2023, you said that when you uploaded the affidavit dated 03.04.2019 on 04.04.2019

(Ext.43, Ext.44, Ext.45 and Ext.46), the system overrode the earlier affidavit dated 02.04.2019 of the Respondent uploaded on 02.04.2019. What does it mean that 'the system overrode the earlier affidavit? Whether the affidavit dated 02.04.2019 was completely removed from the system or it can be traced out?

Ans. The subsequent affidavit would prevail over the earlier affidavit and that is how I have used the term that 'the system overrode the earlier affidavit'. So far as the second question is concerned, since it is a system generated aspect, I am not able to answer the same.

Q. Did you try to verify whether a person intending to verify the affidavit dated 02.04.2019 from the web portal, would be able to verify the same or not?

Ans. I have not checked that aspect at that point of time.

Q. Since in Clause 5.20.3 of Chapter-5 of the Handbook for the Returning Officer marked as Ext. 38, there is a provision that while uploading the incomplete affidavit of a candidate on the website, you are also to give a note that the affidavit is incomplete and the candidate has been issued notice, whether in this particular case, you have followed that procedure?

Ans. Yes. I have uploaded the incomplete affidavit of the respondent dated 02.04.2019. I do not remember whether along with the incomplete affidavit, I have uploaded the note that the affidavit is incomplete one and the candidate has been issued notice.

Q. Whether on verification of the hyperlink, can you say whether you have uploaded the note that the affidavit dated 02.04.2019 is incomplete one and that you have given a note to the Respondent and that notice has been issued to him?

Ans. No I cannot do the same.

Q. Whether after 02.04.2019 till the election process was over, did you try to verify whether the affidavit dated 02.04.2019 filed by the Respondent and uploaded by you was available in the web portal of the Election Commission of India?

Ans. I have not verified.

Q. Whether any person can verify the affidavit dated 02.04.2019 filed by the respondent and the declarations made therein which you stated to have uploaded on 02.04.2019 in the web portal of the Election Commission of India?

Ans. I cannot say.

Q. When you came to know that the system has overrode the affidavit dated 02.04.2019, did you take any step to correct the same and re-load the affidavit dated 02.04.2019 so that a voter can look into the same?

Ans. I have not done that.

"It is not a fact that I have not uploaded the affidavit in Form 26 of the respondent dated 02.04.2019 in the web portal of the Election Commission of India on 02.04.2019."

"The respondent himself came to me on 04.04.2019 and handed over the revised affidavit in Form 26 dated 03.04.2019. It is a fact that CCTV recording was made in the room of the Returning Officer from the first day of filing of the nomination paper till the scrutiny was over on 05.04.2019. If the CCTV recording is called for and verified, it will be found that the Respondent had come to me on 04.04.2019 and handed over the revised affidavit in Form 26. It is not a fact that the Respondent did not come to my office on 04.04.2019."

Q. Can you show any provision either from the Representation of the People Act, 1951, the Conduct of Elections Rules, 1961 and the Handbook for Returning Officer i.e. Ext.38 which permitted you as a Returning Officer to accept

xerox attested copies of the affidavits under Ext.44, Ext.45 and Ext.46 along with the nomination paper Ext.40, Ext.41 and Ext.42 respectively?

Ans. Even after verifying Representation of the People Act, 1951, the Conduct of Elections Rules, 1961 and the Handbook for Returning Officer i.e. Ext.38, at present I am not getting the provision, which permitted me as a Returning Officer to accept xerox attested copies of the affidavits under Ext.44, Ext.45 and Ext.46 along with the nomination paper Ext.40, Ext.41 and Ext.42 respectively.

"It is prescribed that a stamp paper worth of Rs.10/- is to be used for an affidavit purpose as per the State law. During my incumbency as Sub-Collector, Cuttack, Sadar, number of persons have sworn affidavits before me using stamp papers of Rs.10/-. I have never allowed any person to swear an affidavit before me by using plain paper. It is a fact that paragraph 5.16.1 of Chapter-V of Ext.38 indicates that the duly sworn affidavits should be on stamp paper of such denomination as prescribed under the State law of the State concerned. Paragraph 5.16.1 of Chapter-5 of Ext.38 is marked as Ext.38/6. It is a fact that the affidavits dated 02.04.2019 of the Respondent filed along with the nomination papers Ext.39, Ext.40, Ext.41

and Ext.42 are in plain papers. Ext.39/1 (23 sheets) (earlier marked as Y/2) is the plain paper affidavit filed along with Ext.39, Ext.40/1 (23 sheets) (earlier marked as Y/5) is the plain paper affidavit filed along with Ext.40, Ext.41/1 (23 sheets) (earlier marked as Y/8) is the plain paper affidavit filed along with Ext.41, Ext.42/1 (23 sheets) (earlier marked as Y/11) is the plain paper affidavit filed along with Ext.42.”

Q. It is put to you that the affidavits under Ext.39/1, Ext.40/1, Ext.41/1 and Ext.42/1 were not in consonance with the provision as contained in paragraph 5.16.1 of Chapter-5 of Ext.38?

Ans. I cannot say.

Witness volunteers. Since the affidavits under Ext.39/1, Ext.40/1, Ext.41/1 and Ext.42/1 were incomplete, instruction was given to the Respondent to file revised affidavits complete in all respects.

“As per the provision as contained in paragraphs 5.16.3 and 5.16.4 of Ext.38, as a Returning Officer, I have to prepare a checklist in duplicate and handover the same to the concerned candidate or his proposer bringing to his notice the requirement in the duly sworn affidavit. The original of the checklist is kept with the

nomination paper and the duplicate of the same is handed over to the concerned candidate or his proposer. I have prepared this checklist dated 02.04.2019 marked as Ext.39/2 (one sheet), which is available along with Ext.39. It is a fact that in Ext. 39/2 I have not indicated that the affidavit filed by the Respondent dated 02.04.2019 was in plain paper and that he was instructed to file it in required stamp paper. I have handed over duplicate copy of Ext.39/2 to the Respondent. It is a fact that two sets of checklists are available along with Ext.39, one which has been marked as Ext.39/2 and the other xerox copy is marked as Ext.39/3 (one sheet) (with objection). Even though two sets of checklists i.e. Ext.39/2 and Ext.39/3 are available along with Ext.39, but I have handed over a duplicate copy of checklist to the Respondent on 02.04.2019, which was duly acknowledged by the Respondent and the signature of the Respondent is appearing on Ext.39/2. From Ext.39/2, it appears that I have prepared the same on 02.04.2019 at 11.45 a.m. at Cuttack, which I have mentioned therein. As per paragraph 5.16.4 of Ext.38, as a Returning Officer, I am supposed to give notice to the candidates if any column of the affidavit in Form 26 has been left blank or filled by just tick mark/dash marking and in this case, I have

given notice to the Respondent in that respect in the checklist marked as Ext.39/2.”

“The Respondent had filed four sets of nomination papers along with affidavit dated 02.04.2019 along with other documents on 02.04.2019 and I verified each of the nomination paper so also the affidavit and prepared the checklist separately with respect to each set of nomination paper. After verifying the nomination paper marked as Ext.39 along with the affidavit marked as Ext.39/1 and other accompanying documents, I prepared the checklist marked as Ext.39/2. Thereafter, I verified the nomination paper marked as Ext.40 along with the affidavit marked as Ext.40/1 and other accompanying documents, I prepared this checklist marked as Ext.40/2 (one sheet). Thereafter, I verified the nomination paper marked as Ext.41 along with the affidavit marked as Ext.41/1 and other accompanying documents, I prepared this checklist marked as Ext.41/2(one sheet). Thereafter, I verified the nomination paper marked as Ext.42 along with the affidavit marked as Ext.42/1 and other accompanying documents, I prepared this checklist marked as Ext.42/2(one sheet).”

“It is a fact that in Ext.40/2, though I have put the date as 02.04.2019 under my signature above the writing ‘signature of RO/ARO’, but

against the date, time and place, which is available below the 'signature of candidate', no date, time and place has been mentioned."

"The portion 'date, time and place', which is available below the 'signature of candidate' in Ext.39/2 has been filled up, is not in my handwriting and the same is marked as Ext.39/4."

"The checklist Ext.39/2 has been filled up by a team of officers, who were assisting me at the relevant point of time and I have only put my signature and the date above the writing 'signature of RO/ARO' after due verification. I cannot say who has filled up the portion marked as Ext.39/4. The handwritings appearing in the checklist Ext.39/2 are not mine. My team of officers has filled it up under my supervision and instruction."

"The checklists dated 02.04.2019, i.e. Ext.40/2, Ext.41/2 and Ext.42/2 have been filled up by a team of officers, who were assisting me at the relevant point of time under my instruction and supervision and I have only put my signature and the date above the writing 'signature of RO/ARO' after due verification. The date and time and place which are appearing below the 'signature of candidate' in Ext.40/2 have not been filled up and the same is marked as

Ext.40/3. I cannot say who has filled up date and time and place which are appearing below the 'signature of candidate' in Ext.41/2 and the same is marked as Ext.41/3. I cannot say who has filled up date and time and place which are appearing below the 'signature of candidate' in Ext.42/2 and the same is marked as Ext.42/3. Different officers of my team have filled up the handwritten portion of Ext.39/2, Ext.40/2, Ext.41/2 and Ext.42/2 under my supervision and instruction. I cannot recollect now as to who were the officers of my team were then who filled the handwritten portion of Ext.39/2, Ext.40/2, Ext.41/2 and Ext.42/2 under my supervision and instruction. I do not remember who were the officers and staff of my team then assisting me during the preparation of checklists under Ext.39/2, Ext.40/2, Ext.41/2 and Ext.42/2. It is a fact that in Ext.40/2, Ext.41/2 and Ext.42/2, I have not put a tick mark in Col.(b) under the headings of 'the following documents which have not been filed should be filed as indicated below' as I have done in Ext.39/2. It is a fact that in Ext.41/2 I have not put any mark in Columns (a), (b) and (c) under the headings of 'the following documents which have not been filed should be filed as indicated below'. Since in Sl.No.1 of Ext.41/2, it has been indicated that the affidavit in Form 26 is not as per the prescribed format and Col. Nos. (5), (6),

(7) and (8) not properly mentioned, there was no necessity of again specifying the same by filling up of Col.Nos. (a), (b) and (c) under the headings of 'the following documents which have not been filed should be filed as indicated below'."

Q. Why in Ext.39/2, you have put a tick mark in Co. (b) under the headings of 'the following documents which have not been filed should be filed as indicated below' and not in Ext.40/2, Ext.41/2 and Ext.42/2?

Ans. I cannot assign any reason why it has been done like that.

"The Respondent had filed four sets of nomination papers along with four affidavits in Form 26 apart from other required documents and I have prepared four checklists after verifying the same. It is a fact that after submission of the revised affidavit in Form 26 by the Respondent on 04.04.2019, I prepared a checklist of documents in duplicate. The original of the said checklist dated 04.04.2019 was kept with the nomination paper and the duplicate was handed over to the Respondent after taking his signature. The original checklist dated 04.04.2019 is marked as Ext.47."

“(Witness volunteers)- In Ext.47, the serial numbers of four nomination papers i.e. 02, 03, 04 and 05/LA/2019/RO have been mentioned in the top by me. Again says, the same has been filled up by the team of officers, who were assisting me at the relevant point of time under my instruction and supervision.”

“The handwritten portion in Ext.47 has also been filled up by the team of officers. I have put only signature and date in Ext.47. The witness volunteers - After due verification, I put my signature and date in Ext.47. After due verification of Ext.43, Ext.44, Ext.45 and Ext.46, I instructed my team of officers to fill up checklist Ext.47 since I found that all the columns are filled up. Only Ext.43 was the original one and Ext.44, Ext.45 and Ext.46 are the xerox attested copies of Ext.43. I cannot say who has filled up the date and time and place in Ext.47 which are appearing below ‘the signature of candidate’. The relevant portion is marked as Ext.47/1. I cannot say the name and designation of the officer or the staff of my team who filled up handwritten portion of Ext.47.”

“On 02.04.2019 I personally verified the four sets of nomination papers under Ext.39, Ext.40, Ext.41 and Ext.42 along with the accompanying documents and affidavits under Ext.39/1, Ext.40/1, Ext.41/1 and Ext.42/1 one after

another. I cannot say how much time it took to verify each set of nomination papers along with accompanying documents and affidavit even approximately. After verifying first set of nomination paper along with accompanying documents and affidavit, I prepared one check list and then I proceeded to verify the 2nd set and in the like manner 3rd set and 4th set.”

“This is the downloaded and printed copy of Ext.32/5 as per the order of this Court dated 03.05.2023 marked as Ext.32/7 and the relevant portion where it is mentioned ‘Affidavit Uploaded: 2nd April 2019’ is marked as Ext.32/8. This is the downloaded and printed copy of nomination paper Ext.39 as per the order of this Court dated 03.05.2023 marked as Ext.39/5. This is the downloaded and printed copy of the affidavit Ext.43 as per the order of this Court dated 03.05.2023 marked as Ext.43/1.”

“This is the downloaded and printed copy of Ext.33/5 as per the order of this Court dated 03.05.2023 marked as Ext.33/7 and the relevant portion where it is mentioned ‘Affidavit Uploaded: 2nd April 2019’ is marked as Ext.33/8. This is the downloaded and printed copy of nomination paper Ext.40 as per the order of this Court dated 03.05.2023 marked as Ext.40/4. This is the downloaded and printed copy of the

affidavit Ext.44 as per the order of this Court dated 03.05.2023 marked as Ext.44/1.”

“This is the downloaded and printed copy of Ext.34/5 as per the order of this Court dated 03.05.2023 marked as Ext.34/7 and the relevant portion where it is mentioned ‘Affidavit Uploaded: 2nd April 2019’ is marked as Ext.34/8. This is the downloaded and printed copy of nomination paper Ext.41 as per the order of this Court dated 03.05.2023 marked as Ext.41/4. This is the downloaded and printed copy of the affidavit Ext.45 as per the order of this Court dated 03.05.2023 marked as Ext.45/1.”

“This is the downloaded and printed copy of Ext.35/5 as per the order of this Court dated 03.05.2023 marked as Ext.35/7 and the relevant portion where it is mentioned ‘Affidavit Uploaded: 2nd April 2019’ is marked as Ext.35/8. This is the downloaded and printed copy of nomination paper Ext.42 as per the order of this Court dated 03.05.2023 marked as Ext.42/4. This is the downloaded and printed copy of the affidavit Ext.46 as per the order of this Court dated 03.05.2023 marked as Ext.46/1.”

“I cannot say whether any permission is necessary for a voter to download and print out the nomination paper, affidavit in Form 26 uploaded by the Returning Officer in the web

portal of Election Commission of India. No permission of mine is necessary if anyone wants to download and print out the nomination paper, affidavit in Form 26 of the Respondent uploaded by me in the web portal of the Election Commission of India. I cannot say whether permission of the District Election Officer, Chief Electoral Officer, Odisha or Election Commission of India is necessary for downloading and printing out the nomination paper, affidavit in Form 26 of the Respondent uploaded by me in the web portal of the Election Commission of India."

"It is not a fact that in violation of the provisions contemplated under the Representation of the People Act, 1951, the Conduct of Elections Rules, 1961 and Handbook for Returning Officer (Ext.38), I accepted Ext.39, Ext.40, Ext.41 and Ext.42 and Ext.43, Ext.44, Ext.45 and Ext.46. It is not a fact that I have not received the affidavits of the respondent under Ext.39/1, Ext.40/1, Ext.41/1 and Ext.42/1 on 02.04.2019."

"Ext.39 is the nomination paper filed by the Respondent which I have numbered as 02/LA/2019 dated 02.04.2019 which was received by me at 11.20 a.m. and it consists of seventy three sheets apart from nomination papers which includes other documents in

connection with the nomination of the Respondent and it is in one bunch. Ext.39 i.e. Form 2B upto Part-IV is in four sheets and apart from it, Part-V of Form 2B which is my decision accepting the nomination paper of the Respondent is available and it is in one sheet and marked as Ext.AW. In Ext.AW, I have taken a decision that the nomination paper of the Respondent Mohammed Moquim is valid in accordance with section 36 of the Representation of People Act, 1951 and I have put my signature thereon with date as 05.04.2019 and the said portion is marked as Ext.AW/1. In the first set of the nomination papers filed by the Respondent numbered as 02/LA/2019, after Ext.AW, Ext.39/1 appears, which is the affidavit in Form 26 dated 02.04.2019 of the Respondent and it consists of twenty three sheets."

"After Ext.BK, in the same bunch, the original 'checklist of documents in connection with filing of nomination' granted by me in favour of the Respondent on 02.04.2019 with respect to nomination Sl.No. 02 which has been received by the Respondent on 02.04.2019 at 11.45 a.m. at Cuttack is available, which is in one sheet and the same has already been marked as Ext. 39/2. I have mentioned in Ext.39/2 against its Sl.No.1 against the document 'affidavit in Form 26' that

'not as per the prescribed format (column/SI.No.5, 6, 7 & 8 not properly mentioned)'. I have mentioned in Ext.39/2 against its SI.No.2 against the document 'certified extract of electoral roll (when candidate is an elector of a different constituency) as 'NA'. I have mentioned in Ext.39/2 against its SI.No.3 against the document 'Form A and B (applicable in the case of candidates set up by political parties)' as 'yes'. I have mentioned in Ext.39/2 against its SI.No.4 against the document 'copy of caste certificate (if the candidate claims to belong to SC/ST)' as 'NA'. I have mentioned in Ext.39/2 against its SI.No.5 against the document 'security deposit (whether made)' as 'yes'. I have mentioned in Ext.39/2 against its SI.No.6 against the document 'oath and affirmations (whether taken)' as 'yes'. In Ext.39/2 after Sl. Nos.1 to 6, there is a heading 'the following documents which have not been filed should be filed as indicated below', against its item (a) the gaps have not been filled up by me and I have put "dash" mark, against its item (b), I have put a 'tick' mark and thereby the candidate has been directed to submit the revised affidavit with columns duly filled up before the commencement of scrutiny of nominations, failing which the nomination paper will be liable to be rejected, against its item (c),

I have not filled up the gaps and I have put “dash” marks.”

To Court:

Q. According to you, as per Ext.39/2, there was only one defect in the nomination paper bearing Sl.No.02 filed by the Respondent and that was the incomplete affidavit in Form 26, which was not in prescribed format?

Ans. Yes.

“Ext.39/2 was prepared in original as well as in duplicate by me. The original checklist was kept in the bunch of first set of nomination paper of the Respondent bearing Sl.No.02/LA/2019. The duplicate of the checklist was handed over to the Respondent and he received the same on 02.04.2019 at 11:45 a.m. by putting his signature, which is one sheet and the same is marked as Ext.BL (which was earlier marked as X/2). My signature, date and seal appearing on Ext.BL is marked as Ext.BL/1 and the signature, date, time and place of the Respondent on Ext.BL is marked as Ext.BL/2. The format of the checklist has been prescribed by the Election Commission of India in Ext.38 at pages 76 and 77. Being a Returning Officer, I cannot alter or modify the format of checklist and I have only to fill it up after receiving the nominations from

different candidates and after preliminary examination of the same.”

To Court:

Q. From whom you received Ext.43 which is dated 03.04.2019 and when?

Ans. From the Respondent and that too on 04.04.2019.

Q. How did Ext.43 came to the bunch of the nomination paper bearing Sl.No.02/LA/2019?

Ans. After receiving Ext.43 from the Respondent on 04.04.2019, I put it in the bunch of the nomination paper bearing Sl.No.02/LA/2019.

Q. Please see Ext.43 and answer as to when and from whom the Respondent purchased the stamp paper?

Ans. The document in Ext.43 (stamp paper) indicates that it was purchased on 30.03.2019 from one Prasanta Kumar Dash, Stamp Vendor.

Q. Please look into Ext.43 and answer whether it contains at what time on 03.04.2019, the affidavit was sworn before the Notary Public?

Ans. After verifying Ext.43, the witness answers 'no'.

“After Ext.43 in the same bunch, there is original ‘checklist of documents in connection with filing of nominations’ granted by me to the Respondent with respect to nomination papers Sl.Nos. 02, 03, 04, 05/LA/2019/RO which is one sheet and the same is already marked as Ext.47. After preparation of Ext.47 in original and in duplicate, I handed over the duplicate copy to the Respondent on 04.04.2019 which has been handed over by me and received by the Respondent on 04.04.2019 at 12.20 p.m. at Cuttack. The duplicate checklist of documents in connection with filing of nominations’ granted by me to the Respondent with respect to nomination papers Sl.Nos.02, 03, 04, 05/LA/2019/RO, which is one sheet, is marked as Ext.BP (earlier marked as X/7). This is my signature, date and seal appearing on Ext.BP, which is marked as Ext. BP/1. The signature, date and time of the Respondent appearing on Ext.BP is marked as Ext. BP/2. I have mentioned in Ext.47 as well as in Ext.BP that the affidavit in Form 26 with all the columns filled up as ‘yes’ and the affidavit has been sworn before Notary in Sl.No.1 and since documents under Sl.Nos.2,3,4,5 and 6 have been earlier complied with on 02.04.2019, I have mentioned ‘NA’. Ext.43 i.e. the revised affidavit in Form 26 was filed by the Respondent in time. After Ext.43 in the same bunch, the forwarding letter of the

Respondent dated 03.04.2019 enclosing therein the revised affidavit is there which is in one sheet and the same is marked as Ext.BQ (with objection). The signature of the Respondent in Ext.BQ is marked as Ext.BQ/1. The Respondent while filing Ext.43 also filed three sets of photo copy of Ext.43 duly attested by Notary Public to be true copy, which I kept in nomination paper SI.No.03/LA/2019, 04/LA/2019 and 05/LA/2019 respectively and those attested photocopy of the revised affidavits have already been marked as Ext.44, Ext.45 and Ext.46 respectively.”

“After submission of revised affidavit in Ext.43 and the forwarding letter in Ext.BQ, the total sheet of first set of nomination paper bearing SI.No.02/LA/2019 became 73 (seventy three) sheets and i.e. Ext.39 (four sheets), Ext.AW (one sheet), Ext.39/1 (23 sheets), Ext.AX (one sheet), Ext.AY (one sheet), Ext.AZ (one sheet), Ext.BA (one sheet), Ext.BB (one sheet), Ext.BC (one sheet), Ext.BD (one sheet), Ext. BE(one sheet), Ext.BF (one sheet), Ext.BG (one sheet), Ext.BH(one sheet), Ext.BJ (one sheet), Ext.BK (one sheet), Ext.39/2 (one sheet), Ext.BM (one sheet), Ext.39/3 (one sheet), Ext.43 (twenty seven sheets), Ext.47(one sheet) and Ext.BQ (one sheet). Ext.39/2, Ext.39/3 and Ext.47 (which are total three sheets) have been prepared by me whereas the rest of 70 sheets

out of the total 73 sheets of the bunch available in the first set of nomination bearing Sl.No. 02/LA/2019 have been submitted by the Respondent.”

“Ext.40 is the nomination paper filed by the Respondent which I have numbered as 03/LA/2019 dated 02.04.2019 which was received by me at 11.20 a.m. and it consists of total sixty-eight sheets and apart from nomination paper in Form 2B (upto Part-IV), which is the 2nd set of nomination papers of the respondent, includes other documents in connection with his nomination and it is in one bunch. Ext.40 i.e. Form 2B upto Part-IV is in four sheets and apart from it, Part-V of Form 2B which is my decision accepting the nomination paper of the Respondent is there and it is in one sheet and marked as Ext.BR. In Ext.BR, I have taken a decision that the nomination paper of the Respondent Mohammed Moquim is valid in accordance with section 36 of the Representation of the People Act, 1951 and I have put my signature thereon with date as 05.04.2019 and the said portion on Ext.BR is marked as Ext.BR/1. In the 2nd set of the nomination papers filed by the Respondent numbered as 03/LA/2019, after Ext.BR, in that bunch, Ext.40/1 is there, which is the affidavit in

Form 26 dated 02.04.2019 of the Respondent and it consists of twenty-three sheets.”

“After Ext.CC, in the same bunch, the original ‘checklist of documents in connection with filing of nomination’ granted by me in favour of the Respondent on 02.04.2019 with respect to nomination Sl. No. 03/LA/2019/RO is there which has been received by the Respondent, which is in one sheet and the same has already been marked as Ext. 40/2. I have mentioned in Ext.40/2 against its Sl.No.1 against the document ‘affidavit in Form 26’ that ‘not as per the prescribed format (Col. No. 5, 6, 7 & 8 not properly mentioned)’. I have mentioned in Ext.40/2 against its Sl.No.2 against the document ‘certified extract of electoral roll (when candidate is an elector of a different constituency)’ as ‘NA’ as after verification of original final voter list for the year 2019, I was satisfied that the Respondent is an elector of 90-Barabati Cuttack Assembly Constituency. I have mentioned in Ext.40/2 against its Sl.No.3 against the document ‘Form A and B (applicable in the case of candidates set up by political parties)’ as ‘Yes’. I have mentioned in Ext.40/2 against its Sl.No.4 against the document ‘copy of caste certificate (if the candidate claims to belong to SC/ST)’ as ‘NA’. I have mentioned in Ext.40/2 against its Sl.No.5 against the

document 'security deposit (whether made)' as 'Yes'. I have mentioned in Ext.40/2 against its Sl.No.6 against the document 'oath and affirmations (whether taken)' as 'Yes'. In Ext.40/2, after its Sl. Nos. 1 to 6, there is a heading 'the following documents which have not been filed should be filed as indicated below', against its item (a) the gaps have not been filled up by me and I have put "dash" marks on the gaps, against its item (b), the candidate has been directed to the effect that, 'Above-mentioned columns in the Affidavit in Form 26 have been left blank. You must submit a revised Affidavit with columns duly filled up before the commencement of scrutiny of nominations, failing which the nomination paper will be liable to be rejected', against its item (c), I have not filled up the gaps and I have put "dash" marks on the gaps. Ext.40/2 was prepared in original as well as in duplicate by me. The original checklist was kept in the bunch of 2nd set of nomination papers of the Respondent bearing Sl.No.03/LA/2019. The duplicate of the checklist was handed over to the Respondent and he received the same by putting his signature, which is in one sheet and the same is marked as Ext.CD (which was earlier marked as X/3). The portion containing my signature, date and seal appearing on Ext.CD is marked as Ext.CD/1 and the signature of the

Respondent on Ext.CD is marked as Ext.CD/2. The format of the checklist has been prescribed by the Election Commission of India in Ext.38 at its pages 76 and 77. Being a Returning Officer, I cannot alter or modify the format of checklist and I have only to fill it up after receiving the nominations from different candidates and after preliminary examination of the same.”

“After Ext.CF, in the same bunch, the photocopy of the revised affidavit in Form 26 dated 03.04.2019 of the Respondent is there which is attested by the notary public to be true copy, which is in 27 sheets, and the same has already been marked as Ext.44. Ext.44 was received by me from the Respondent on 04.04.2019 well within time and after receiving the same, I have kept it along with the 2nd set of nomination papers of the Respondent bearing Sl. No. 03/LA/2019.”

“The 2nd set of nomination papers of the Respondent bearing Sl.No.03/LA/2019 are 68 (sixty-eight) sheets in total i.e. Ext.40 (four sheets), Ext.BR (one sheet), Ext.40/1 (23 sheets), Ext.BS (one sheet), Ext.BT (one sheet), Ext.BU (one sheet), Ext.BV (one sheet), Ext.BW (one sheet), Ext.BX (one sheet), Ext.BY (one sheet), Ext. BZ (one sheet), Ext.CA (one sheet), Ext.CB (one sheet), Ext.CC (one sheet), Ext.40/2 (one sheet), Ext.CF (one sheet) and

Ext.44 (twenty-seven sheets). Ext.40/2 (one sheet) has been prepared by me whereas the rest of 67 sheets out of the total 68 sheets of the bunch available in the 2nd set of nomination bearing Sl. No. 03/LA/2019 have been submitted by and on behalf of the Respondent.”

“Ext.41 is the nomination paper filed by the Respondent which I have numbered as 04/LA/2019 dated 02.04.2019 which was received by me at 11.20 a.m. and it consists of total sixty-eight sheets and apart from nomination paper in Form 2B (upto Part-IV) which is the 3rd set of nomination papers of the Respondent, includes other documents in connection with his nomination and it is in one bunch. Ext.41 i.e. Form 2B upto Part-IV is in four sheets and apart from it, Part-V of Form 2B which is my decision accepting the nomination paper of the Respondent is there and it is in one sheet and marked as Ext.CG. In Ext.CG, I have taken a decision that the nomination paper of the Respondent Mohammed Moquim is valid in accordance with section 36 of the Representation of the People Act, 1951 and I have put my signature and seal thereon with date as 05.04.2019 and the said portion on Ext.CG is marked as Ext.CG/1. In the 3rd set of the nomination papers filed by the Respondent numbered as 04/LA/2019, after Ext.CG, in that

bunch, Ext.41/1 is there, which is the affidavit in Form 26 dated 02.04.2019 of the Respondent and it consists of twenty-three sheets.”

“After Ext.CT, in the same bunch, the original ‘checklist of documents in connection with filing of nomination’ granted by me in favour of the Respondent on 02.04.2019 with respect to nomination Sl. No. 04/LA/2019/RO is there which has been received by the RESPONDENT on 02.04.2019 at 11.45 a.m. at Cuttack, which is in one sheet and the same has already been marked as Ext. 41/2. I have mentioned in Ext.41/2 against its Sl.No.1 against the document ‘affidavit in Form 26’ that ‘not as per the prescribed format (Column Nos.5, 6, 7 & 8 not properly mentioned)’. I have mentioned in Ext.41/2 against its Sl.No.2 against the document ‘certified extract of electoral roll (when candidate is an elector of a different constituency)’ as ‘NA’ as the Respondent is an elector of 90-Barabati Cuttack Assembly Constituency. I have mentioned in Ext.41/2 against its Sl.No.3 against the document ‘Form A and B (applicable in the case of candidates set up by political parties)’ as ‘Yes’. I have mentioned in Ext.41/2 against its Sl.No.4 against the document ‘copy of caste certificates (if the candidate claims to belong to SC/ST)’ as ‘NA’. I have mentioned in Ext.41/2 against its

Sl.No.5 against the document 'security deposit (whether made)' as 'Yes'. I have mentioned in Ext.41/2 against its Sl.No.6 against the document 'oath and affirmations (whether taken)' as 'Yes'. In Ext.41/2, after its Sl. Nos. 1 to 6, there is a heading 'the following documents which have not been filed should be filed as indicated below', against its item (a) the gaps have not been filled up by me, against its item (b), the candidate has been directed to the effect that, 'Above-mentioned columns in the Affidavit in Form 26 have been left blank. You must submit a revised Affidavit with columns duly filled up before the commencement of scrutiny of nominations, failing which the nomination paper will be liable to be rejected', against its item (c). I have not filled up the gaps. Ext.41/2 was prepared in original as well as in duplicate by me. The original checklist was kept in the bunch of 3rd set of nomination papers of the Respondent bearing Sl.No.04/LA/2019. The duplicate of the checklist was handed over to the Respondent and he received the same by putting his signature on 02.04.2019 at 11.45 a.m. at Cuttack, which is in one sheet and the same is marked as Ext.CU (which was earlier marked as X/4). The portion containing my signature, date and seal appearing on Ext.CU is marked as Ext.CU/1 and the signature of the Respondent with date, time and place on Ext.CU

is marked as Ext.CU/2. The format of the checklist has been prescribed by the Election Commission of India in Ext.38 at its pages 76 and 77. Being a Returning Officer, I cannot alter or modify the format of checklist and I have only to fill it up after receiving the nominations from different candidates and after preliminary examination of the same.”

“After Ext.CV, in the same bunch, the photocopy of the revised affidavit in Form 26 dated 03.04.2019 of the Respondent is there which is attested by the notary public to be true copy, which is in 27 sheets, and the same has already been marked as Ext.45. Ext.45 was received by me from the Respondent on 04.04.2019 well within time and after receiving the same I have kept it along with the 3rd set of nomination papers of the Respondent bearing Sl. No. 04/LA/2019.”

“The 3rd set of nomination papers of the Respondent bearing Sl.No.04/LA/2019 are 68 (sixty-eight) sheets in total i.e. Ext.41 (four sheets), Ext.CG (one sheet), Ext.41/1 (23 sheets), Ext.CH (one sheet), Ext.CJ (one sheet), Ext.CK (one sheet), Ext.CL (one sheet), Ext.CM (one sheet), Ext.CN (one sheet), Ext.CP (one sheet), Ext. CQ (one sheet), Ext.CR (one sheet), Ext.CS (one sheet), Ext.CT (one sheet), Ext.41/2 (one sheet), Ext.CV (one sheet) and

Ext.45 (twenty-seven sheets). Ext.41/2 (one sheet) has been prepared by me whereas the rest of 67 sheets out of the total 68 sheets of the bunch available in the 3rd set of nomination bearing Sl. No. 04/LA/2019 have been submitted by the Respondent.”

“Ext.42 is the nomination paper filed by the Respondent which I have numbered as 05/LA/2019 dated 02.04.2019 which was received by me at 11.20 a.m. and it consists of total sixty-nine sheets and apart from nomination paper in Form 2B (up to Part-IV) which is the 4th set of nomination papers of the Respondent, includes other documents in connection with his nomination and it is in one bunch. Ext.42 i.e. Form 2B up to Part-IV is in four sheets and apart from it, Part-V of Form 2B which is my decision accepting the nomination paper of the Respondent is there and it is in one sheet and marked as Ext.CX. In Ext.CX, I have taken a decision that the nomination paper of the Respondent Mohammed Moquim is valid in accordance with section 36 of the Representation of the People Act, 1951 and I have put my signature and seal thereon with date as 05.04.2019 and the said portion on Ext.CX is marked as Ext.CX/1. In the 4th set of the nomination papers filed by the Respondent numbered as 05/LA/2019, after Ext.CX, in that

bunch, Part-VI of Form-2B is there which is 'receipt for nomination paper and notice of scrutiny' granted by me on 02.04.2019 in favour of the Respondent Mohammed Moquim with respect to nomination paper Sl.No.05/LA/19 which is in one sheet and the same is marked as Ext.CY. My signature, date and seal appearing on Ext. CY is marked as Ext.CY/1. After Ext.CY, in the same bunch, Ext.42/1 is there, which is the affidavit in Form 26 dated 02.04.2019 of the Respondent and it consists of twenty-three sheets."

"After Ext.DK, in the same bunch, the original 'checklist of documents in connection with filing of nomination' granted by me in favour of the Respondent on 02.04.2019 with respect to nomination Sl. No.05/LA/2019/RO is there which has been received by the Respondent on 02.04.2019 at 11.45 a.m. at Cuttack, which is in one sheet and the same has already been marked as Ext. 42/2. I have mentioned in Ext.42/2 against its Sl.No.1 against the document 'affidavit in Form 26' that 'not as per the prescribed format (Column No. 5, 6, 7 & 8) not properly mentioned'. I have mentioned in Ext.42/2 against its Sl.No.2 against the document 'certified extract of electoral roll (when candidate is an elector of a different constituency)' as 'NA'. I have mentioned in

Ext.42/2 against its Sl.No.3 against the document 'Form A and B (applicable in the case of candidates set up by political parties)' as 'Yes'. I have mentioned in Ext.42/2 against its Sl.No.4 against the document 'copy of caste certificates (if the candidate claims to belong to SC/ST)' as 'NA'. I have mentioned in Ext.42/2 against its Sl.No.5 against the document 'security deposit (whether made)' as 'Yes'. I have mentioned in Ext.42/2 against its Sl.No.6 against the document 'oath and affirmations (whether taken)' as 'Yes'. In Ext.42/2, after its Sl. Nos. 1 to 6, there is a heading 'the following documents which have not been filed should be filed as indicated below', against its item (a) the gaps have not been filled up by me and I have put 'dash' marks on the gaps, against its item (b), the candidate has been directed to the effect that, 'Above-mentioned columns in the Affidavit in Form 26 have been left blank. You must submit a revised Affidavit with columns duly filled up before the commencement of scrutiny of nominations, failing which the nomination paper will be liable to be rejected', against its item (c), I have not filled up the gaps and I have put 'dash' marks on the gaps. Ext.42/2 was prepared in original as well as in duplicate by me. The original checklist was kept in the bunch of 4th set of nomination papers of the respondent bearing Sl.No.05/LA/2019. The

duplicate of the checklist was handed over to the Respondent and he received the same by putting his signature on 02.04.2019 at 11.45 a.m. at Cuttack, which is in one sheet and the same is marked as Ext.DL (which was earlier marked as X/5). The portion containing my signature, date and seal appearing on Ext.DL is marked as Ext.DL/1 and the signature of the Respondent with date, time and place on Ext.DL is marked as Ext.DL/2. The format of the checklist has been prescribed by the Election Commission of India in Ext.38 at its pages 76 and 77. Being a Returning Officer, I cannot alter or modify the format of checklist and I have only to fill it up after receiving the nominations from different candidates and after preliminary examination of the same.”

“After Ext.DM, ^{सतमेव जगते} in the same bunch, the photocopy of the revised affidavit in Form 26 dated 03.04.2019 of the Respondent is there which is attested by the notary public to be true copy, which is in 27 sheets, and the same has already been marked as Ext.46. Ext.46 was received by me from the Respondent on 04.04.2019 well within time and after receiving the same I have kept it along with the 4th set of nomination papers of the Respondent bearing Sl. No. 05/LA/2019.”

"The 4th set of nomination papers of the Respondent bearing Sl.No.05/LA/2019 are 69 (sixty-nine) sheets in total i.e. Ext.42 (four sheets), Ext.CX (one sheet), Ext.CY (one sheet), Ext.42/1 (23 sheets), Ext.CZ (one sheet), Ext.DA (one sheet), Ext.DB (one sheet), Ext.DC (one sheet), Ext.DD (one sheet), Ext.DE (one sheet), Ext.DF (one sheet), Ext. DG (one sheet), Ext.DH (one sheet), Ext.DJ (one sheet), Ext.DK (one sheet), Ext.42/2 (one sheet), Ext.DM (one sheet) and Ext.46 (twenty-seven sheets). Ext.42/2 (one sheet) and Ext. DM (one sheet) have been prepared by me whereas the rest of 67 sheets out of the total 69 sheets of the bunch available in the 4th set of nomination papers bearing Sl. No. 05/LA/2019 have been submitted by the Respondent."

"Ext.43, Ext.44, Ext.45 and Ext.46, which are the affidavits in Form-26 dated 03.04.2019 of the Respondent, have been filed by Respondent Mohammed Moquim on 04.04.2019 well within time in compliance with my instruction as well as instruction of the Election Commission of India given under Ext.39/2, Ext.40/2, Ext.41/2 and Ext.42/2 i.e. checklists dated 02.04.2019. After receipt of Ext.43, Ext.44, Ext.45 and Ext.46, which are affidavits in Form-26 dated 03.04.2019 of the Respondent on 04.04.2019, I granted `checklist of documents in connection

with filing of nomination' with respect to nomination Sl. Nos. 02, 03, 04, 05/LA/2019 to the Respondent vide Ext.47 and Ext.BP indicating the receipt of the revised affidavit in Form-26. After receipt of Ext.43, Ext.44, Ext.45 and Ext.46, which are affidavits in Form-26 dated 03.04.2019 of the Respondent on 04.04.2019 and after granting checklist to that effect, I kept Ext.43, Ext.44, Ext.45 and Ext.46 in the bunch of 1st set, 2nd set, 3rd set and 4th set of nomination papers of the Respondent respectively. I also kept Ext.47 i.e. checklist dated 04.04.2019 in the bunch of 1st set of nomination papers of the Respondent."

"If any candidate fails to file any required document along with his nomination papers, on the date of its presentation, the returning officer after preliminary examination of that nomination paper shall intimate the same to that candidate in the checklist further directing the candidate in the checklist to submit the required document(s) within the stipulated time. When that candidate submits the required document(s) within the stipulated time as mentioned in the checklist, the returning officer has to keep the said document(s) along with the bunch of nomination papers of the candidate filed earlier and during scrutiny of nominations, the returning officer has to take the entire bunch of that nomination set

for scrutiny and for making his decision accepting or rejecting that set of nomination of the candidate.”

“Ext.E is the 1st set of nomination papers filed by the Election Petitioner which I have numbered as Sl.No. 06/LA/2019 dated 02.04.2019 which was received by me at 12.20 p.m. and it consists of total forty-eight sheets in one bunch.”

“This is the original ‘checklist of documents in connection with filing of nomination’ prepared and granted by me in favour of the Election Petitioner on 02.04.2019 with respect to his nomination bearing Sl. No. 06/LA/2019 which has been received by the Election Petitioner on 02.04.2019 at Cuttack, which is in one sheet and the same has already been marked as Ext.U. I have mentioned in Ext.U against its Sl.No.1 against the document ‘affidavit in Form 26’ as ‘Yes...Yes, Notary Public’. I have mentioned in Ext.U against its Sl.No.2 against the document ‘certified extract of electoral roll (when candidate is an elector of a different constituency) as ‘NA’ as the Election Petitioner is an elector of 90-Barabati Cuttack Assembly Constituency. I have mentioned in Ext.U against its Sl.No.3 against the document ‘Form A and B (applicable in the case of candidates set up by political parties)’ as ‘Yes’. I have mentioned in

Ext.U against its Sl.No.4 against the document 'copy of caste certificate (if the candidate claims to belong to SC/ST)' as 'NA'. I have mentioned in Ext.U against its Sl.No.5 against the document 'security deposit (whether made)' as 'Yes'. I have mentioned in Ext.U against its Sl.No.6 against the document 'oath and affirmations (whether taken)' as 'Yes'. In Ext.U after Sl. Nos.1 to 6, there is a heading 'the following documents which have not been filed should be filed as indicated below', against its item (a) the gaps have not been filled up by me and I have put 'dash' marks on the gaps, against its item (b), the candidate has been directed to the effect that, 'Above-mentioned columns in the Affidavit in Form 26 have been left blank. You must submit a revised Affidavit with columns duly filled up before the commencement of scrutiny of nominations, failing which the nomination paper will be liable to be rejected', but the said direction under item (b) is not applicable to the Election Petitioner as he had filed his affidavit in Form 26 (Ext.E/1) with all columns filled up and duly notarized as has been mentioned against Sl. No.1 of the checklist (Ext.U), against its item (c) the gaps have not been filled up by me and I have put "dash" marks on the gaps. The endorsements made by me in Ext.U reveal that the nomination papers filed by the Election Petitioner along with the

accompanying documents were in order and no document was wanting.”

“Ext.U was prepared in original as well as in duplicate by me. The original checklist (Ext.U) which is required to be kept in the bunch of first set of nomination papers of the Election Petitioner bearing Sl.No.06/LA/2019 having been produced by the District Election Officer, Cuttack later pursuant to the order of this Court be kept along with the bunch of first set of nomination papers of the Election Petitioner bearing Sl.No.06/LA/2019. The duplicate of the checklist was handed over to the Election Petitioner and he received the same on 02.04.2019 at Cuttack by putting his signature. The format of the checklist has been prescribed by the Election Commission of India in Ext.38 at pages 76 and 77. Being a Returning Officer, I cannot alter or modify the format of checklist and I have only to fill it up after receiving the nominations from different candidates and after preliminary examination of the same.”

“After tagging the Ext.U with the bunch of 1st set of nomination papers of the Election Petitioner bearing Sl. No. 06/LA/2019 (Ext.E), the total sheets of the 1st set of nomination papers of the Election Petitioner bearing Sl. No. 06/LA/2019 now comes to 49 (forty-nine) sheets.”

"This is the nomination paper of the candidate, namely, Priyadarshan Pavel is marked as Ext.DP. Affidavit in Form 26 dated 29.03.2019 is marked as Ext.DP/1, checklist of documents is marked as Ext.DP/2, revised affidavit as Ext.DP/3, checklist of revised affidavit as Ext.DP/4 and decision of the Returning Officer as Ext.DP/5. The nomination has been accepted as valid as there is no substantial defect."

"Photocopies of nomination papers filed by each candidate along with photocopy of the affidavit in Form 26 accompanying the nomination should be displayed on my office notice board on the same day on which the nomination has been filed as per Clause 5.20.1 of Ext.38 at page 88. I have followed this instruction meticulously."

To Court

Q. Whether in the case of the Respondent, you as a Returning Officer displayed in your office notice board the entire bunch of nomination papers filed by the Respondent in his four sets of nomination papers or you only displayed the Form 2B and affidavits in Form 26?

Ans. I displayed the photocopies of the entire bunch of nomination papers filed by the Respondent in his four sets of nomination papers in my office notice board.

If anyone furnishes any information contradicting the statements in the nomination Form 2B or the affidavit in Form 26 by means of a duly sworn affidavit, copies of such papers were also required to be displayed by me on my office notice board and I have meticulously followed it.

Q. Whether either the Election Petitioner or any person on his behalf or anyone had furnished any such information contradicting the statements in the nomination papers in Form 2B or affidavits in Form 26 filed by the Respondent vide Ext.39, Ext.40, Ext.41 and Ext.42 i.e. four sets of nomination papers in Form 2B and Ext.39/1, Ext.40/1, Ext.41/1 and Ext.42/1 i.e. affidavits in Form 26 dated 02.04.2019 as well as Ext.43, Ext.44, Ext.45 and Ext.46 i.e. affidavits in Form 26 dated 03.04.2019 by means of a duly sworn affidavit before you?

Ans. No.

“If anyone asks for photocopy of the nomination papers in Form 2B and the affidavits in Form 26 filed by any candidate, as per the provision of Clause 5.20.1 of Ext.38 (pages 88 and 89), I, as the Returning Officer, am required to make the same available to him/her free cost. I have also meticulously followed this provision.”

"As a Returning Officer, I am required to handover photocopies of the nomination papers in Form 2B and its accompanying documents including the affidavits in Form 26 filed by each candidates to the media persons for wide dissemination of the information contained therein as per the provision of Clause 5.20.1 of Ext.38 (page 89) and I have meticulously followed this provision."

"As per Clause 5.20.2 of Ext.38 (page 89), as the Returning Officer, I am required to furnish the photocopies of the affidavits in Form 26 filed by the candidates to the District Election Officer at the earliest who will consolidate all such affidavits in his district and make available of the same to any person or persons desirous of obtaining the same on payment of nominal copying charges and I have meticulously followed this provision."

"As per Clause 5.20.2 of Ext.38 (page 89), as the Returning Officer, I am required to upload both the nominations in Form 2B as well as affidavits in Form 26 filed by the respective candidates in the website of Election Commission of India soon after the candidates file the same which can be viewed by general public and I have meticulously followed this provision and uploaded the nomination papers in Form 2B as well as the affidavits in Form 26

dated 02.04.2019 of the Respondent on the date when he presented the same. I have also uploaded the affidavits in Form 26 dated 03.04.2019 of the Respondent filed on 04.04.2019 on the same day i.e. 04.04.2019 in the official website of the Election Commission of India.”

“While uploading the affidavits in Form 26 dated 03.04.2019 on 04.04.2019 filed by the Respondent, the later affidavit i.e. the affidavits in Form 26 dated 03.04.2019 overrode the earlier affidavits in Form 26 dated 02.04.2019 filed by the Respondent.”

“The earlier affidavits in Form 26 dated 02.04.2019 of the Respondent was incomplete and the same was irrelevant for the purpose of giving complete and correct information to the electors and as such, the same was required to be replaced. The later revised affidavits in Form 26 dated 03.04.2019 filed by the Respondent on 04.04.2019 is available in the website of Election Commission of India, which is relevant for the purpose of giving complete and correct information to the electors.”

“I have strictly followed the provisions under Clause 5.19 and 5.20 of Ext.38 (pages 88 & 89) with respect to nominations in Form 2B and affidavits in Form 26 filed by all the candidates

including the Respondent Mohammed Moquim in the election in question.”

“Before the commencement of scrutiny of nominations i.e. on 05.04.2019 at 11.00 a.m., the nomination papers in Form 2B i.e. Ext.39, Ext.40, Ext.41 and Ext.42 and the affidavits in Form 26 dated 03.04.2019 i.e. Ext.43, Ext.44, Ext.45 and Ext.46 filed by the Respondent were very much available on my office notice board, with the media persons, in the office of the District Election Officer, Cuttack and in the official website of the Election Commission of India for view by the general public.”

“In spite of availability of the nomination papers and affidavits of the respondent to the general public in the aforesaid manner as stated by me in the previous sub-paragraph, nobody including the election petitioner or his agents or any of his supporters raised any objection before me to the nomination papers and affidavits filed by the respondent before or during scrutiny of nominations.”

“The nomination papers in Form 2B and the affidavit in Form 26 filed by the respective candidates in the election in question which were uploaded by me in the official website of Chief Electoral Officer, Odisha and Election Commission of India were available in the web

portals <http://www.ceoorissa.nic.in/main.html>,
<https://affidavit.eci.gov.in/candidate-affidavit>
and
<https://suvidha.eci.gov.in/uploads/acaffidavit>.

These web portals are available under Ext.W which is I.A. No.24 of 2020 filed by the Election Petitioner, which is an application to pass appropriate order directing to preserve all the nomination papers along with the affidavits filed by the Respondent. In the prayer portion under Ext.W, four URL numbers have been given. Each URL number as mentioned in the prayer portion of Ext.W indicates the date of uploading of affidavits in Form 26 dated 03.04.2019 of the respondent on 04.04.2019.”

“The first URL number available in the prayer portion of Ext.W clearly demonstrates that the affidavit in Form 26 dated 03.04.2019 (Ext.43) of the Respondent available with his first set of nomination papers for the year 2019, for Assembly Constituency for the State of Odisha (S18) has been uploaded by me in the year 2019 in the month of April (04) on the date (04) i.e. 04.04.2019 vide uploading number 094823.pdf which would be evident from the same URL number and uploading number available in Ext.W/8 at its top, which is the first page of the affidavit in Form 26 dated 03.04.2019 (Ext.43) of the respondent.”

"The second URL number available in the prayer portion of Ext.W clearly demonstrates that the affidavit in Form 26 dated 03.04.2019 (Ext.44) of the Respondent available with his second set of nomination papers for the year 2019, for Assembly Constituency for the State of Odisha (S18) has been uploaded by me in the year 2019 in the month of April (04) on the date (04) i.e. 04.04.2019 vide uploading number 094946.pdf which would be evident from the same URL number and uploading number available in Ext.W/6 at its top, which is the first page of the photocopy of the affidavit in Form 26 dated 03.04.2019 of the Respondent (Ext.44) attested to be the true copy."

"The third URL number available in the prayer portion of Ext.W clearly demonstrates that the affidavit in Form 26 dated 03.04.2019 (Ext.45) of the Respondent available with his third set of nomination papers for the year 2019, for Assembly Constituency for the State of Odisha (S18) has been uploaded by me in the year 2019 in the month of April (04) on the date (04) i.e. 04.04.2019 vide uploading number 095100.pdf which would be evident from the same URL number and uploading number available in Ext.W/4 at its top, which is the first page of the photocopy of the affidavit in Form 26

dated 03.04.2019 of the Respondent (Ext.45) attested to be the true copy.”

“The fourth URL number available in the prayer portion of Ext.W clearly demonstrates that the affidavit in Form 26 dated 03.04.2019 (Ext.46) of the Respondent available with his fourth set of nomination papers for the year 2019, for Assembly Constituency for the State of Odisha (S18) has been uploaded by me in the year 2019 in the month of April (04) on the date (04) i.e. 04.04.2019 vide uploading number 095209.pdf which would be evident from the same URL number and uploading number available in Ext.W/2 at its top, which is the first page of the photocopy of the affidavit in Form 26 dated 03.04.2019 of the Respondent (Ext.46) attested to be the true copy.”

“All total I received twenty-seven sets of nomination papers from total eleven candidates for the election in question. Apart from the Respondent, in case of the candidate Priyadarshan Pavel, I found the affidavit in Form 26 dated 29.03.2019 (Ext.DP/1) defective and incomplete and accordingly, I issued the check-list i.e. Ext.DP/2 instructing him to file the revised affidavit, which he sworn on 30.03.2019 (Ext.DP/3) and filed on 04.04.2019 and accordingly, I issued a check-list dated 04.04.2019 (Ext.DP/4) showing receipt of the

Ext.DP/3. In case of the candidate Priyadarshan Pavel, after receipt of Ext.DP/3, I also uploaded the same in the official web portal of the Election Commission of India like the affidavit in Form 26 dated 03.04.2019 of the Respondent. I also followed the procedure laid down in Clause 5.20 of Ext.38 (pages 88 & 89) in the case of the candidate Priyadarshan Pavel like the Respondent.”

“This is the downloaded and printed copy of the cover page of the Election Commission of India along with the nomination in Form 2B and affidavit in Form 26 of the candidate Priyadarshan Pavel (total 17 sheets) marked as Ext.DU. In the cover page in Ext.DU, it is mentioned that the affidavit was uploaded on 29.03.2019. The said cover page is marked as Ext.DU/1, the portion showing the affidavit uploaded on 29th March 2019 is marked as Ext.DU/2, the nomination Form 2B of Ext.DU is marked as Ext.DU/3, the revised affidavit in Form 26 appearing under Ext.DU is marked as Ext.DU/4. The original nomination paper of the candidate Priyadarshan Pavel, which has already been marked as Ext.DP (with objection) contains the affidavit dated 29.03.2019 in Form 26 of the candidate, which has already been marked as Ext.DP/1 (with objection). As Ext.DP/1 was incomplete, I issued checklist vide Ext.DP/2

(with objection) to the candidate on 29.03.2019 to submit the revised affidavit with all the columns duly filled up before the commencement of scrutiny of nominations. I received the revised affidavit dated 30.03.2019 from the candidate Priyadarshan Pavel vide Ext.DP/3 (with objection) on 04.04.2019 and accordingly, I issued the checklist vide Ext.DP/4 (with objection) to the candidate showing receipt of Ext.DP/3. When I received the first affidavit dated 29.03.2019 in Form 26 (Ext.DP/1), I uploaded the same in the web portal of the Election Commission of India on 29.03.2019. After receipt of the revised affidavit dated 30.03.2019 in Form 26 (Ext.DP/3) on 04.04.2019, I uploaded the same also in the web portal of the Election Commission of India on 04.04.2019. Ext.DU which was downloaded and printed out today in Court as per the order of the Court passed in I.A. No. 15 of 2023 does not contain the affidavit in Form 26 dated 29.03.2019 (Ext.DP/1) and it only contains the revised affidavit in Form 26 dated 30.03.2019 (Ext.DU/4), which is the downloaded and printed out copy of Ext.DP/3.”

Q. When you uploaded Ext.DP/3 in the web portal of the Election Commission of India on 04.04.2019, whether this later affidavit over-

rode the earlier affidavit i.e. Ext.DP/1 in the web portal of Election Commission of India?

Ans. Yes. Since it is a system based configuration, it happened so. That is the reason why in the cover page of Ext.DU, only the first date of uploading of the affidavit is shown to be '29th March 2019' and not '4th April 2019'.

"When the Respondent on 02.04.2019 submitted his four sets of nomination papers in Form 2B, he along with the same also submitted affidavits in Form 26 dated 02.04.2019. After preliminary examination of such nomination papers and the affidavits filed by the Respondent, in view of Clause 5.16.4 of Ext.38 (page 83), as Returning Officer, I gave notice on 02.04.2019 itself to the Respondent to submit a fresh revised affidavit complete in all respect vide checklists marked as Ext.39/2 (Ext.BL), Ext.40/2 (Ext.CD), Ext.41/2 (Ext.CU) and Ext.42/2 (Ext.DL). The Respondent submitted the revised affidavits dated 03.04.2019 on 04.04.2019 before me, which were within time and the revised affidavits have already been marked as Ext.43, Ext.44, Ext.45 and Ext.46 and accordingly, I issued checklist dated 04.04.2019 to the Respondent, which has already been marked as Ext.47 (Ext.BP) showing receipt of the revised affidavit (Ext.43,Ext.44, Ext.45 and Ext.46)."

Learned counsel for the Respondent Mr. Mishra drew the attention of this Court to the evidence of the Election Petitioner (P.W.1) wherein he has stated that after issuing the certificate for receipt of oath to the candidate, the Returning Officer verifies the entire nomination paper along with the documents filed by the candidate in presence of the candidate on technical stand point. Thereafter, the Returning Officer prepares a checklist in duplicate. The original of the checklist is kept on the record along with the nomination paper and the duplicate of the checklist is given to the candidate. The Returning Officer specifically indicates if there is any short fall in the nomination paper and affidavit in Form 26 filed by the candidate in the checklist giving opportunity to him to rectify the same before the commencement of scrutiny of nomination papers.

Learned counsel for the Respondent Mr. Mishra drew the attention of this Court to the evidence of Dipankar Acharya (P.W.2) wherein he has stated as follows:-

“Ext.1, Ext.2, Ext.3 and Ext.4 are the documents which I have downloaded from the website of the Election Commission of India on 28.06.2022. I have downloaded these documents in my personal computer and my personal computer is operating properly from

the date of downloading till now and all those documents are available in my computer. After downloading the documents Exts.1 to 4, the same have been printed by utilizing my personal printing machine. My personal printing machine is operating properly from the date of such printing till now. I have also downloaded Ext.32, Ext.33, Ext.34 and Ext.35 from the website of the Election Commission of India on 16.11.2022. I have downloaded these documents in my personal computer and printed in my personal printing machine and both the computer as well as the printing machine is operating properly from the date of downloading till now and all those documents are available in my computer. My certificate under section 65-B of the Indian Evidence Act and my signature is not appearing in Ext.1, Ext.2, Ext.3 and Ext.4. However, I have given certificate under section 65-B of the Indian Evidence Act in Ext.32, Ext.33, Ext.34 and Ext.35 and my signature is also appearing in these documents. The certificate given by me under section 65-B of the Indian Evidence Act in Ext.32 is marked as Ext.32/4 and my signatures in the said certificate are marked as Ext.32/1, Ext.32/2 and Ext.32/3. The certificate given by me under section 65-B of the Indian Evidence Act in Ext.33 is marked as Ext.33/4 and my signatures in the said certificate are marked as Ext.33/1, Ext.33/2 and Ext.33/3. The certificate

given by me under section 65-B of the Indian Evidence Act in Ext.34 is marked as Ext. 34/4 and my signatures in the said certificate are marked as Ext. 34/1, Ext. 34/2 and Ext. 34/3. The certificate given by me under section 65-B of the Indian Evidence Act in Ext. 35 is marked as Ext. 35/4 and my signatures in the said certificate are marked as Ext. 35/1, Ext. 35/2 and Ext. 35/3.”

“From Exts.32, 33, 34, and 35, it becomes clear that the affidavit in Form 26 dated 03.04.2019 filed by the Respondent was uploaded on 2nd April 2019. The relevant document in Ext.32 showing the date of uploading of the affidavit is marked as Ext.32/5 (two sheets) and the relevant portion showing the date of uploading of the affidavit is marked as Ext.32/6.”

The relevant document in Ext.33 showing the date of uploading of the affidavit is marked as Ext.33/5 (two sheets) and the relevant portion showing the date of uploading of the affidavit is marked as Ext.33/6.”

“The relevant document in Ext.34 showing the date of uploading of the affidavit is marked as Ext.34/5 (two sheets) and the relevant portion showing the date of uploading of the affidavit is marked as Ext.34/6.”

"The relevant document in Ext.35 showing the date of uploading of the affidavit is marked as Ext.35/5 (two sheets) and the relevant portion showing the date of uploading of the affidavit is marked as Ext.35/6."

"There is no official communication from the Election Commission of India to me to download the documents marked as Exts.1, 2, 3 and 4 and Exts.32, 33, 34 and 35 from its website and prepare and grant certificates under section 65-B of the Indian Evidence Act."

"There is also no official communication from the Returning Officer of 90-Barabati Cuttack Assembly Constituency to me to download the documents marked as Exts.1, 2, 3 and 4 and Exts.32, 33, 34 and 35 from the website of the Election Commission of India and prepare and grant certificates under section 65-B of the Indian Evidence Act."

"There is also no official communication from the District Election Officer to me to download the documents marked as Exts.1, 2, 3 and 4 and Exts.32, 33, 34 and 35 from the website of the Election Commission of India and prepare and grant certificates under section 65-B of the Indian Evidence Act."

"On the instruction of the Election Petitioner, I have downloaded the documents marked as Exts.1, 2, 3 and 4 and Exts.32, 33, 34 and 35 from the website of the Election Commission of India and prepared and granted certificates under section 65-B of the Indian Evidence Act. There is no documentary proof in respect of the instruction given by the Election Petitioner. It was only an oral instruction. The downloading of Exts.1, 2, 3 and 4 were made after the filing of the Election Petition so also Exts.32, 33, 34 and 35 were downloaded after the filing of the Election Petition."

"Apart from downloading the documents marked as Exts.1, 2, 3 and 4 on 28.06.2022 and Exts.32, 33, 34 and 35 on 16.11.2022, I have also downloaded some documents in connection with this election proceeding from the website of the Election Commission of India between 02.04.2019 to 27.06.2022. I have downloaded Form 2B and affidavit in Form 26 of the Respondent during the period from 02.04.2019 to 27.06.2022, but I cannot say what other documents I have downloaded from the website of the Election Commission of India and on what date. I have not downloaded any document from the website of the Election Commission of India in between 29.06.2022 to 15.11.2022. I have not downloaded any document from the website

of the Election Commission of India in between 17.11.2022 till date nor I have downloaded again the copies of Exts.1, 2, 3 and 4 and Exts.32, 33, 34 and 35. In between 02.04.2019 till the filing of my evidence affidavit, I have verified the status of the nomination form and affidavit in Form 26 of the Respondent.”

“In Exts.1, 2, 3 and 4, my signatures and my certificates under section 65-B(4) of the Indian Evidence Act are not there. I have not given any certificate or declaration that Exts.1, 2, 3 and 4 have been downloaded by me. I have handed over the documents under Exts.1, 2, 3 and 4 to Mr. Gopal Agarwal, Advocate for the Election Petitioner after downloading the same. I have kept the hard copies of Exts.1, 2, 3 and 4 with me before handing over the same to Mr. Gopal Agarwal, Advocate.”

“I have not contacted the Returning Officer of 90-Barabati Cuttack Assembly Constituency to get the confirmed list before granting the certificate under section 65-B of the Indian Evidence Act. I have also not contacted the Returning Officer of 90-Barabati Cuttack Assembly Constituency to get the confirmed list before filing my evidence affidavit.”

“I cannot say whether the date of uploading as available at the top of the documents under

Exts. W/2, W/4, W/6 and W/8 to be 04.04.2019 is correct or not.”

“The uploading details as available at the top of the documents under Exts. W/2, W/4, W/6 and W/8 are not there in Exts. 1, 2, 3 and 4 and Exts.32, 33, 34 and 35, but the upload date has been mentioned in Exts.1, 2, 3 and 4 and Exts.32, 33, 34 and 35.”

“The hyperlinks which I have mentioned in Exts.32, 33, 34 and 35 in my certificate under section 65-B of the Indian Evidence Act as well as in paragraph 5 of my evidence affidavit do not find place in the documents under Ext.W.”

“On comparison of hyperlinks mentioned in my certificate under section 65-B of the Indian Evidence Act under Exts.32, 33, 34 and 35 and paragraph 5 of my evidence affidavit with that of the hyperlinks mentioned in I.A. No. 23 of 2022 marked as Ext.Z filed by the Election Petitioner to preserve all the nomination papers along with the affidavits filed by the Respondent and uploaded by the Returning Officer on the web portal/hyperlinks, I find that they do not tally with each other.”

“My laptop/computer whose model No. and Serial No. has been mentioned in paragraph 5 of my evidence affidavit have never been used by

the Returning Officer of 90-Barabati Cuttack Assembly Constituency in the process of uploading of the nomination paper and affidavit filed by the Respondent on 02.04.2019.”

“Since I am a Law Graduate and I have basic knowledge regarding computer operation as well as internet operation, but I have no Degree relating to skill, qualification and competency in computer operation as well as internet operation.”

“I got the details of the hyperlinks which are mentioned in my certificates under section 65-B of the Indian Evidence Act so also in paragraph 5 of my Evidence Affidavit from the website of the Election Commission of India. It is not a fact that I have no official competency to grant certificates under section 65-B of the Indian Evidence Act. It is not a fact that my personal computer does not satisfy the requirement as prescribed under sub-section (2) of section 65-B of the Indian Evidence Act. It is not a fact that the certificates granted by me in Exts.32, 33, 34 and 35 are not valid certificates in the eye of law as required under sub-section 4 of section 65-B of the Indian Evidence Act.”

“The information which I have received through computer out-put is in public domain and anyone can have access to the same and verify

and make print-out of the same by using computer system and that is how I have mentioned in paragraph 7 of my Evidence Affidavit and also in paragraph 2 of the certificate granted by me under section 65-B of the Indian Evidence Act.”

“It is not a fact that at the instance of the Election Petitioner, I have given incorrect certificates and deposing in favour of the Election Petitioner. It is not a fact that the certificates granted by me under section 65-B of the Indian Evidence Act are all false and my evidence is also false.”

Mr. Mishra, learned counsel for the Respondent submitted that under Paragraph 7(B) of the election petition, the allegation of the Election Petitioner is to the effect that, “Respondent has not filed the affidavit in prescribed Form 26 as required under Section 33A of the R.P. Act, 1951.” According to the Election Petitioner, the Respondent filed his nomination on 02.04.2019 along with the affidavit in Form 26 dated 03.04.2019. Thus, the said affidavit is no affidavit in the eye of law, in contravention of mandate of law and the Returning Officer should have rejected the nomination of the Respondent. According to Mr. Mishra, such allegations on the face of it stands belied in view of the very fact that ‘Checklist’ dated 04.04.2019

(Ext.47/Ext.BP), marked without objection, shows that the affidavits in Form 26 dated 03.04.2019 (Ext.43, Ext.44, Ext.45 and Ext.46) have been filed on 04.04.2019 by the Respondent and the same have been received by the Returning Officer on 04.04.2019 at 12.20 p.m.

Mr. Mishra further argued that the allegations made under Paragraph-7(B) of the election petition are bereft of following material facts:

(a) It has not been pleaded as to why and how the affidavit filed by the Respondent is not in the prescribed Form 26.

(b) It has not been pleaded as to what are the departures available in the affidavit filed by the Respondent from the prescribed Form 26.

(c) It has not been pleaded that on 02.04.2019 the Respondent has filed four sets of nomination papers (Ext.39, Ext.40, Ext.41 and Ext.42) along with his four affidavits in Form 26 dated 02.04.2019 (Ext.39/1, Ext.40/1, Ext.41/1 and Ext.42/1).

(d) It has not been pleaded that on 02.04.2019 the Returning Officer, after preliminary examination of four sets of nomination papers including the affidavits in

Form 26 dated 02.04.2019 filed by the Respondent, found that the affidavits in Form 26 dated 02.04.2019 are not in the prescribed format and the column Nos.5, 6, 7 & 8 not properly mentioned.

(e) It has not been pleaded that the Returning Officer issued four 'Checklists' in original and in duplicate (Ext.39/2, Ext.BL, Ext.40/2, Ext.CD, Ext.41/2, Ext.CU, Ext.42/2 and Ext.DL) on 02.04.2019 with respect to four sets of nomination papers filed by the Respondent (Ext.39, Ext.40, Ext.41 and Ext.42) mentioning therein that the affidavits in Form 26 dated 02.04.2019 are not in the prescribed format and the column Nos.5, 6, 7 & 8 not properly mentioned and further directing therein to the Respondent to file the revised affidavit in Form 26 with all columns filled up before commencement of scrutiny of nominations, failing which his nomination will be liable to be rejected.

(f) It has not been pleaded that in due compliance of the instruction of the Returning Officer given in the 'Checklists' dated 02.04.2019 (Ext.39/2, Ext.BL, Ext.40/2, Ext.CD, Ext.41/2, Ext.CU, Ext.42/2 and Ext.DL), on 04.04.2019 at 12.20 P.M. the Respondent filed the revised affidavits in Form 26 dated

03.04.2019 (Ext.43, Ext.44, Ext.45 and Ext.46) before the Returning Officer.

(g) It has not been pleaded that after receipt of the revised affidavits in Form 26 dated 03.04.2019 (Ext.43, Ext.44, Ext.45 and Ext.46) from the Respondent on 04.04.2019, the Returning Officer on 04.04.2019 issued 'Checklist' (Ext.47, Ext.BP) showing therein that all the columns of the affidavit in Form 26 are filled up and the same has been sworn before Notary.

(h) It has not been pleaded that at the time of filing of nomination papers including the affidavit in Form 26 by the Respondent on 02.04.2019 who perused that the Respondent has filed his affidavits in Form 26 dated 03.04.2019 along with his nomination papers on 02.04.2019.

Omission to plead the above material facts under Paragraph-7(B) of the election petition, according to Mr. Mishra, does not disclose complete cause of action.

Learned counsel Mr. Mishra further argued that the certificate given by P.W.2 under Section 65B of the Indian Evidence Act vide Ext.32/4, Ext.33/4, Ext.34/4 and Ext.35/4 are not acceptable as the same are not in consonance with the requirements of law as laid down under Section 65B of the

Indian Evidence Act. Reliance is placed in the case of **Arjun Panditrao Khotkar -Vrs.- Kailash Kushanrao Gorantyal and others reported in (2020) 7 Supreme Court Cases 1**, wherein the Hon'ble Supreme Court held as follows:-

"21. Section 65 differentiates between existence, condition and contents of a document. Whereas "existence" goes to "admissibility" of a document, "contents" of a document are to be proved after a document becomes admissible in evidence. Section 65-A speaks of "contents" of electronic records being proved in accordance with the provisions of Section 65-B. Section 65-B speaks of "admissibility" of electronic records which deals with "existence" and "contents" of electronic records being proved once admissible into evidence....

22. It will first be noticed that the subject-matter of Sections 65-A and 65-B of the Evidence Act is proof of information contained in electronic records. The marginal note to Section 65-A indicates that "special provisions" as to evidence relating to electronic records are laid down in this provision. The marginal note to Section 65-B then refers to "admissibility of electronic records".

23. Section 65-B(1) opens with a non-obstante clause, and makes it clear that any information that is contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document, and shall be admissible in any proceedings without further proof of production of the original, as evidence of the contents of the original or of any facts stated therein of which direct evidence would be admissible. The deeming fiction is for the reason that "document" as defined by Section 3 of the Evidence Act does not include electronic records.

24. Section 65-B(2) then refers to the conditions that must be satisfied in respect of a computer output, and states that the test for being included in conditions 65-B(2)(a) to 65-B(2)(d) is that the computer be regularly used to store or process information for purposes of activities regularly carried on in the period in question. The conditions mentioned in sub-sections (2)(a) to (2)(d) must be satisfied cumulatively.

25. Under sub-section (4), a certificate is to be produced that identifies the electronic record containing the statement and describes the manner in which it is produced, or gives particulars of the device involved in the production of the electronic record to show that

the electronic record was produced by a computer, by either a person occupying a responsible official position in relation to the operation of the relevant device; or a person who is in the management of "relevant activities" — whichever is appropriate. What is also of importance is that it shall be sufficient for such matter to be stated to the "best of the knowledge and belief of the person stating it". Here, "doing any of the following things ..." must be read as doing all of the following things, it being well settled that the expression "any" can mean "all" given the context....

32. Coming back to Section 65-B of the Evidence Act, sub-section (1) needs to be analysed. The sub-section begins with a non-obstante clause, and then goes on to mention information contained in an electronic record produced by a computer, which is, by a deeming fiction, then made a "document". This deeming fiction only takes effect if the further conditions mentioned in the section are satisfied in relation to both the information and the computer in question; and if such conditions are met, the "document" shall then be admissible in any proceedings. The words "...without further proof or production of the original..." make it clear that once the deeming fiction is given effect by the fulfilment

of the conditions mentioned in the section, the “deemed document” now becomes admissible in evidence without further proof or production of the original as evidence of any contents of the original, or of any fact stated therein of which direct evidence would be admissible.

33. The non-obstante clause in sub-section (1) makes it clear that when it comes to information contained in an electronic record, admissibility and proof thereof must follow the drill of Section 65-B, which is a special provision in this behalf-Sections 62 to 65 being irrelevant for this purpose. However, Section 65-B(1) clearly differentiates between the “original” document-which would be the original “electronic record” contained in the “computer” in which the original information is first stored — and the computer output containing such information, which then may be treated as evidence of the contents of the “original” document. All this necessarily shows that Section 65-B differentiates between the original information contained in the “computer” itself and copies made therefrom — the former being primary evidence, and the latter being secondary evidence.

34. Quite obviously, the requisite certificate in sub-section (4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, a computer

tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where "the computer", as defined, happens to be a part of a "computer system" or "computer network" (as defined in the Information Technology Act, 2000) and it becomes impossible to physically bring such network or system to the court, then the only means of proving information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4). This being the case, it is necessary to clarify what is contained in the last sentence in para 24 of *Anvar P.V.* which reads as "if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act..." This may more appropriately be read without the words "under Section 62 of the Evidence Act...". With this minor clarification, the law stated in para 24 of *Anvar P.V.* does not need to be revisited.

35. In fact, in *Vikram Singh v. State of Punjab*, a three-Judge Bench of this Court followed the law in *Anvar P.V.*, clearly stating that where primary evidence in electronic form has been produced, no certificate under Section 65-B would be

necessary. This was so stated as follows: (SCC pp. 531-32, paras 25-26)

“25. The learned counsel contended that the tape-recorded conversation has been relied on without there being any certificate under Section 65-B of the Evidence Act, 1872. It was contended that audio tapes are recorded on magnetic media, the same could be established through a certificate under Section 65-B and in the absence of the certificate, the document which constitutes electronic record, cannot be deemed to be a valid evidence and has to be ignored from consideration. Reliance has been placed by the learned counsel on the judgment of this Court in *Anvar P.V. v. P.K. Basheer*. The conversation on the landline phone of the complainant situated in a shop was recorded by the complainant. The same cassette containing conversation by which ransom call was made on the landline phone was handed over by the complainant in original to the police. This Court in its judgment dated 25-1-2010 has referred to the aforesaid fact and has noted the said fact to the

following effect: (*Vikram Singh case*, SCC p. 61, para 5)

'5...The cassette on which the conversations had been recorded on the landline was handed over by Ravi Verma to SI Jiwan Kumar and on a replay of the tape, the conversation was clearly audible and was heard by the police.'

26. The tape-recorded conversation was not secondary evidence which required certificate under Section 65-B, since it was the original cassette by which ransom call was tape-recorded, there cannot be any dispute that for admission of secondary evidence of electronic record a certificate as contemplated by Section 65-B is a mandatory condition."

36. Despite the law so declared in *Anvar P.V.*, wherein this Court made it clear that the special provisions of Sections 65-A and 65-B of the Evidence Act are a complete code in themselves when it comes to admissibility of evidence of information contained in electronic records, and also that a written certificate under Section 65-B(4) is a *sine qua non* for admissibility of such evidence, a discordant note was soon struck in *Tomaso Bruno*. In this judgment, another three-Judge Bench dealt with the admissibility of

evidence in a criminal case in which CCTV footage was sought to be relied upon in evidence. The Court held: (*Tomaso Bruno case*, SCC pp. 191-92, paras 24-25)

"24. With the advancement of information technology, scientific temper in the individual and at the institutional level is to pervade the methods of investigation. With the increasing impact of technology in everyday life and as a result, the production of electronic evidence in cases has become relevant to establish the guilt of the accused or the liability of the defendant. Electronic documents *stricto sensu* are admitted as material evidence. With the amendment to the Evidence Act in 2000, Sections 65-A and 65-B were introduced into Chapter V relating to documentary evidence. Section 65-A provides that contents of electronic records may be admitted as evidence if the criteria provided in Section 65-B is complied with. The computer generated electronic records in evidence are admissible at a trial if proved in the manner specified by Section 65-B of the Evidence Act. Sub-section (1) of Section 65-B makes admissible as a document, paper

printout of electronic records stored in optical or magnetic media produced by a computer, subject to the fulfilment of the conditions specified in sub-section (2) of Section 65-B. Secondary evidence of contents of document can also be led under Section 65 of the Evidence Act. PW 13 stated that he saw the full video recording of the fateful night in the CCTV camera, but he has not recorded the same in the case diary as nothing substantial to be adduced as evidence was present in it.

25. The production of scientific and electronic evidence in court as contemplated under Section 65-B of the Evidence Act is of great help to the investigating agency and also to the prosecution. The relevance of electronic evidence is also evident in the light of *Mohd. Ajmal Amir Kasab v. State of Maharashtra*, wherein production of transcripts of internet transactions helped the prosecution case a great deal in proving the guilt of the accused. Similarly, in *State (NCT of Delhi) v. Navjot Sandhu*, the links between the slain terrorists and the masterminds of the attack were established only through

phone call transcripts obtained from the mobile service providers.”

37. What is clear from this judgment is that the judgment of *Anvar P.V.* was not referred to at all. In fact, the judgment in *State (NCT of Delhi) v. Navjot Sandhu* was adverted to, which was a judgment specifically overruled by *Anvar P.V.* It may also be stated that Section 65-B(4) was also not at all adverted to by this judgment. Hence, the declaration of law in *Tomaso Bruno* following *Navjot Sandhu* that secondary evidence of the contents of a document can also be led under Section 65 of the Evidence Act to make CCTV footage admissible would be in the teeth of *Anvar P.V.* and cannot be said to be a correct statement of the law. The said view is accordingly overruled.

xxx

xxx

xxx

45. Thus, it is clear that the major premise of *Shafhi Mohammad* that such certificate cannot be secured by persons who are not in possession of an electronic device is wholly incorrect. An application can always be made to a Judge for production of such a certificate from the requisite person under Section 65-B(4) in cases in which such person refuses to give it.

xxx

xxx

xxx

51. On an application of the aforesaid maxims to the present case, it is clear that though Section 65-B(4) is mandatory, yet, on the facts of this case, the respondents, having done everything possible to obtain the necessary certificate, which was to be given by a third party over whom the respondents had no control, must be relieved of the mandatory obligation contained in the said sub-section.

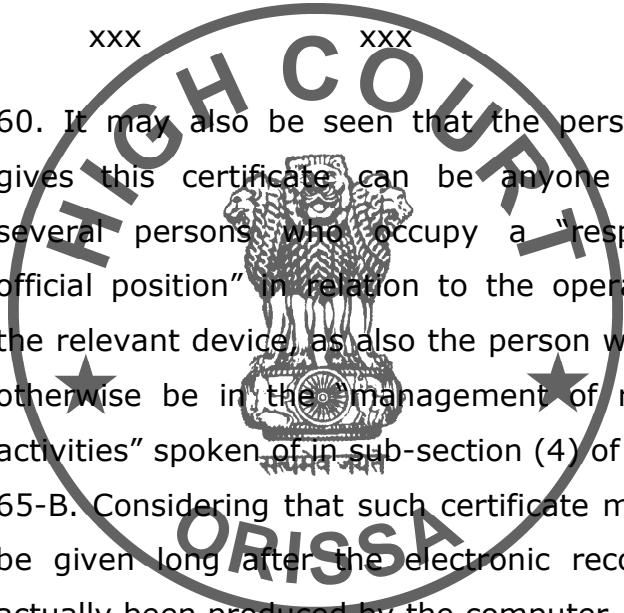
52. We may hasten to add that Section 65-B does not speak of the stage at which such certificate must be furnished to the Court. In *Anvar P.V.*, this Court did observe that such certificate must accompany the electronic record when the same is produced in evidence. We may only add that this is so in cases where such certificate could be procured by the person seeking to rely upon an electronic record. However, in cases where either a defective certificate is given, or in cases where such certificate has been demanded and is not given by the person concerned, the Judge conducting the trial must summon the person/persons referred to in Section 65-B(4) of the Evidence Act, and require that such certificate be given by such person/persons. This, the trial Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the circumstances aforementioned.

This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case. When it comes to criminal trials, it is important to keep in mind the general principle that the accused must be supplied all documents that the prosecution seeks to rely upon before commencement of the trial, under the relevant sections of the CrPC.

xxx

xxx

xxx

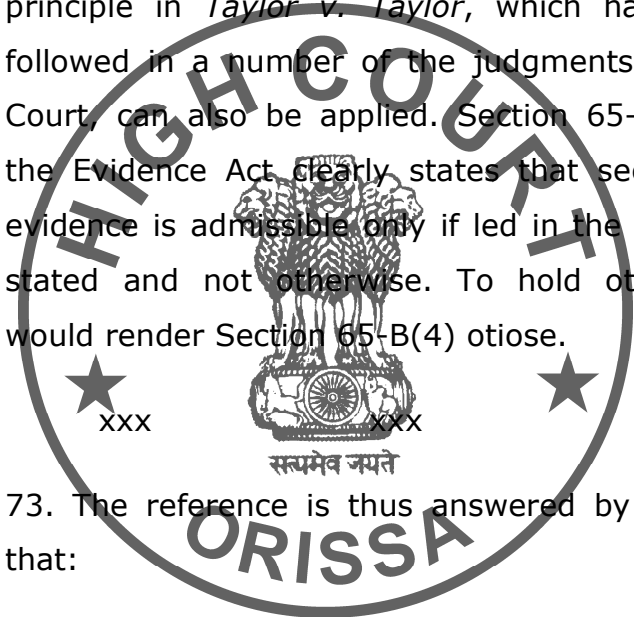


60. It may also be seen that the person who gives this certificate can be anyone out of several persons who occupy a "responsible official position" in relation to the operation of the relevant device, as also the person who may otherwise be in the management of relevant activities" spoken of in sub-section (4) of Section 65-B. Considering that such certificate may also be given long after the electronic record has actually been produced by the computer, Section 65-B(4) makes it clear that it is sufficient that such person gives the requisite certificate to the "best of his knowledge and belief". [Obviously, the word "and" between knowledge and belief in Section 65-B(4) must be read as "or", as a person cannot testify to the best of his knowledge and belief at the same time.]

61. We may reiterate, therefore, that the certificate required under Section 65-B(4) is a condition precedent to the admissibility of evidence by way of electronic record, as correctly held in *Anvar P.V.*, and incorrectly “clarified” in *Shafhi Mohammad*. Oral evidence in the place of such certificate cannot possibly suffice as Section 65-B(4) is a mandatory requirement of the law. Indeed, the hallowed principle in *Taylor v. Taylor*, which has been followed in a number of the judgments of this Court, can also be applied. Section 65-B(4) of the Evidence Act clearly states that secondary evidence is admissible only if led in the manner stated and not otherwise. To hold otherwise would render Section 65-B(4) otiose.

73. The reference is thus answered by stating that:

73.1. *Anvar P.V.*, as clarified by us hereinabove, is the law declared by this Court on Section 65-B of the Evidence Act. The judgment in *Tomaso Bruno*, being *per incuriam*, does not lay down the law correctly. Also, the judgment in *Shafhi Mohammad* and the judgment dated 3-4-2018 reported as *Shafhi Mohd. v. State of H.P.*, do not lay down the law correctly and are therefore overruled.



73.2. The clarification referred to above is that the required certificate under Section 65-B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the court, then the only means of providing information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4). The last sentence in para 24 in *Anvar P.V.* which reads as "...if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act ..." is thus clarified; it is to be read without the words "under Section 62 of the Evidence Act,..."". With this clarification, the law stated in para 24 of *Anvar P.V.* does not need to be revisited.

73.3. The general directions issued in para 64 (supra) shall hereafter be followed by courts that deal with electronic evidence, to ensure their preservation, and production of certificate

at the appropriate stage. These directions shall apply in all proceedings, till rules and directions under Section 67-C of the Information Technology Act and data retention conditions are formulated for compliance by telecom and internet service providers.

xxx

xxx

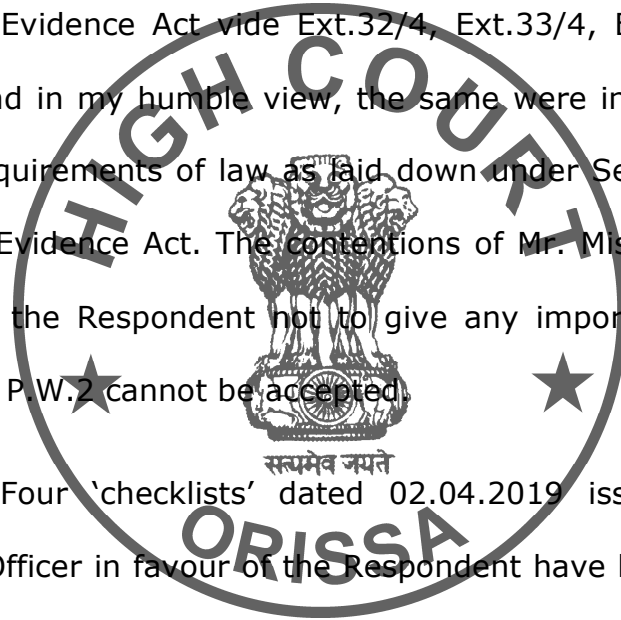
xxx

84. But Section 65-B(1) starts with a non-obstante clause excluding the application of the other provisions and it makes the certification, a pre-condition for admissibility. While doing so, it does not talk about relevancy. In a way, Sections 65-A and 65-B, if read together, mix up both proof and admissibility, but not talk about relevancy. Section 65-A refers to the procedure prescribed in Section 65-B, *for the purpose of proving the contents of electronic records*, but Section 65-B speaks entirely *about the preconditions for admissibility*. As a result, Section 65-B places admissibility as the first or the outermost checkpoint, capable of turning away even at the border, any electronic evidence, without any enquiry, if the conditions stipulated therein are not fulfilled.”

Keeping in view the ratio laid down in the aforesaid decision, I find that the evidence of P.W.2 is clear, cogent and trustworthy as to how he downloaded the documents from the

website of the Election Commission of India and printed by utilising his personal printing machine and stored in his personal computer which was being regularly used by him to store and process informations. There is no flaw in the certificate furnished by him. Therefore, the documents proved by P.W.2 along with his certificates becomes admissible in evidence. I find no illegality in the certificates given by P.W.2 under section 65B of the Indian Evidence Act vide Ext.32/4, Ext.33/4, Ext.34/4 and Ext.35/4 and in my humble view, the same were in consonance with the requirements of law as laid down under Section 65B of the Indian Evidence Act. The contentions of Mr. Mishra, learned counsel for the Respondent not to give any importance to the evidence of P.W.2 cannot be accepted.

Four 'checklists' dated 02.04.2019 issued by the Returning Officer in favour of the Respondent have been marked as Ext.39/2, Ext.40/2, Ext.41/2 and Ext.42/2 wherein the Returning Officer has given instruction to the Respondent to file revised/fresh affidavit in Form 26 before commencement of scrutiny of nominations. The affidavits in Form 26 dated 03.04.2019 filed by the Respondent before the Returning Officer on 04.04.2019 have been marked as Ext.43, Ext.44, Ext.45 and Ext.46 on behalf of the Election Petitioner. The 'checklist' dated



04.04.2019 issued by the Returning Officer in favour of the Respondent has been marked as Ext.47 showing that on 04.04.2019 the Returning Officer has received the revised/fresh affidavit in Form 26 dated 03.04.2019 from the Respondent. The next document is I.A. No.24/2020 filed on behalf of the Election Petitioner, which has been marked as Ext.W on behalf of the Respondent. The hyperlinks mentioned in the cause title, paragraph-4, paragraph-5 and prayer portion of Ext.W show that the revised affidavits dated 03.04.2019 have been uploaded on 2019-04-04 i.e. 04.04.2019. Ext.W/2, Ext.W/4, Ext.W/6 and Ext.W/8, which are the downloaded copies of the 1st page of four affidavits dated 03.04.2019 filed by the Respondent bear the same hyperlinks at its top showing that the revised/fresh affidavits dated 03.04.2019 of the Respondent have been uploaded on 2019-04-04 i.e. 04.04.2019.

It appears that in the election in question, two candidates had filed defective/incomplete affidavit in Form 26 along with their respective nomination papers. One candidate is the Respondent and the other candidate is Priyadarsan Pavel. The affidavit in Form 26 dated 29.03.2019 filed by the candidate Priyadarsan Pavel (Ext.DP/1) found to be incomplete and defective by the Returning Officer. The Returning Officer issued

'checklist' dated 29.03.2019 (Ext.DP/2) to the candidate Priyadarsan Pavel directing therein to file a revised affidavit before commencement of scrutiny of nominations. Accordingly, the candidate Priyadarsan Pavel sworn the revised/fresh affidavit in Form 26 on 30.03.2019, which has been marked as Ext.DP/3. The revised/fresh affidavit in Form 26 dated 30.03.2019 has been filed by the candidate Priyadarsan Pavel before the Returning Officer on 04.04.2019. After receipt of the revised/fresh affidavit in Form 26 dated 30.03.2019 (Ext.DP/3) on 04.04.2019, the Returning Officer issued a fresh 'checklist' dated 04.04.2019 which has been marked as Ext.DP/4. Upon application filed on behalf of the Respondent, this Court directed to download the nomination paper and the affidavit in Form 26 filed by the candidate Priyadarsan Pavel in Court from the web portal of Election Commission of India. The said downloaded and printed copy of the cover page of the Election Commission of India along with the nomination paper in Form 2B and affidavit in Form 26 of the candidate Priyadarsan Pavel has been marked as Ext.DU (without objection). The cover page of Ext.DU has been marked as Ext.DU/1 and the portion showing the affidavit uploaded on 29th March 2019 has been marked as Ext.DU/2. In Ext.DU, only one affidavit in Form 26 dated 30.03.2019 of the

candidate Priyadarsan Pavel is available. The 1st affidavit in Form 26 dated 29.03.2019 of the candidate Priyadarsan Pavel is not available in Ext.DU i.e. in the web portal of the Election Commission of India. Thus, the evidence of the Returning Officer (P.W.3) to the effect that the revised/fresh affidavit overrode the earlier affidavit has got sufficient force.

In view of the foregoing discussions, I come to the finding that the Respondent filed plain paper affidavits on 02.04.2019 along with his nomination papers before P.W.3, the Returning Officer and since the same were defective and not in the prescribed format, P.W.3 asked the Respondent by issuing checklists to file fresh/revised affidavit in Form 26 on duly stamped papers. No doubt, the Respondent has stated in one line in the cross-examination that he filed Exts.43 to 46 (which are the affidavits in Form 26 dated 03.04.2019) along with his nomination papers Exts.39 to 42 (which were filed on 02.04.2019), but evidence has to be read as a whole and not by hair splitting analysis and reading in between lines. It is not that a part of evidence of a witness, in isolation, is to be taken out without any context of that. In the case of **State of U.P. -Vrs.- Krishna Master reported in (2010) 12 Supreme Court**

Cases 324, the Hon'ble Supreme Court has, no ambiguous words, observed:-

"15. Before appreciating evidence of the witnesses examined in the case, it would be instructive to refer to the criteria for appreciation of oral evidence. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is found, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief."

In my view, the Respondent had not filed his affidavit in Form 26 dated 03.04.2019 along with his nomination papers on 02.04.2019 rather he had filed the said affidavit dated 03.04.2019 on 04.04.2019 and the Returning Officer (P.W.3) received the affidavit in Form 26 dated 03.04.2019 from the Respondent on 04.04.2019 and issued checklist dated 04.04.2019 to the Respondent. On 02.04.2019, P.W.3 has not illegally and improperly accepted the affidavit dated 03.04.2019

along with the nomination papers of the Respondent, rather he accepted such affidavit which was in the nature of a fresh/revised affidavit on 04.04.2019. No doubt the earlier affidavit of the Respondent dated 02.04.2019 was not available in the web portal of the Election Commission of India, but in view of the evidence of P.W.3, the Returning Officer, it becomes clear that when the affidavit dated 03.04.2019 of the Respondent was uploaded on 04.04.2019, the system overrode the earlier affidavit dated 02.04.2019 and the subsequent affidavit prevailed over the earlier affidavit and it was a system based configuration. Absence of the affidavit dated 02.04.2019 in the web portal cannot be a ground to doubt its existence particularly when the same has been duly proved through competent persons.

Accordingly, the issue nos.15 and 16 are answered in favour of the Respondent and against the Election Petitioner. In view of my answer to issue nos.15 and 16, it is not necessary to answer issue nos.19 and 20.

11. **Issue Nos.17 & 21 (Disclosure of Criminal Cases):-**

Issues nos.17 and 21 deal with question of disclosure of all criminal cases, pending against the Respondent, in the

affidavit in Form 26. As both the issues are analogous and interlinked with each other, it is deemed proper by this Court to deal both of them together. The above issues are extracted herein below for ready reference:-

“**17.** Whether the sole Respondent has disclosed all the criminal cases pending against him in his affidavit in Form 26 dated 03.04.2019 as per the prescribed format and instructions of Form 26 or not?”

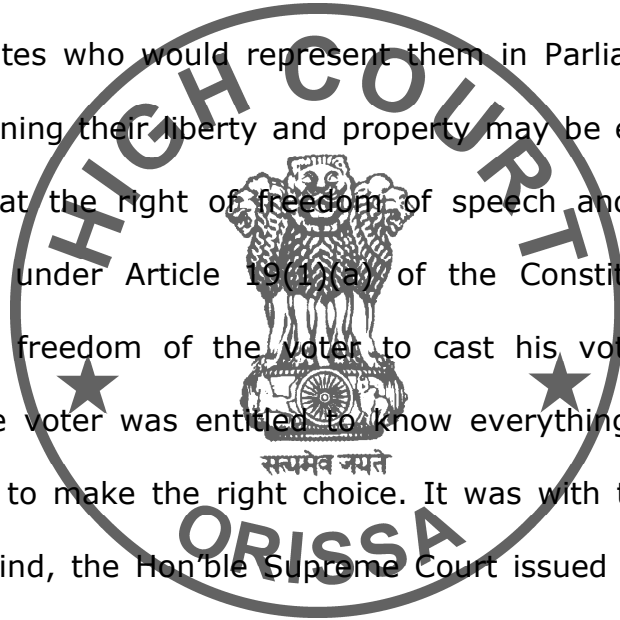
19. Whether the Respondent has made proper and full declaration about the criminal cases pending against him in the affidavit filed in Form 26?”

Mr. Milan Kanungo, learned Senior Advocate argued that the Respondent has given false and misleading affidavit in Form 26 along with the nomination paper so far as his thirteen criminal cases are concerned.

The requirement of filing an affidavit arises from the decision of Hon'ble Supreme Court in the case of **Union of India -Vrs.- Association for Democratic Reforms and another reported in (2002) 5 Supreme Court Cases 294**. In that case, Hon'ble Apex Court, examined the nature and extent of jurisdiction exercised by the Election Commission under Article 324 of the Constitution and held that the same was wide enough

to include all powers necessary for smooth conduct of elections and that the word "Election" was used in a wide sense to include entire process of election and held that the Election Commission could invoke its power under Article 324 till Parliament brought a suitable legislation on the subject.

The Supreme Court recognized the right of the voters in the country to know about the particulars and antecedents of the candidates who would represent them in Parliament where laws concerning their liberty and property may be enacted, and declared that the right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution would include the freedom of the voter to cast his vote for which purpose the voter was entitled to know everything that would enable him to make the right choice. It was with that salutary object in mind, the Hon'ble Supreme Court issued directions to the Election Commission to call for information on affidavit from each one of the candidate seeking election to Parliament or State Legislatures as an essential part of his nomination papers furnishing therein information in relation to his/her candidature and it also directed the Election Commission to call for information on affidavit:



(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 dependents;

(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.

As a sequel to the above directions, the Parliament amended the R.P. Act, 1951 and introduced section 33A and 33B by the Representation of People (3rd Amendment) Act, 2002. Section 33A made it obligatory for every candidate to furnish information whether or not he has been 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 and

whether he has been convicted of an offence other than those referred to in sub-section (1) or (2) or covered in sub-section (3) of section 8 and sentenced to imprisonment for one year or more. Sub-section (2) of section 33-A required a candidate or his proposer to deliver to the Returning Officer an affidavit sworn by the candidate in the prescribed form along with nomination papers in which the information specified above is set out. Section 33-B, however, purported to neutralise the effect of the directions issued by the Supreme Court in the case of **Association for Democratic Reforms** (supra) and declared that no candidate shall be liable to disclose or furnish any information, in respect of his election, which is not required to be disclosed or furnished under the Act or the Rules made thereunder.

The constitutional validity of the above additions to the statute was challenged before Hon'ble Supreme Court in the case of **People's Union for Civil Liberties (PUCL) and another -Vrs.- Union of India and another reported in (2003) 4 Supreme Court Cases 399** and the Hon'ble Supreme Court while upholding the vires of Section 33-A, declared Section 33-B to be constitutionally invalid being in violation of Article 19(1)(a) of the Constitution. The Supreme Court reiterated the

directions given in the case of **Association for Democratic Reforms** (supra) and directed the Election Commission to issue revised instructions keeping in view the observations made in the judgment delivered by the Supreme Court. The Supreme Court also held that the order issued by the Election Commission relating to the disclosure of assets and liabilities will continue to hold good and be operative although direction insofar as verification of assets and liabilities by means of a summary enquiry and rejection of nomination papers on the ground of furnishing wrong information or suppression of material information was concerned, the same shall not be enforced. The Hon'ble Highest Court further observed:-

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

Subsequently, another writ petition under Article 32 of the Constitution was filed to issue specific directions to effectuate seeking implementation of the judgment rendered by the Hon'ble Supreme Court in the case of **Assn. for Democratic Reforms** (supra) and **People's Union for Civil Liberties** (supra). After giving hearing to the respective parties, the Hon'ble Supreme Court in the case of **Resurgence India -Vrs.- Election Commission of India & Another reported in (2014) 14 Supreme Court Cases 189** held that:

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

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

After the above judgments of the Hon’ble Supreme Court, an Election Petition was filed in the High Court of Bombay challenging the election of the returned candidate under sections 100(1)(d)(i) and (iv) of the R.P. Act, 1951. It was alleged that the returned candidate had suppressed information as to his assets, liabilities, government dues, assets of his spouse and other material information in the affidavit filed by him along with the nomination form. The High Court allowed the election petition and set aside the election of the returned candidate. On appeal, the Hon’ble Supreme Court upheld the judgment passed by the Bombay High Court.

In the case of **Kishan Shankar Kathore -Vrs.-**
Arun Dattatray Sawant and others reported in (2014) 14

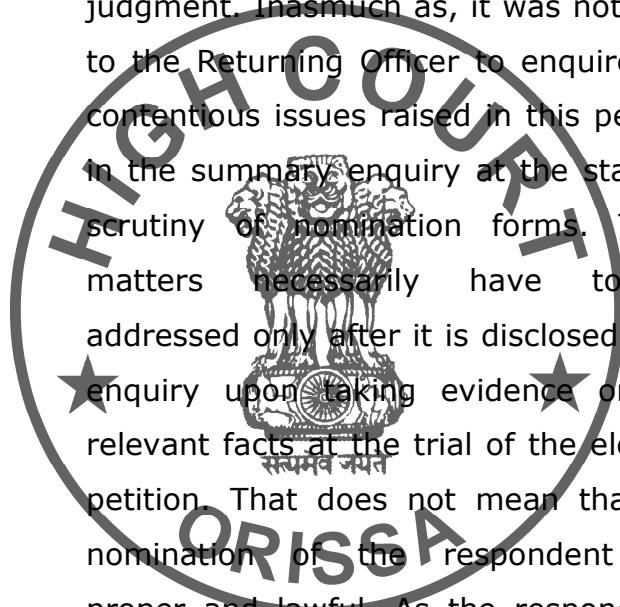
Supreme Court Cases 162, the Hon'ble Supreme Court held as follows:

"2. The election petition was filed under Sections 100(1)(d)(i) and (iv) of the Act on the ground that in the nomination form filled in by the appellant he had suppressed his dues payable to the Government, suppressed the assets of his spouse and also suppressed the information and assets of a partnership firm of which he is a partner. The appellant contested the said petition. Evidence was led. After hearing the arguments, the High Court passed judgment dated 16-8-2007 accepting the plea of the first respondent that the nomination form of the appellant was defective and should not have been accepted by the Returning Officer.

31. On Issue 7, finding of the High Court is that nomination was improperly accepted by the Returning Officer by giving the following reasons:

"130. That takes me to the next issue as to whether the petitioner proves that the respondent's nomination form is improperly accepted by the Returning Officer? Insofar as this issue is concerned, the respondent may be right

to the extent that the Returning Officer cannot be faulted for having accepted the nomination form of the respondent. That was required to be accepted in spite of the objection, in view of the decision of the Apex Court in People's Union for Civil Liberties and the order issued by the Election Commission on the basis of the law declared in the said judgment. Inasmuch as, it was not open to the Returning Officer to enquire into contentious issues raised in this petition in the summary enquiry at the stage of scrutiny of nomination forms. Those matters necessarily have to be addressed only after it is disclosed in an enquiry upon taking evidence on the relevant facts at the trial of the election petition. That does not mean that the nomination of the respondent was proper and lawful. As the respondent's nomination paper suffered from the defects already referred to in the earlier part of this decision, it is plainly a case of improper acceptance of his nomination paper by the Returning Officer, covered by the rigours of Section 100(1)(d)(i) of the Act. Issue 7 will have to be answered accordingly."



32. Issue 8 pertains to the question as to whether the election result was materially affected because of non-disclosure of the aforesaid information. The High Court took note of the provisions of Sections 100(1)(d)(i) and (iv) and discussed the same. Thereafter, some judgments cited by the appellant were distinguished and deciding this issue against the appellant, the High Court concluded as under:

“137. In my opinion, it is not necessary to elaborate on this matter beyond a point, except to observe that when it is a case of improper acceptance of nomination on account of invalid affidavit or no affidavit filed therewith, which affidavit is necessarily an integral part of the nomination form; and when that challenge सत्यमेव जयते concerns the returned candidate and if upheld, it is not necessary for the petitioner to further plead or prove that the result of the returned candidate has been materially affected by such improper acceptance.

138. The avowed purpose of filing the affidavit is to make truthful disclosure of all the relevant matters regarding assets (movable and immovable) and liabilities as well as criminal actions (registered, pending or in respect of which

cognizance has been taken by the court of competent jurisdiction or in relation to conviction in respect of specified offences). Those are matters which are fundamental to the accomplishment of free and fair election. It is the fundamental right of the voters to be informed about all matters in relation to such details for electing candidate of their choice. Filing of complete information and to make truthful disclosure in respect of such matters is the duty of the candidate who offers himself or who is nominated for election to represent the voters from that constituency. As the candidate has to disclose this information on affidavit, the solemnity of the affidavit cannot be allowed to be ridiculed by the candidates by offering incomplete information or suppressing material information, resulting in disinformation and misinformation to the voters. The sanctity of disclosure to be made by the candidate flows from the constitutional obligation.”

xxx

xxx

xxx

34. We may state, in the first instance, that the judgment in *G.M. Siddeshwar* has no application

insofar as the present case is concerned. The Court was dealing with the form of affidavit that is required to be filed along with the election petition in order to comply with the provisions of Section 83(1) proviso of the Act. The very maintainability of the election petition was challenged on the ground that the affidavit furnished by the election petitioner was not in absolute compliance with the format affidavit (Form 25). The Court, however, upheld the view of the High Court holding that on perusal of the affidavit, there was substantial compliance with the prescribed format. Even when some defect was found in the verification to the election petition, it was held that the said defect is also curable and cannot be held fatal to the maintainability of the election petition. In the present case, we are concerned with the affidavit which a candidate seeking election is required to file along with his nomination form. At the same time, we proceed on the basis that if there is a substantial compliance with the requirements contained in the said affidavits, in the sense that there is a disclosure of required particulars, including assets/liabilities, etc., it can be treated as adequate compliance with the provisions of the Act, Rules and Orders.

xxx

xxx

xxx

36. In view of the aforesaid, two facets of the issue, which require consideration, are as follows:

36.1. (i) Whether there is a substantial compliance in disclosing the requisite information in the affidavits filed by the appellant along with the nomination paper?

36.2.(ii) Whether non-disclosure of the information on account of the aforesaid four aspects has materially affected the result of the election?

37. We have already discussed in detail each item of non-disclosure as well as defence of the appellant pertaining thereto. For the reasons recorded in detail at that stage by the High Court and stated above, with which we agree, we are of the opinion that its finding about non-disclosure of the information qua all the aspects is without blemish. There is a specific format in which the information is to be given, which was not adhered to.

xxx

xxx

xxx

41. It was argued that the acceptance of nomination is as per Section 33 of the Act, which contains requirement for a valid nomination. Further Section 36(2) deals with the rejection of nomination on grounds specified therein. It was

the submission of the learned Senior Counsel that 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 is not covered by Section 36(2) of the Act. Therefore, the Returning Officer had rightly accepted the nomination form as none of the grounds specified in sub-section (2) of Section 36 were attracted. He further submitted that Sections 8-A, 9, 9-A, 10 and 10-A provide disqualifications for the Members of Parliament and the State Legislature. As per the counsel, from the scheme of the Act it can be seen that at the time of scrutiny of nomination, all that the Returning Officer is required to examine is as to whether the candidate suffers from any of the disqualifications mentioned in Sections 8 to 10-A of the Act and as to whether the nomination is in the form prescribed by Section 33 and accompanied by the documents mentioned in sub-sections (2) to (7) of Section 33 and whether it is accompanied by an affidavit prescribed by Rule 4-A and the deposit required by Section 34 of the Act. Apart from the aforesaid, the Returning Officer is not empowered to reject the nomination on any other ground. He argued that the right of the Returning Officer to conduct a summary inquiry

into the correctness or otherwise of the contents of the affidavit filed along with the nomination was expressly taken away as can be seen from the judgment of this Court in *People's Union for Civil Liberties*. Having noted that the Returning Officer has no power to reject a nomination where false information is furnished or material information is suppressed, the Election Commission of India and the Union of India have requested this Court to treat the same as equal to a blank affidavit, as noted in *Resurgence India*.

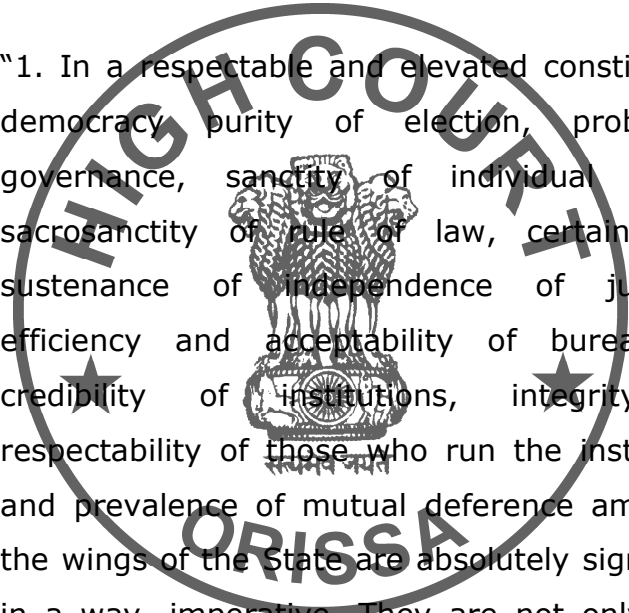
xxx xxx xxx

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.”

In the case of **Krishnamoorthy -Vrs.- Sivakumar and Others reported in (2015) 3 Supreme Court Cases 467**, the Hon’ble Supreme Court held as follows:-



“1. In a respectable and elevated constitutional democracy, purity of election, probity in governance, sanctity of individual dignity, sacrosanctity of rule of law, certainty and sustenance of independence of judiciary, efficiency and acceptability of bureaucracy, credibility of institutions, integrity and respectability of those who run the institutions and prevalence of mutual deference among all the wings of the State are absolutely significant, in a way, imperative. They are not only to be treated as essential concepts and remembered as glorious precepts but also to be practised so that in the conduct of every individual they are concretely and fruitfully manifested. The crucial recognised ideal which is required to be realised is eradication of criminalisation of politics and corruption in public life. When criminality enters into the grass root level as well as at the higher levels there is a feeling that “monstrosity” is

likely to wither away the multitude and eventually usher in a dreadful fear that would rule supreme creating an incurable chasm in the spine of the whole citizenry. In such a situation the generation of today, in its effervescent ambition and volcanic fury, smothers the hopes, aspirations and values of tomorrow's generation and contaminate them with the idea to pave the path of the past, possibly thinking, that is the noble tradition and corruption can be a way of life and one can get away with it by a well decorated exterior. But, an intervening and pregnant one, there is a great protector, and an unforgiving one, on certain occasions and some situations, to interdict—"The law", the mightiest sovereign in a civilised society.

2. The prelude, we are disposed to think, has become a necessity, as, in the case at hand, we are called upon to decide, what constitutes "undue influence" in the context of Section 260 of the Tamil Nadu Panchayats Act, 1994 (for short "the 1994 Act") which has adopted the similar expression as has been used under Section 123(2) of the Representation of the People Act, 1951 (for brevity "the 1951 Act") thereby making the delineation of great significance, for our interpretation of the aforesaid words shall be applicable to election law in all spheres.

3. The instant case is a case of non-disclosure of full particulars of criminal cases pending against a candidate, at the time of filing of nomination and its eventual impact when the election is challenged before the Election Tribunal. As the factual score is exposted the appellant was elected as the President of Thekampatti Panchayat, Mettupalayam Taluk, Coimbatore District in the State of Tamil Nadu in the elections held for the said purpose on 13-10-2006. The validity of the election was called in question on the sole ground that he had filed a false declaration suppressing the details of criminal cases pending trial against him and, therefore, his nomination deserved to be rejected by the Returning Officer before the District Court, Coimbatore in Election OP No. 296 of 2006.

xxx

ORISSA

xxx

xxx

7. In this backdrop, the election of the first respondent was sought to be declared to be invalid with certain other consequential reliefs. In the counter-statement filed by the elected candidate, a stand was put forth that the election petitioner though was present at the time of scrutiny of the nomination papers, had failed to raise any objection and, in any case, he had mentioned all the necessary details in the

nomination papers perfectly. It was further set forth as follows:

"All the averments stated in the 3rd paragraph of the petition is false and hereby denied. The averment stated that the first respondent had deliberately omitted to provide the details of charge-sheets having been filed against him which have been on file in eight cases is false and hereby denied. It is humbly submitted that this respondent has clearly mentioned about the case pending in Cr. No. 10 of 2001 pending before JM No. 4 at p. 2 in details of candidate. Therefore, the abovesaid averments are false, misleading and unsustainable."

8. The Principal District Judge of Coimbatore, the Election Tribunal, adverted to the allegations, the ocular and the documentary evidence that have been brought on record and came to hold that nomination papers filed by the appellant, the first respondent to the election petition, deserved to be rejected and, therefore, he could not have contested the election, and accordingly he declared the election as null and void and ordered for re-election of the post of the President in question. The said order was challenged in revision before the High Court.

9. In revision, the High Court referred to the decisions in *Union of India v. Assn. for Democratic Reforms*, *People's Union for Civil Liberties v. Union of India*, notification issued by the Election Commission of India and the notification of the State Election Commission, Sections 259 and 260 of the 1994 Act and adverted to the issues whether there was suppression by the elected candidate and in that context referred to the "Form" to be filled up by a candidate as per the Notification dated 1-9-2006 and opined that an element of sanctity and solemnity is attached to the said declaration, by the very fact that it is required to be in the form of an affidavit sworn and attested in a particular manner. The High Court emphasised on the part of the verification containing the declaration that "nothing material has been concealed". On the aforesaid analysis, the High Court held that the elected candidate had not disclosed the full and complete information. Thereafter, the High Court referred to the authority in *Assn. for Democratic Reforms*, incorporation of Sections 33-A and 44-A in the 1951 Act, Rule 4-A of the Conduct of Elections Rules, 1961 and Form 26 to the said Rules, Section 125-A of the 1951 Act, the definition of "affidavit" as per Section 3(3) of the General Clauses Act, 1897, the conceptual meaning of "oath", Section 8 of the Oaths Act, 1969 and scanned the anatomy of Sections 259

and 260 of the 1994 Act and the principles that have been set out in various decisions of this Court and opined that the non-disclosure of full and complete information relating to his implication in criminal cases amounted to an attempt to interfere with the free exercise of electoral right which would fall within the meaning of "undue influence" and consequently "corrupt practice" under Section 259(1)(b) read with Section 260(2) of the 1994 Act. Being of this view, the High Court agreed with the ultimate conclusion of the Tribunal, though for a different reason.

12. The issue of disclosure, declaration and filing of the affidavit in this regard has a history, albeit, a recent one. Therefore, one is bound to sit in a time machine. In **Assn. for Democratic Reforms**, the Court posed the following important question: (SCC p. 300, para 1)

"1....in a nation wedded to republican and democratic form of Government, where election as a Member of Parliament or as a Member of Legislative Assembly is of utmost importance for governance of the country, whether, before casting votes, voters have a right to know relevant particulars of their

candidates? Further connected question is — whether the High Court had jurisdiction to issue directions, as stated below, in a writ petition filed under Article 226 of the Constitution of India?”

xxx

xxx

xxx

14. After so holding, the Court posed a question whether the Election Commission is empowered to issue directions? Be it noted, such a direction was ordered by the High Court of Delhi and in that context the Court relied upon *Mohinder Singh Gill v. Chief Election Commr., Kanhiya Lal Omar v. R.K. Trivedi, Common Cause v. Union of India* and opined thus: (*Assn. for Democratic Reforms case, SCC p. 317, para 38*)

“38. If right to telecast and right to view sport games and the right to impart such information is considered to be part and parcel of Article 19(1)(a), we fail to understand why the right of a citizen/voter — a little man — to know about the antecedents of his candidate cannot be held to be a fundamental right under Article 19(1)(a). In our view, democracy cannot survive without free and fair election, without free and fairly informed voters. Votes cast by uninformed voters in favour of X or Y

candidate would be meaningless. As stated in the aforesaid passage, one-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce. Therefore, casting of a vote by a misinformed and non-informed voter or a voter having one-sided information only is bound to affect the democracy seriously. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions. Entertainment is implied in freedom of 'speech and expression' and there is no reason to hold that freedom of speech and expression would not cover right to get material information with regard to a candidate who is contesting election for a post which is of utmost importance in the democracy."

15. In this regard, a reference was made to a passage from *P.V. Narasimha Rao v. State*, jurisdiction of the Election Commission and ultimately the Court issued the following directions: (*Assn. for Democratic Reforms case*, SCC p. 322, para 48)

"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.”

xxx

xxx

xxx

18. Though various issues were raised in the said case, yet we are really to see what has been stated with regard to the disclosure, and the Ordinance issued after the judgment. M.B. Shah, J., in his ultimate analysis held as follows: (*People's Union for Civil Liberties case*, SCC pp. 452-53, para 78)

★ 78. What emerges from the above discussion can be summarised thus:

(A) The legislature can remove the basis of a decision rendered by a competent court thereby rendering that decision ineffective but the legislature has no power to ask the instrumentalities of the State to disobey or disregard the decisions given by the court. A declaration that an order made by a court of law is void is normally a part of the judicial function. The legislature cannot declare that decision rendered by

the Court is not binding or is of no effect.

It is true that the legislature is entitled to change the law with retrospective effect which forms the basis of a judicial decision. This exercise of power is subject to constitutional provision, therefore, it cannot enact a law which is violative of fundamental right.

(B) Section 33-B which provides that notwithstanding anything contained in the judgment of any court or directions 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 the Act or the Rules made thereunder, is on the face of it beyond the legislative competence, as this Court has held that the voter has a fundamental right under Article 19(1)(a) to know the antecedents of a candidate for various reasons recorded in the earlier judgment as well as in this judgment.

The amended Act does not wholly cover the directions issued by this

Court. On the contrary, it provides that a candidate would not be bound to furnish certain information as directed by this Court.

(C) The judgment rendered by this Court in *Assn. for Democratic Reforms* has attained finality, therefore, there is no question of interpreting constitutional provision which calls for reference under Article 145(3).

(D) The contention that as there is no specific fundamental right conferred on a voter by any statutory provision to know the antecedents of a candidate, the directions given by this Court are against the statutory provisions is, on the face of it, without any substance. In an election petition challenging the validity of an election of a particular candidate, the statutory provisions would govern respective rights of the parties. However, voters' fundamental right to know the antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic

society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures.

(E) It is established that fundamental rights themselves have no fixed content, most of them are empty vessels into which each generation must pour its content in the light of its experience. The attempt of the Court should be to expand the reach and ambit of the fundamental rights by process of judicial interpretation. During the last more than half a decade, it has been so done by this Court consistently. There cannot be any distinction between the fundamental rights mentioned in Chapter III of the Constitution and the declaration of such rights on the basis of the judgments rendered by this Court."

Being of this view, he declared Section 33-B as illegal, null and void.

XXX

XXX

XXX

21. The purpose of referring to the aforesaid authorities in extenso is to focus how this Court has given emphasis on the rights of a voter to know about the antecedents of a candidate, especially, the criminal antecedents, contesting the election. With the efflux of time, the Court in subsequent decisions has further elaborated the right to know in the context of election, as holding a free and fair election stabilises the democratic process which leads to good governance. In this regard, reference to a recent three-Judge Bench decision in *Resurgence India v. Election Commission of India* is advantageously fruitful. A writ petition was filed under Article 32 of the Constitution of India to issue specific directions to effectuate the meaningful implementation of the judgments rendered by this Court in *Assn. for Democratic Reforms, People's Union for Civil Liberties* and also to direct the respondents therein to make it compulsory for the Returning Officers to ensure that the affidavits filed by the contestants are complete in all respects and to reject the affidavits having blank particulars. The Court referred to the background, relief sought and Sections 33-A, 36 and 125-A of the 1951 Act. A reference was also made to the authority in *Shaligram Shrivastava v. Naresh Singh Patel*.

xxx

xxx

xxx

23. It is apt to note here that the Court referred to para 73 of the judgment in *People's Union for Civil Liberties* case and elaborating further ruled thus: (*Resurgence India* case, SCC p. 202, para 27)

"27. If we accept the contention raised by the Union of India viz. the candidate who has filed an affidavit with false information as well as the candidate who has filed an affidavit with particulars left blank should be treated on a par, it will result in breach of fundamental right guaranteed under Article 19(1)(a) of the Constitution viz. 'right to know', which is inclusive of freedom of speech and expression as interpreted in *Assn. for Democratic Reforms*."

xxx

xxx

xxx

26. The fear to disclose details of pending cases has been haunting the people who fight the elections at all levels. Fear, compels a man to take the abysmal and unfathomable route; whereas courage, mother of all virtues, not only shatters fears, but atrophies all that come in its way without any justification and paralyses everything that does not deserve to have

locomotion. Democracy nurtures and dearly welcomes transparency. Many a cobweb is woven or endeavoured to be woven to keep at bay what sometimes becomes troublesome. Therefore, Rules 41(2) and (3) and 49-O of the Conduct of Elections Rules, 1961 (for short "the Rules") came into force, to give some space to the candidates and deny the advantage to the voters. At that juncture, a writ petition under Article 32 of the Constitution of India was filed by the People's Union for Civil Liberties (PUCL) and another, challenging the constitutional validity of the said Rules to the extent that the said provisions violate the secrecy of voting which is fundamental to free and fair elections and is required to be maintained as per Section 128 of the 1951 Act and Rules 39, 49-M of the Rules. Relevant parts of Rule 41 and Rule 49-O read as follows:

"41. Spoilt and returned ballot papers.—

(1) ***

(2) If an elector after obtaining a ballot paper decides not to use it, he shall return it to the Presiding Officer, and the ballot paper so returned and the counterfoil of such ballot paper shall be marked as 'Returned: cancelled' by the Presiding Officer.

(3) All ballot papers cancelled under sub-rule (1) or sub-rule (2) shall be kept in a separate packet.

* * *

49-O. Elector deciding not to vote.—If an elector, after his electoral roll number has been duly entered in the register of voters in Form 17-A and has put his signature or thumb impression thereon as required under sub-rule (1) of Rule 49-L, decided not to record his vote, a remark to this effect shall be made against the said entry in Form 17-A by the Presiding Officer and the signature or thumb impression of the elector shall be obtained against such remark."

27. Testing the validity of the aforesaid Rules, a three-Judge Bench in *People's Union for Civil Liberties v. Union of India* after dwelling upon many a facet opined thus: (SCC pp. 27-28, para 53)

"53. Democracy being the basic feature of our constitutional set-up, there can be no two opinions that free and fair elections would alone guarantee the growth of a healthy democracy in the country.

The 'fair' denotes equal opportunity to all people. Universal adult suffrage conferred on the citizens of India by the Constitution has made it possible for these millions of individual voters to go to the polls and thus participate in the governance of our country. For democracy to survive, it is essential that the best available men should be chosen as people's representatives for proper governance of the country. This can be best achieved through men of high moral and ethical values, who win the elections on a positive vote. Thus in a vibrant democracy, the voter must be given an opportunity to choose none of the above (NOTA) button, which will indeed compel the political parties to nominate a sound candidate. This situation palpably tells us the dire need of negative voting."

xxx

xxx

xxx

29. The aforesaid decisions pronounce beyond any trace of doubt that a voter has a fundamental right to know about the candidates contesting the elections as that is essential and a necessary concomitant for a free and fair election. In a way, it is the first step. The voter is entitled to make a choice after coming to

know the antecedents of a candidate a requisite for making informed choice. It has been held by Shah, J. in *People's Union for Civil Liberties* (SCC p. 453, para 78) that the voter's fundamental right to know the antecedents of a candidate is independent of statutory requirement under the election law, for a voter is first a citizen of this country and apart from statutory rights, he has the fundamental right to know and be informed. Such a right to know is conferred by the Constitution.

34. In *Anukul Chandra Pradhan v. Union of India*, the Court was dealing with the provisions made in the election law which excluded persons with criminal background and the kind specified therein, from the elections as candidates and voters. In that context, the Court held thus: (SCC p. 5, para 5)

"5....The object is to prevent criminalisation of politics and maintain probity in elections. Any provision enacted with a view to promote this object must be welcomed and upheld as subserving the constitutional purpose. The elbow room available to the legislature in classification depends on the context and the object for enactment

of the provision. The existing conditions in which the law has to be applied cannot be ignored in adjudging its validity because it is relatable to the object sought to be achieved by the legislation. Criminalisation of politics is the bane of society and negation of democracy. It is subversive of free and fair elections which is a basic feature of the Constitution. Thus, a provision made in the election law to promote the object of free and fair elections and facilitate maintenance of law and order which are the essence of democracy must, therefore, be so viewed. More elbow room to the legislature for classification has to be available to achieve the professed object."

सत्यमेव जयते

Be it stated, the Court did not accept the challenge to the constitutional validity of subsection (5) of Section 62 of the 1951 Act which was amended to provide that no person shall vote at any election if he is confined in prison, whether under a sentence of imprisonment, or under lawful confinement, or otherwise or is in the lawful custody of the police. A proviso was carved out to exclude a person subjected to preventive detention under any law for the time being in force.

xxx

xxx

xxx

36. Criminalisation of politics is absolutely unacceptable. Corruption in public life is indubitably deprecable. The citizenry has been compelled to stand as a silent, deaf and mute spectator to the corruption either being helpless or being resigned to fate. Commenting on corruption, the court in *Niranjan Hemchandra Sashittal v. State of Maharashtra*, was constrained to say thus: (SCC pp. 654-55, para 26)

"26. It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered. The only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality."

xxx

xxx

xxx

42. Mr Harish Salve, learned Senior Counsel, who was requested to assist the Court, would unequivocally submit that it would come within the arena of corrupt practice. The propositions that have been presented by the learned Amicus Curiae are as follows:

A. The notion of what constitutes the free exercise of any electoral right cannot be static. The exercise of electoral rights in a democracy is central to the very existence of a democracy. The notion of the free exercise of any electoral right is thus not something that can be ossified—it must evolve with the constitutional jurisprudence and be judged by contemporary constitutional values.

B. The disclosure by a candidate of his character antecedents was premised by this Court on the right of an elector to know—which right flows from the right to the informed exercise of an electoral right.

C. Section 123(2) of the 1951 Act necessarily implies that any influence on the mind of the voter that interferes

with a free exercise of the electoral right is a corrupt practice. Misleading voters as to character antecedents of a candidate in contemporary times is a serious interference with the free exercise of a voter's right.

D. In the context of disclosure of information, if the falsity or suppression of information relating to the criminal antecedents of a candidate is serious enough to mislead voters as to his character, it would clearly influence a voter in favour of a candidate. This Court should take judicial notice of the problem of criminalisation of politics— which led this Court to ask Parliament to seriously consider ameliorative changes to the law. सत्यमेव जयते

E. Section 123 of the 1951 Act defines "undue influence" in terms of interference with the free exercise of an electoral right. This result i.e. interference with the free exercise of an electoral right, may apply to a person or a body of persons. As clarified in *Ram Dial v. Sant Lal*, Section 123 does not emphasise the individual aspect of the exercise of such influence, but pays regard to the use of such influence as

has the tendency to bring about the result contemplated in the clause.

F. It is not every failure to disclose information that would constitute an undue influence. In the context of criminal antecedents, the failure to disclose the particulars of any charges framed, cognizance taken, or conviction for any offence that involves moral turpitude would constitute an act that causes undue influence upon the voters.

G. Purity of public life has its own hallowedness and hence, there is emphasis on the importance of truth in giving information. Half truth is worse than silence, it has the effect potentiality to have a cacophony that can usher in anarchy.

72. This Court had issued certain directions in *Assn. for Democratic Reforms and People's Union for Civil Liberties*. Section 33-A which has been reproduced earlier is relatable to furnishing of an information in respect of an 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. At this stage, it is appropriate to refer to Section 169 of the 1951 Act, the same

being pertinent in the context. It reads as under:

“169.Power to make rules.—(1)***

(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 33-A;

(aa) the duties of Presiding Officers and polling officers at polling stations;

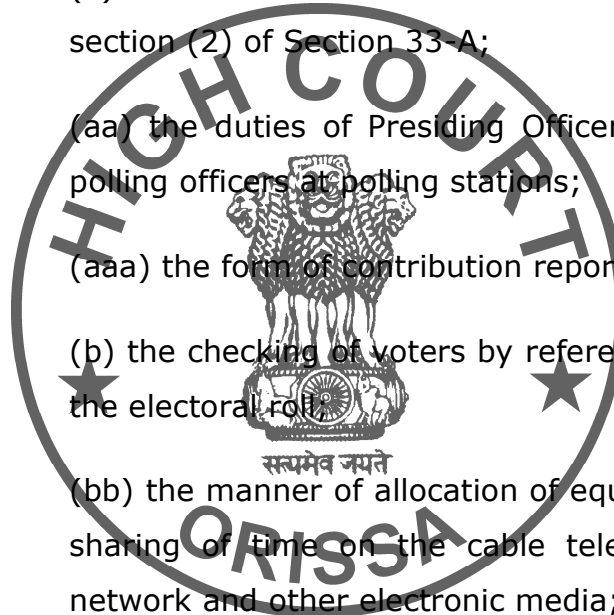
(aaa) the form of contribution report;

(b) the checking of voters by reference to the electoral roll;

(bb) the manner of allocation of equitable sharing of time on the cable television network and other electronic media;

(c) the manner in which votes are to be given both generally and in the case of illiterate voters or voters under physical or other disability;

(d) the manner in which votes are to be given by a Presiding Officer, polling officer, polling agent or any other person, who being an elector for a constituency is



authorised or appointed for duty at a polling station at which he is not entitled to vote;

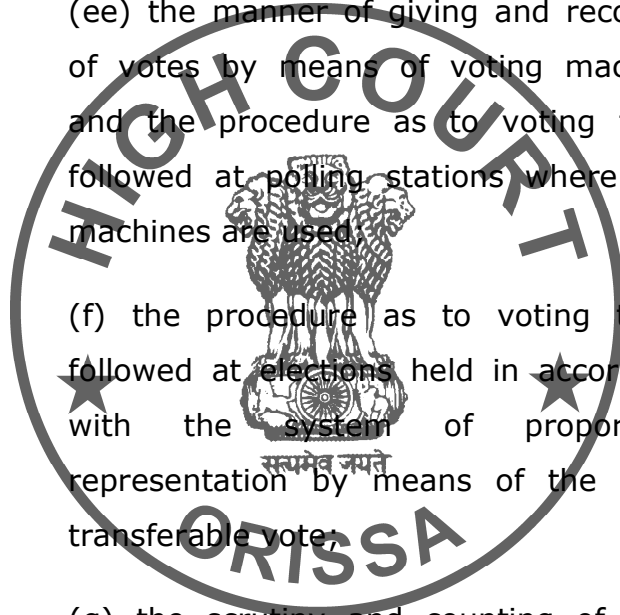
(e) the procedure to be followed in respect of the tender of vote by a person representing himself to be an elector after another person has voted as such elector;

(ee) the manner of giving and recording of votes by means of voting machines and the procedure as to voting to be followed at polling stations where such machines are used;

(f) the procedure as to voting to be followed at elections held in accordance with the system of proportional representation by means of the single transferable vote;

(g) the scrutiny and counting of votes including cases in which a recount of the votes may be made before the declaration of the result of the election;

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



(h) the safe custody of ballot boxes, voting machines, ballot papers and other election papers, the period for which such papers shall be preserved and the inspection and production of such papers;

(hh) the material to be supplied by the Government to the candidates of recognised political parties at any election to be held for the purposes of constituting the House of the People or the Legislative Assembly of a State;

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

73. Rule 4-A has been inserted in the Conduct of Elections Rules, 1961 (for short "the 1961 Rules") w.e.f. 3-9-2002. Rule 4-A reads as follows:

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

xxx

xxx

xxx

75. On a perusal of the aforesaid format, it is clear as crystal that the details of certain categories of the offences in respect of which cognizance has been taken or charges have been framed must be given/furnished. This Rule is in consonance with Section 33-A of the 1951 Act. Section 33(1) envisages that information has to be given in accordance with the Rules. This is in addition to the information to be provided as per Sections 33(1)(i) and (ii). The affidavit that is required to be filed by the candidate stipulates mentioning of cases pending against the candidate in which charges have been framed by the Court for the offences punishable with imprisonment for two years or more and also the cases which are pending against him in which cognizance has been taken by the court other than the cases which have been mentioned in clause (5)(i) of Form 26. Apart from the aforesaid, clause (6) of Form 26 deals with conviction.

76. The singular question is, if a candidate, while filing his nomination paper does not furnish the entire information what would be the resultant effect. In *Resurgence India*, the Court has held that if a nomination paper is filed with particulars left blank, the Returning Officer is entitled to reject the nomination paper. The

Court has proceeded to state that the candidate must take the minimum effort to explicitly remark as "Nil" or "Not Applicable" or "Not known" in the columns. In the said case, it has been clarified that para 73 of *People's Union for Civil Liberties* case will not come in the way of Returning Officer to reject the nomination paper when the affidavit has been filed with blank particulars. It is necessary to understand what has been stated in para 73 of *People's Union for Civil Liberties* case, how it has been understood and clarified in *Resurgence India*.

79. Both the paragraphs when properly understood relate to the stage of scrutiny of the nomination paper. In this context, a question may arise if a candidate fills up all the particulars relating to his criminal antecedents and the nomination is not liable for rejection in law, what would be the impact. At the stage of scrutiny, needless to say, even if objections are raised, that possibly cannot be verified by the Returning Officer. Therefore, we do not intend to say that if objections are raised, the nomination paper would be liable for rejection. However, we may hasten to clarify that it is not the issue involved in the present case. The controversy which has emanated in this case is whether non-furnishing of the information while filing an

affidavit pertaining to criminal cases, especially cases involving heinous or serious crimes or relating to corruption or moral turpitude would tantamount to corrupt practice, regard being had to the concept of undue influence. We have already referred to the authorities in *Assn. for Democratic Reforms* and *People's Union for Civil Liberties*. Emphasis on all these cases has been given with regard to essential concept of democracy, criminalisation of politics and preservation of a healthy and growing democracy. The right of a voter to know has been accentuated. As a part of that right of a voter, not to vote in favour of any candidate has been emphasised by striking down Rules 41(2), 41(3) and 49-O of the Rules. In *Assn. for Democratic Reforms*, it has been held thus: (SCC pp. 309-10, para 22)

"22. For health of democracy and fair election, whether the disclosure of assets by a candidate, his/her qualification and particulars regarding involvement in criminal cases are necessary for informing voters, maybe illiterate, so that they can decide intelligently, whom to vote for. In our opinion, the decision of even an illiterate voter, if properly educated and informed about the contesting candidate, would be based on

his own relevant criteria of selecting a candidate. In democracy, periodical elections are conducted for having efficient governance for the country and for the benefit of citizens—voters. In a democratic form of Government, voters are of utmost importance. They have the right to elect or re-elect on the basis of the antecedents and past performance of the candidate. The voter has the choice of deciding whether holding of educational qualification or holding of property is relevant for electing or re-electing a person to be his representative. *Voter has to decide whether he should cast vote in favour of a candidate who is involved in a criminal case. For maintaining purity of elections and a healthy democracy, voters are required to be educated and well informed about the contesting candidates.* Such information would include assets held by the candidate, his qualifications including educational qualification and antecedents of his life including whether he was involved in a criminal case and if the case is decided—its result, if pending—whether charge is framed or cognizance is taken by the court. *There is no necessity of*

suppressing the relevant facts from the voters.”

(emphasis supplied)

xxx

xxx

xxx

82. Having stated about the need for vibrant and healthy democracy, we think it appropriate to refer to the distinction between disqualification to contest an election and the concept or conception of corrupt practice inhered in the words “undue influence” Section 8 of the 1951 Act stipulates that conviction under certain offences would disqualify a person for being a Member either of the House of Parliament or the Legislative Assembly or Legislative Council of a State. We repeat at the cost of repetition unless a person is disqualified under law to contest the election, he cannot be disqualified to contest. But the question is when an election petition is filed before an Election Tribunal or the High Court, as the case may be, questioning the election on the ground of practising corrupt practice by the elected candidate on the foundation that he has not fully disclosed the criminal cases pending against him, as required under the Act and the Rules and the affidavit that has been filed before the Returning Officer is false and reflects total suppression, whether such a ground would be sustainable on the

foundation of undue influence. We may give an example at this stage. A candidate filing his nomination paper while giving information swears an affidavit and produces before the Returning Officer stating that he has been involved in a case under Section 354 IPC and does not say anything else though cognizance has been taken or charges have been framed for the offences under the Prevention of Corruption Act, 1988 or offences pertaining to rape, murder, dacoity, smuggling, land grabbing, local enactments like the Maharashtra Control of Organised Crime Act, 1999, U.P. Control of Goondas Act, 1970, embezzlement, attempt to murder or any other offence which may come within the compartment of serious or heinous offences or corruption or moral turpitude. It is apt to note here that when an FIR is filed a person filing a nomination paper may not be aware of lodgement of the FIR but when cognizance is taken or charge is framed, he is definitely aware of the said situation. It is within his special knowledge. If the offences are not disclosed in entirety, the electorate remain in total darkness about such information. It can be stated with certitude that this can definitely be called antecedents for the limited purpose, that is, disclosure of information to be chosen as a representative to an elected body.

XXX

XXX

XXX

86. From the aforesaid, it is luculent that free exercise of any electoral right is paramount. If there is any direct or indirect interference or attempt to interfere on the part of the candidate, it amounts to undue influence. Free exercise of the electoral right after the recent pronouncements of this Court and the amendment of the provisions are to be perceived regard being had to the purity of election and probity in public life which have their hallowedness. A voter is entitled to have an informed choice. A voter who is not satisfied with any of the candidates, as has been held in *People's Union for Civil Liberties*, can opt not to vote for any candidate. The requirement of a disclosure, especially the criminal antecedents, enables a voter to have an informed and instructed choice. If a voter is denied of the acquaintance to the information and deprived of the condition to be apprised of the entire gamut of criminal antecedents relating to heinous or serious offences or offence of corruption or moral turpitude, the exercise of electoral right would not be an advised one. He will be exercising his franchisee with the misinformed mind. That apart, his fundamental right to know also gets nullified. The attempt has to be perceived as creating an impediment in the mind

of a voter, who is expected to vote to make a free, informed and advised choice. The same is sought to be scuttled at the very commencement. It is well settled in law that election covers the entire process from the issuance of the notification till the declaration of the result. This position has been clearly settled in *Hari Vishnu Kamath v. Ahmad Ishaque*, *Election Commission of India v. Shivaji* and *V.S. Achuthanandan v. P.J. Francis*. We have also culled out the principle that corrupt practice can take place prior to voting. The factum of non-disclosure of the requisite information as regards the criminal antecedents, as has been stated hereinabove is a stage prior to voting.

91. The purpose of referring to the instructions of the Election Commission is that the affidavit sworn by the candidate has to be put in public domain so that the electorate can know. If they know the half truth, as submits Mr Salve, it is more dangerous, for the electorate is denied of the information which is within the special knowledge of the candidate. When something within special knowledge is not disclosed, it tantamounts to fraud, as has been held in *S.P. Chengalvaraya Naidu v. Jagannath*. While filing the nomination form, if the requisite information, as has been highlighted by us,

relating to criminal antecedents, is not given, indubitably, there is an attempt to suppress, effort to misguide and keep the people in dark. This attempt undeniably and undisputedly is undue influence and, therefore, amounts to corrupt practice. It is necessary to clarify here that if a candidate gives all the particulars and despite that he secures the votes that will be an informed, advised and free exercise of right by the electorate. That is why there is a distinction between a disqualification and the corrupt practice. In an election petition, the election petitioner is required to assert about the cases in which the successful candidate is involved as per the rules and how there has been non-disclosure in the affidavit. Once that is established, it would amount to corrupt practice. We repeat at the cost of repetition, it has to be determined in an election petition by the Election Tribunal.

92. Having held that, we are required to advert to the factual matrix at hand. As has been noted hereinbefore, the appellant was involved in 8 cases relating to embezzlement. The State Election Commission had issued a notification. The relevant part of the said notification reads as under:

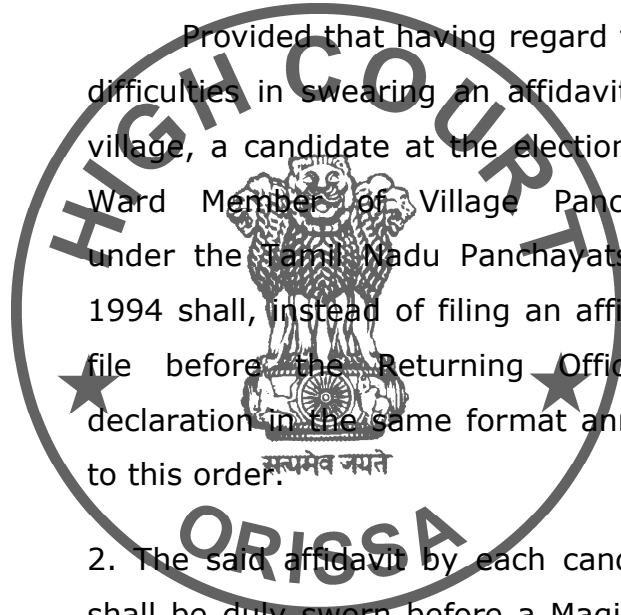
“1. Every candidate at the time of filing his nomination paper for any election or

casual election for electing a member or members or Chairperson or Chairpersons of any panchayat or municipality, shall furnish full and complete information in regard to all the five matters referred to in Para 5 of the Preamble, in an affidavit or declaration, as the case may be, in the format annexed hereto:

Provided that having regard to the difficulties in swearing an affidavit in a village, a candidate at the election to a Ward Member of Village Panchayat under the Tamil Nadu Panchayats Act, 1994 shall, instead of filing an affidavit, file before the Returning Officer a declaration in the same format annexed to this order.

2. The said affidavit by each candidate shall be duly sworn before a Magistrate of the First Class or a Notary Public or a Commissioner of Oaths appointed by the High Court of the State or before an officer competent for swearing an affidavit.

3. Non-furnishing of the affidavit or declaration, as the case may be, by any candidate shall be considered to be

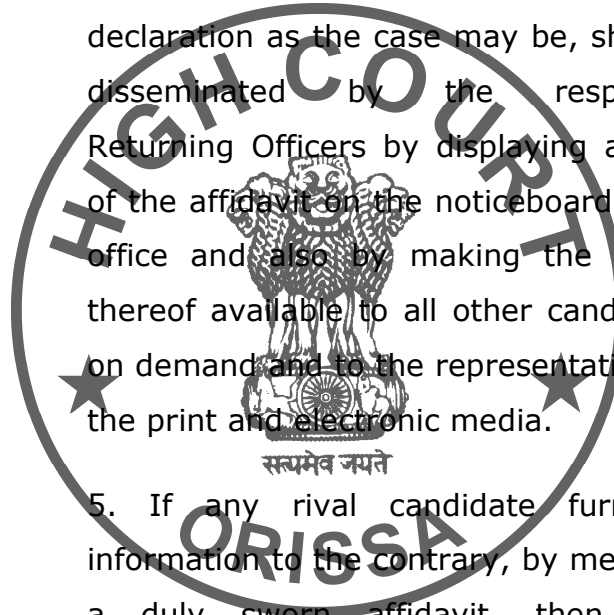


violation of this order and the nomination of the candidate concerned shall be liable for rejection by the Returning Officer at the time of scrutiny of nomination for such non-furnishing of the affidavit/declaration, as the case may be.

4. The information so furnished by each candidate in the aforesaid affidavit or declaration as the case may be, shall be disseminated by the respective Returning Officers by displaying a copy of the affidavit on the noticeboard of his office and also by making the copies thereof available to all other candidates on demand and to the representatives of the print and electronic media.

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

6. All the Returning Officers shall ensure that the copies of the affidavit/declaration, prescribed herein by the Tamil Nadu State Election



Commission in the Annexure shall be delivered to the candidates along with the forms of nomination papers as part of the nomination papers.”

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

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

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

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

94.4. As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his

part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(b) of the 1951 Act.

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

In the case of **Public Interest Foundation & Ors.**

-Vrs.- Union of India & Anr. reported in (2019) 3 Supreme Court Cases 224, the Constitution Bench of the Hon'ble Supreme Court, for eradicating criminal elements from the politics, issued a slew of directions as hereunder:

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

116.1. 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.

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

116.3. 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.

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

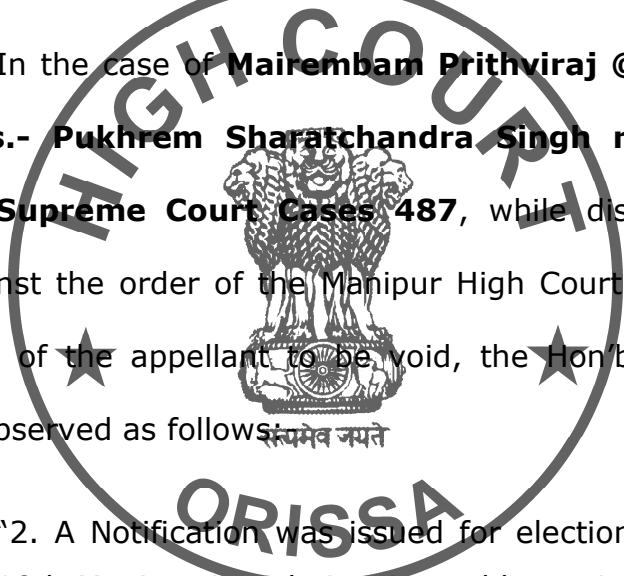
116.5. The candidate as well as the political party concerned shall issue declaration in the widely circulated newspapers in the locality about the antecedents of the candidate and also give wide publicity in the electronic media. When we say wide publicity, we mean that the same shall be done at least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

117. These directions ought to be implemented in true spirit and right earnestness in a bid to strengthen the democratic set-up. There may be certain gaps, or lacunae in a law or legislative enactment which can definitely be addressed by the legislature if it is backed by the proper intent, strong resolve and determined will of right-thinking minds to ameliorate the situation. It must also be borne in mind that the law cannot always be found fault with for the lack of its stringent implementation by the authorities concerned. Therefore, it is the solemn responsibility of all concerned to enforce the law as well as the directions laid down by this Court

from time to time in order to infuse the culture of purity in politics and in democracy and foster and nurture an informed citizenry, for ultimately it is the citizenry which decides the fate and course of politics in a nation and thereby ensures that "we shall be governed no better than we deserve", and thus, complete information about the criminal antecedents of the candidates forms the bedrock of wise decision making an informed choice by the citizenry. Be it clearly stated that informed choice is the cornerstone to have a pure and strong democracy.

118. We have issued the aforesaid directions with immense anguish, for the Election Commission cannot deny a candidate to contest on the symbol of a party. A time has come that Parliament must make law to ensure that persons facing serious criminal cases do not enter into the political stream. It is one thing to take cover under the presumption of innocence of the accused but it is equally imperative that persons who enter public life and participate in law making should be above any kind of serious criminal allegation. It is true that false cases are foisted on prospective candidates, but the same can be addressed by Parliament through appropriate legislation. The nation eagerly waits for such legislation, for the society has a

legitimate expectation to be governed by proper constitutional governance. The voters cry for systematic sustenance of constitutionalism. The country feels agonised when money and muscle power become the supreme power. Substantial efforts have to be undertaken to cleanse the polluted stream of politics by prohibiting people with criminal antecedents so that they do not even conceive of the idea of entering into politics. They should be kept at bay.”

In the case of **Mairembam Prithviraj @ Prithviraj Singh -Vrs.- Pukhrem Sharatchandra Singh reported in (2017) 2 Supreme Court Cases 487**, while dismissing the appeal against the order of the Manipur High Court, which held the election of the appellant to be void, the Hon'ble Supreme Court has observed as follows: 

“2. A Notification was issued for election to the 10th Manipur Legislative Assembly on 4-1-2012. The appellant belonging to the Indian National Congress (INC) and the respondent who was sponsored by the National Congress Party (NCP) filed their nominations within the time prescribed. There was no other nomination filed. The respondent objected to the nomination of the appellant at the time of scrutiny on the ground that a false declaration relating to educational qualification was made by the

appellant. The Returning Officer directed the appellant to submit documents in proof of his educational qualification as declared in the affidavit filed under Form 26. The appellant failed to produce any document to prove his educational qualification in spite of which the Returning Officer accepted the nomination of the appellant. Polling took place on 28-1-2012 and the counting of votes was held on 6-3-2012. The result was declared on the same day. The appellant secured 14,521 votes and the respondent secured 13,363 votes. The appellant was declared elected as MLA, Moirang constituency.

xxx

xxx

xxx

8. Two issues fall for our consideration in this appeal which are:

सत्यमेव जयते

8.1. (a) Whether a false declaration relating to the educational qualification is a defect of substantial character warranting rejection of a nomination?

8.2. (b) Whether it is necessary to plead and prove that the result was materially affected when the nomination of the returned candidate was found to have been improperly accepted, more so, when there are only two candidates contesting the election?

9. Chapter I of Part V of the Act deals with the nomination of candidates. Section 33 of the Act provides for presentation of nomination paper and requirements of a valid nomination. A nomination paper complete in the prescribed form, signed by a candidate and by an elector of the constituency as proposer should be delivered to the Returning Officer within the prescribed period. Section 33-A which was inserted by Act 72 of 2002 with effect from 24-8-2002 contemplates that a candidate has to provide additional information, apart from the information provided by him under Section 33(1). The information mentioned in Section 33-A relates to the criminal antecedents of a candidate. Section 36 deals with scrutiny of nomination. Section 36(4) which is relevant for adjudication of this case is as follows:

"36. Scrutiny of nomination.—(1)-(3)

(4) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character."

10. Rule 4-A of the Conduct of Election Rules, 1961 which was inserted with effect from 3-9-2002 reads as under:

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

11. A candidate has to file an affidavit along with his nomination paper as prescribed in Form 26 in which one of the columns pertains to the educational qualification. Grounds for declaring the election to be void are provided in Section 100 of the Act which is as under:

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

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

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

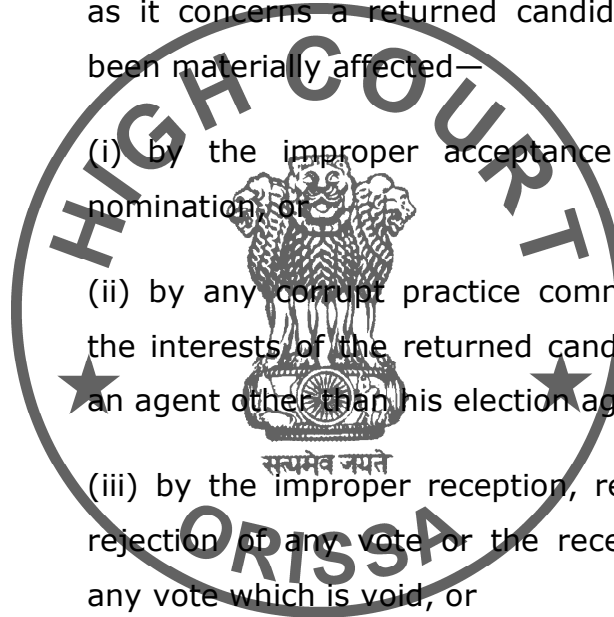
(i) by the improper acceptance of any nomination, or

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

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

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.



(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

(b)***

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the High Court may decide that the election of the returned candidate is not void.”

13. Sir Winston Churchill underlining the importance of a voter in a democratic form of government stated as follows:

“At the bottom of all tributes paid to democracy is the little man, walking into a

little booth, with a little pencil, making a little cross on a little bit of paper — no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point.”

xxx

xxx

xxx

17. It is clear from the law laid down by this Court as stated above that every voter has a fundamental right to know about the educational qualification of a candidate. It is also clear from the provisions of the Act, the Rules and Form 26 that there is a duty cast on the candidates to give correct information about their educational qualifications. It is not in dispute that the appellant did not study MBA in the Mysore University. It is the case of the appellant that reference to MBA from Mysore University was a clerical error. It was contended by the appellant that he always thought of doing MBA by correspondence course from Mysore University. But, actually he did not do the course. The question which has to be decided is whether the declaration given by him in Form 26 would amount to a defect of substantial nature warranting rejection of his nomination.

xxx

xxx

xxx

19. The contention of the appellant that the declaration relating to his educational qualification in the affidavit is a clerical error cannot be accepted. It is not an error committed once. Since 2008, the appellant was making the statement that he has an MBA degree. The information provided by him in the affidavit filed in Form 26 would amount to a false declaration. The said false declaration cannot be said to be a defect which is not substantial. He was given an opportunity by the Returning Officer to produce the relevant document in support of his declaration. At least at that point of time he should have informed the Returning Officer that an error crept into the declaration. He did not do so. The false declaration relating to his educational qualification cannot be stated to be not of a substantial character. It is no more *res integra* that every candidate has to disclose his educational qualification to subserve the right to information of the voter. Having made a false declaration relating to his educational qualification, the appellant cannot be permitted to contend that the declaration is not of a substantial character. For the reasons stated supra, we uphold the findings recorded by the High Court that the false declaration relating to the educational qualification made by the appellant is substantial in nature.

XXX

XXX

XXX

23. It is clear from the above judgment in *Durai Muthuswami* 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.

xxx

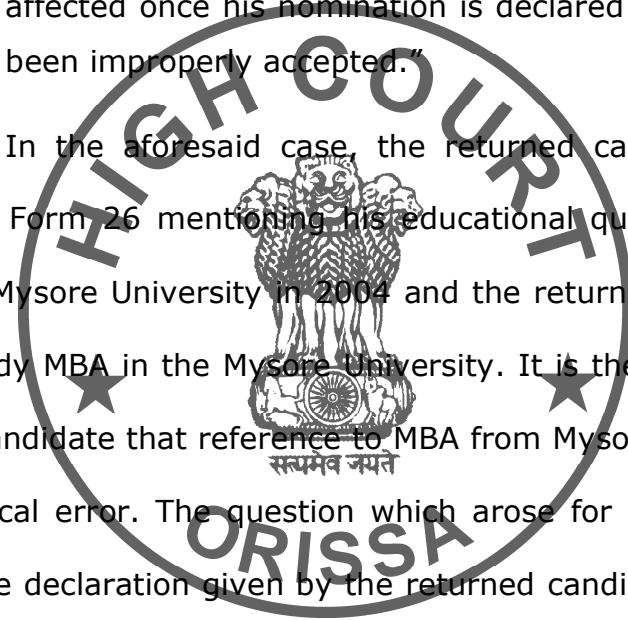
xxx

xxx

26. Mere finding that there has been an improper acceptance of the nomination is not sufficient for a declaration that the election is void under Section 100(1)(d). There has to be further pleading and proof that the result of the election of the returned candidate was materially affected. But, there would be no necessity of any proof in the event of the nomination of a returned candidate being declared as having been improperly accepted, especially in a case where there are only two candidates in the fray. If the returned candidate's nomination is declared to have been improperly accepted it would mean that he could not have contested the election and that the result of the election of the returned candidate was materially affected need not be proved further. We do not find substance in the submission of Mr Giri that the judgment in *Durai Muthuswami* is not applicable to the facts of this case. The submission that *Durai Muthuswami* is a case of disqualification under Section 9-A of the Act and, so, it is not applicable to the facts of this case is also not correct. As stated supra, the election petition in that case was rejected on the ground of non-compliance with Section 100(1)(d). The said

judgment squarely applies to this case on all fours. We also do not find force in the submission that the Act has to be strictly construed and that the election cannot be declared to be void under Section 100(1)(d) without pleading and proof that the result of the election was materially affected. There is no requirement to prove that the result of the election of the returned candidate is materially affected once his nomination is declared to have been improperly accepted."

In the aforesaid case, the returned candidate filed affidavit in Form 26 mentioning his educational qualification as MBA from Mysore University in 2004 and the returned candidate did not study MBA in the Mysore University. It is the case of the returned candidate that reference to MBA from Mysore University was a clerical error. The question which arose for decision was whether the declaration given by the returned candidate in Form 26 would amount to defect of substantial nature warranting rejection of his nomination. The Hon'ble Supreme Court rejected the contention of the returned candidate that the declaration relating to his educational qualification in the affidavit is a clerical error.



Mr. Kanungo, learned counsel for the Election Petitioner contended that in the present case the Respondent has taken the stand that the wrong and misinformation in the affidavit in Form 26 is a typographical error or clerical error and he evaded to own responsibility for such mistake. The Respondent not only gave false and misleading declaration in the affidavit in Form 26 (Exts.43 to 46) but also made false and misleading declaration in the publication made in three newspapers, pursuant to the directions of the Constitution Bench of Hon'ble Supreme Court in the case of **Public Interest Foundation** (supra).

In case of **Ganga Mishra -Vrs.- Chhedi Paswan & Ors reported in MANU/BH/0533/2016**, while invalidating the election of the returned candidate (Respondent No.1), the Patna High Court observed as follows:-

"3. The Respondent No.1 contested the election on being nominated by the Bhartiya Janta Party (BJP). Altogether 11 candidates contested the election. It is stated that being a voter of 34 Sasaram (SC) Parliamentary Constituency, he has a right under Article 19(1)(a) of the Constitution to know about the contesting candidates including his/their criminal antecedents. It is much more fundamental and

basic for survival of a vibrant democracy. A well informed voter can vote judiciously and elect the law maker. By various judgments, the Apex Court has emphasized the legal right of the elector/voter like the petitioner. Any candidate contesting election is required to furnish details regarding his/her criminal antecedent while filing nomination paper. Part-IIIA of Form-2A as well as paragraph No. 5 of Part-A of Form 26 require detailing of pending criminal cases against the contesting candidate in which the offence is punishable with imprisonment with two years or more. However, the Returned Candidate (Respondent No. 1) suppressed the material fact that a criminal case bearing Mohania P.S. Case No.168 of 2006 dated 08.09.2006 was pending against him in which cognizance was taken by the competent Court in the year 2007. The same was not disclosed in Clause 5(ii) of Form-26. The Returned Candidate had filed his nomination paper on 30.10.2010 to contest the assembly election from 204 Mohania Assembly Constituency and in Form 2A and Form-26, he had detailed all the criminal cases but in the election under question he purposefully suppressed his criminal antecedent by not disclosing pendency of Mohania P.S. Case No. 168 of 2006. Altogether three criminal cases were pending against the Returned Candidate. The first criminal case arose out of Mohania P.S.

Case No.168 of 2006 under Sections 143, 145, 283 and 290 of the Indian Penal Code out of which punishment under Section 145 IPC is two years. In the aforesaid case, charge-sheet had already been filed on 20.02.2007 whereupon cognizance was taken by the learned Chief Judicial Magistrate, Bhabhua in 2007 and the case is pending for final adjudication in the Court of learned S.D.J.M., Bhabhua. In the said case, the Returned Candidate had surrendered on 19.02.2010 and was released on bail on furnishing bond as directed by the Court. The said case is fixed up for attendance. The said case was lodged by the Officer-in-charge of the Police Station against the Returned Candidate and others named and unknown accused alleging that Respondent No.1 along with 60-70 supporters constituting a mob in the afternoon of 08.09.2006 at about 4.30 p.m. sat on the middle of the road and blocked N.H.-2 (G.T. Road) resulting in complete blockage. Even on instruction by the Police, the accused did not disperse and remained static creating public nuisance. The mob was doing so to compel the government to enforce Durgawati Reservoir Project. Another criminal case bearing Mohania P.S. Case No. 28 of 2005 under Section 171(h) of I.P.C. and Section 3(i) of the Bihar Prevention of Defacement of Property Act, 1985 was lodged against the Returned Candidate (Sri Chhedi

Paswan) which is also pending before the learned Judicial Magistrate, Bhabhua on a charge-sheet being filed against him and cognizance taken against the petitioners and others on 31.01.2006. The Returned Candidate later surrendered and was enlarged on bail. The third criminal case pending against the Returned Candidate was Mohania P.S. Case No.206 of 2005 under Section 3(i) of the Bihar Prevention of Defacement of Property Act which is pending trial vide Tr. No.2987 of 2013. The Returned Candidate is on bail in the said case which is still pending. Prima facie it is established that the Returned Candidate had filled up the nomination paper in 2014 Parliamentary Election by furnishing false affidavit in regard to his pending criminal cases. In one of those three cases, the punishment is two years. The Returning Officer acted contrary to the provisions of the Act and diverse judgments of the Apex Court in illegally accepting the nomination paper of the Respondent No.1 as valid instead of rejecting the same as per Section 33A of the Act as he was required to furnish the information about his involvement in criminal offence(s) punishable with imprisonment of two years or more and pending consideration before the Court upon filing of charge-sheet. By not furnishing the entire details of his criminal antecedents, the Respondent No.1 prevented the voter, like the

petitioner, from expressing their considered choice at the franchise. The votes thus polled in his favour by the uninformed citizens/voters of 34 Sasaram (SC) Parliamentary Constituency have become meaningless and in strict violation of the fundamental rights of the voters guaranteed under the Constitution. The purity of election and more particularly the transparency in the said election process has been completely frustrated which materially affected the result of the election insofar as it concerns the Returned Candidate. The Returned Candidate in Clause-5 of the Form-26 filled up by him did not record pendency of the Mohania P.S. Case No.168 of 2006. His nomination paper was liable to be rejected. The Returning Officer illegally/improperly accepted the nomination paper of the respondent (Returned Candidate). In clause 5(ii) of Form-26, the Returned Candidate wrote 'Nil'. This is clear case of suppression of his criminal antecedents.

xxx

xxx

xxx

8. The Counsel for the respondent No.1 has opposed the application and the prayer made therein. It is submitted that according to the prescribed form (Form-26), in paragraph 5(ii) thereof the respondent No.1 was not required to give information of the Mohania P.S. Case No.168 of 2006 because the charges in the said

case had not been framed against him till the date of filing of the nomination paper and even today by the competent Court in which the punishment is imprisonment for two years or more. It was the duty of the ECI to publicize the new format to collect the information regarding the criminal case pending against the contesting candidate in which charge-sheet was filed by the Police against the candidate and cognizance taken by the competent Court. Unfortunately, the ECI did not publicize the new format requiring the candidate to detail relevant facts. There was no space provided in Form-26 to provide such information. Vide information sought in paragraph 5 of Form-26, the candidate was required to enlist only cases pending against the candidate in which the imprisonment is two years or more and charges have been framed by the competent Court. If it is so then only the candidate filling up the affidavit has to proceed further with sub-para (i) and (ii) of Para-5 of Form-26. Otherwise the contesting candidate is not required to answer sub-para (i) and (ii) of Para-5 of Form-26. In these circumstances, the respondent No.1, quite bona fide, filled up the relevant column as 'shunya' (nil) in sub-para (i) and (ii) of Para-5 as indisputably no charge was framed in those case(s) against the petitioner in which the imprisonment is two year or more. The details

required to be furnished in sub-para (ii) of Para-5 of Form-26, if read carefully, would clarify these facts. It is clearly written in the bracket of sub-para-(ii) "other than the cases mentioned in Item No.1 above". It is thus more than obvious that if the contesting candidate has furnished relevant information in sub-para (i) which required detailing of the case in which the candidate is accused of any offence in which punishment is two years or more and the charges has been framed by the competent Court, then only the respondent No.1 was obliged to set out details/information in sub-para (ii) of Para-5 as to whether he has got any other pending criminal case(s). The respondent No.1 is accused in three cases which are trivial in nature. Out of them, two cases relate to pasting of the posters on the wall without consent during the elections held in 2005 in which the imprisonment is up to six months. In one of these two cases namely Mohania P.S. Case No.28 of 2005, the respondent No.1 has been acquitted by the Court. The third case registered in the year 2006 was also trivial as on account of staging peaceful 'dharna' on the road side of G.T. road, Mohania in order to pressurize the government to take up and commission the Durgawati Project meant for providing irrigation facilities to the agricultural lands of more than two lacs farmers of 34 Sasaram (SC)

Parliamentary Constituency, the same was lodged. It is the political right of the citizens in active politics to do so for the benefit of the people of the constituency. The said project has now been commenced. In the above case registered under Section 145 IPC, besides other penal provisions, the punishment provided is up to two years. Hence, under legal advice and considering the requirements of aforesaid paragraph of Form 26, the respondent No.1 had not disclosed the details of the said case in Form-26. The manner in which Form 26 require detailing of the criminal cases pending against the candidate filling up the form/affidavit in which the punishment provided was up to two years prevented him to enlist the said case. Further, as no charge was framed against the respondent No.1 in the said case also prevented him from enlisting the said case in Form 26. It was not a case of deliberate suppression of relevant details with a view to deny the electors of his right to know criminal antecedents of the candidate contesting the election.

xxx

xxx

xxx

Re. Issue No.VII

13. For better appreciation of the case, this issue is taken up for consideration out of turn. The election petition in paragraph 22 has

asserted that non-compliance of the Constitution and the provisions of the Act and the rules and the orders made thereunder, the election of the returned candidate is fit to be declared void insofar as it concerns the returned candidate as the election on account of illegal acceptance of the nomination paper filed by the returned candidate has materially affected the election. In case the Court holds the nomination paper submitted by the returned candidate was illegally or improperly accepted then the election of the returned candidate is bound to be declared as void. Naturally, it would amount to materially affecting the result of the returned candidate. Though, not much submissions have been advanced on this issue by the respondent No.1 (returned candidate) yet this Court would note that in the case of Krishnamurti v. Shiv Kumar and Ors. 2015 AIR SCW 2688, in paragraph 85(e) the Apex Court observed that in a case like this, the question whether it materially affects the election or not will not arise. Consequently, the Court has no difficulty to conclude that in case the Court accepts the contention of the election petitioner on the main issues then the result of the election can be held to have materially affected. No further discussion in the light of the pleadings and the evidence adduced in support thereof require to

be noticed with a view to amplify the point/issue.

Re.--Issue Nos.IV, V and VI

14. These issues are genetically interlinked and have been considered together. There is also agreement at Bar that they are interlinked and the crucial issues falling for consideration in the election petition which shall determine the fate of the election petition. Relevant pleadings in this regard have been made in paragraph Nos.7 to 16 of the election petition. Before the Court notices the oral evidence adduced by the parties on these issues, it is apt to notice the documents/exhibits available on record on these issues. Ext.-A series is Form 26 of the nomination paper filed by Sri Chhedi Paswan (respondent No.1) at the relevant election. Paragraph 5(i) thereof requires the candidate to set out details of cases pending against him in which punishment provided is two years or above and the Court of competent jurisdiction has framed the charges. The Returned candidate filled up all the succeeding columns of paragraph No.5(i) of Form-26 as 'shunya' (nil). Then comes paragraph 5(ii) which requires the candidate to enlist or detail criminal cases pending against him in which the Court has taken cognizance. Again the respondent No.1 filled up the succeeding column(s) of the said paragraph as

'shunya' (nil). There is no denial of the case of the election petitioner that during the relevant time, three criminal cases were pending in Court against the respondent No.1 out of which one case being Mohania P.S. Case No.168 of 2006 was lodged, on amongst others, under section 145 IPC wherein punishment provided is two years. Ext.C series is Annexure-5 series of the election petition which is the entire order-sheet of Mohania P.S. Case No.168 of 2006. On perusal of the order-sheet, it appears charge-sheet was submitted in the said case in August, 2007 under Sections 143, 145, 283 and 290 of the Indian Penal Code whereafter cognizance was taken by the learned Chief Judicial Magistrate, Bhabhua, Kaimur. The Respondent No.1 in the said case surrendered in Court and was granted bail on 19.2.2010. Ext.D series and E series are similarly the entire order-sheet of Mohania P.S. Case No.28 of 2005 and Mohania P.S. Case No.206 of 2005 respectively in which the respondent No.1 was cited as accused for having committed trivial offence relating to election in which punishment provided is less than one year. They are not material for adjudication of the issues as put up by the election petitioner.

xxx

xxx

xxx

27. I have noticed the relevant evidence adduced by the parties on the point of disclosure or non-disclosure of the antecedent of the respondent No.1. From the evidence of R.W.-VI (respondent No. 1), it is seen that the witness has admitted that he wrote 'shunya' in each column of paragraph 5(ii) of Form-26 (the affidavit). He has given an explanation that the same was done as he was not advised to disclose those cases pending against him in which only cognizance was taken under penal provision providing punishment for two years but no charge was framed by the Court of competent jurisdiction. He has further stated that as he filled 'shunya' (nil) in the preceding paragraph of the affidavit and, as such, he was not required to detail other pending cases in which only cognizance was taken by the Court and no charge was framed. The words other than those in preceding paragraph appearing in paragraph 5(ii) of Form-26, according to him, did not require him to disclose details of those cases. The other non-official witness adduced on his behalf have stated that the one case then pending against the respondent No.1 under Section 145 IPC where punishment provided is two years related to staging dharna on road for the betterment of the cultivators/voters of the constituency. A plea has been taken that the offence was trivial in nature and related to the

right of the political leaders to protest against non-implementation of developmental project(s) in the Parliamentary Constituency in which not even charge was framed. He did not detail the said case and wrote 'shunya' (nil).

xxx

xxx

xxx

29. The ECI issued guidelines to the contesting candidates as well as the Returning Officers on 1st August 2012 in which the Association for Democratic Reforms (supra) and People's Union for Civil Liberties (supra) judgments were required to be complied with. Form 26 as given in the Act (Ext.A) is on record. Copies of the handbook of the candidate as well as for the Returning Officer have been produced in course of argument for perusal of the Court. As noticed, the respondent No.1 filled up the relevant paragraph of Form-26 as 'shunya' (nil). The word 'Constitution' used in 100(1)(d)(v) of the Act is generic, purpose oriented and cannot be controlled by the provisions of the Constitution enumerated in Section 36 of the Act. There has been infraction of the requirements of law as directed by Hon'ble Supreme Court in the judgments referred to above at the hands of respondent No.1. I have further concluded that if it is found so the election of respondent No.1 from 34 Sasaram SC Parliamentary Constituency held in 2014 is fit to be declared void as the

respondent No.1 shall be held to have exercised undue influence during the course of said election which is a corrupt practice within the meaning of the Act. It has been strenuously submitted on behalf of the respondent No.1 that the Mohania P.S. Case No.168 of 2006 was instituted under minor sections of the Penal Code which include Section 145 IPC in relation to staging of dharna or blocking of the road for immediate implementation of a water project in the Constituency for the benefit of the people/voters at large. It is one of the rights of a citizen who is in active politics to do so. Triviality of the offence in which the contesting candidate is involved, in my view, would not be of much consequence. A contesting candidate, according to the requirements of law, is mandated to disclose his past criminal antecedents where the possible conviction is two years or more. The punishment provided for the offence to be disclosed as the antecedent itself suggest that the contesting candidate may have serious offences registered against him in which either cognizance has been taken or charges framed. Yet the law mandates for disclosure thereof. In Association for Democratic Reforms (supra) reinforced in People's Union for Civil Liberties (supra), the Apex Court found the electors right to know the antecedent of a contesting candidate as a facet of right to freedom of

speech and expression enshrined in Article 19(1)(a) of the Constitution. What has been held in Association for Democratic Reforms (supra) is that the contesting candidate must disclose in relevant form on affidavit the criminal cases instituted against the contesting candidate prior to six months of filing of nomination as to whether the candidate is accused in any pending case, of any offence punishable with imprisonment with two years or more, and in which charge is framed or cognizance is taken by the Court of Law. It is in this context paragraph 5(i) and 5(ii) of Form-26 can be seen and appreciated. Indisputably, cognizance of the case by competent Court of Law was taken in Mohania P.S. Case No.168 of 2006. In fact, the Respondent No.1 had disclosed the pendency of the aforesaid case while filing his nomination paper to contest 204 Mohania Assembly Constituency held in 2010. The same was, however, not disclosed to contest the present election. In the circumstances, for such non-compliance of the provisions of the Act, the order issued by the ECI under Article 324 of the Constitution and breach of Article 19(1)(a) of the Constitution, the election of respondent No.1 from 34 Sasaram (SC) Parliamentary Constituency is liable to be held as null and void as the respondent No.1 suffered from constitutional disability. These issues are,

accordingly, decided in favour of the election petitioner.”

In the aforesaid case, it has been strenuously submitted on behalf of the returned candidate that the case was instituted under minor sections of the I.P.C. i.e., section 145 the I.P.C., in relation to staging of dharna or blocking of the road for immediate implementation of water project in the constituency for the benefit of the people/voters at large. It is one of the rights of a citizen who is in active politics to do so. The Hon'ble Patna Court held that, triviality of the offence in which the contesting candidate is involved would not be of much consequence. A contesting candidate, according to the requirements of law, is mandated to disclose his past criminal antecedents where the possible conviction is two years or more. The punishment provided for the offence to be disclosed as the antecedent itself suggest that the contesting candidate may have serious offences registered against him in which either cognizance has been taken or charges framed. Yet the law mandates for disclosure thereof is that the contesting candidate must disclose in relevant form on affidavit the criminal cases instituted against the contesting candidate prior to six months of filing of nomination as to whether the candidate is accused in

any pending case, of any offence punishable with imprisonment with two years or more, and in which charge is framed or cognizance is taken by the Court of Law. It is in this context paragraph 5(i) and 5(ii) of Form-26 can be seen and appreciated. In the circumstances, for such non-compliance of the provisions of the Act, the order issued by the ECI under Article 324 of the Constitution and breach of Article 19(1)(a) of the Constitution, the election of respondent No.1 from 34 Sasaram (SC) Parliamentary Constituency was held liable to be held as null and void.

Mr. Kanungo, learned counsel for the Election Petitioner also placed reliance in the case of **Brajesh Singh -Vrs.- Sunil Arora and Others reported in (2021) 10 Supreme Court Cases 241**, wherein the Hon'ble Supreme Court, *inter alia*, directed all the political parties to publish information about the criminal antecedents of candidates on their respective official websites. It also issued the following directions:-

"77. In furtherance of the directions issued by the Constitution Bench in *Public Interest Foundation* and our order dated 13-2-2020, in order to make the right of information of a voter more effective and meaningful, we find it

necessary to issue the following further directions:

77.1. Political parties are to publish information regarding criminal antecedents of candidates on the homepage of their websites, thus making it easier for the voter to get to the information that has to be supplied. It will also become necessary now to have on the homepage a caption which states "Candidates with Criminal Antecedents".

77.2. The ECI is directed to create a dedicated mobile application containing information published by candidates regarding their criminal antecedents, so that at one stroke, each voter gets such information on his/her mobile phone.

77.3. The ECI is directed to carry out an extensive awareness campaign to make every voter aware about his right to know and the availability of information regarding criminal antecedents of all contesting candidates. This shall be done across various platforms, including social media, websites, TV ads, prime time debates, pamphlets, etc. A fund must be created for this purpose within a period of 4 weeks into which fines for contempt of Court may be directed to be paid.

77.4. For the aforesaid purposes, the ECI is also directed to create a separate cell which will also monitor the required compliances so that this Court can be apprised promptly of non-compliance by any political party of the directions contained in this Court's orders, as fleshed out by the ECI, in instructions, letters and circulars issued in this behalf.

77.5. We clarify that the direction in para 4.4 of our order dated 13-2-2020 be modified and it is clarified that the details which are required to be published, shall be published within 48 hours of the selection of the candidate and not prior to two weeks before the first date of filing of nominations.

★ 77.6. We reiterate that if such a political party fails to submit such compliance report with the ECI, the ECI shall bring such non-compliance by the political party to the notice of this Court as being in contempt of this Court's orders/directions, which shall in future be viewed very seriously.”

Learned counsel for the Election Petitioner submitted that the Election Petitioner in para 7(C) has pleaded that the Respondent in his affidavit dated 03.04.2019 filed along with his nomination paper on 02.04.2019 has falsely and deliberately withheld correct, proper and full declaration about the details of

the criminal cases pending against him. The Respondent has not accurately mentioned correct fact under column (5) of the affidavit submitted by him before the Returning Officer as to whether any criminal case was pending against him or not. In column (5)(ii)(a)(vi), the Respondent has mentioned that:

i) FIR No.136/2012 dated 24.09.2012 in Baliana Police Station, Cuttack, Odisha whereas there is no Baliana Police Station in the district of Cuttack.

ii) The Respondent has mentioned FIR No.34 dated 06.09.2007, Vigilance Police Station, Cuttack, Odisha whereas there is no FIR No.34 dated 06.09.2007 in Vigilance Police Station, Cuttack, Odisha against the Respondent.

iii) The Respondent has not disclosed about the pendency of the FIR/V.G.R. No.34 dated 06.09.2007 of Vigilance Police Station, Bhubaneswar, Odisha against him.

iv) The Respondent has also not disclosed the FIR/V.G.R No. of the T.R. No.41/2013 pending in the Court of Spl. Judge, Vigilance, Bhubaneswar against him and others.

v) The declaration made in column (5)(ii)(b) Sl. No.(ix) by the Respondent about the G.R. case No.680/2012 in the Court of S.D.J.M.,

Bhubaneswar is false and misleading declaration. There is no G.R. Case No.680/2012 pending against the Respondent in the Court of S.D.J.M., Bhubaneswar rather a G.R. Case No. 680/2012 is pending against the respondent in the Court of the J.M.F.C.(O), Bhubaneswar.

vi) FIR Nos. given in column (5)(ii)(a) and the corresponding case nos. and the name of the Court declared in column (5)(ii)(b) and sections of the concerned Acts/Codes involved are false and misleading declarations.

vii) The Respondent in column (5)(ii)(d) has declared that two charge related to wrongful restraint (I.P.C. section 341) whereas in column (5)(ii)(c) sl. No.(v), (vi) and (xii), he has declared three cases under section 341 of the I.P.C. is pending against him.

viii) The Respondent in column (5)(ii)(d) has declared that two charges related to obscene acts and songs (I.P.C. section 294) whereas in column (5)(ii)(c) sl. nos.(i), (ii), (iv), (v), (vi) and (xii), he has declared six cases under section 294 of the I.P.C. is pending against him.

ix) The Respondent in column (5)(ii)(d) has declared five charges related to cheating and dishonestly inducing delivery of property (I.P.C. section 420) whereas in column (5)(ii)(c) sl.

Nos.(iii), (vii) to (x) and (xiii), he has declared six cases under section 420 of the I.P.C. are pending against him.

x) The Respondent in column (5)(ii)(d) has declared five charges related to punishment of criminal conspiracy (I.P.C. section 120-B) whereas in column (5)(ii)(c) sl. nos.(iii), (vii) to (x) and (xiii), he has declared six cases under section 120-B of the I.P.C. is pending against him.

xi) The Respondent in column (5)(ii)(d) has declared two charges related to mischief by injury to public road, bridge, river, channel (I.P.C. section 143) whereas in column (5)(ii)(c) sl. nos. (i), (iv) and (v), he has declared three cases under section 143 of the I.P.C. is pending against him.

xii) The Respondent in column (5)(ii)(d) has declared two charge related to mischief by doing any act in respect of any public property (section 7/3 and 7/4 of P.D.P.P. Act) whereas in column (5)(ii)(c) sl. nos.(i), (ii), (xii), he has declared three cases under the P.D.P.P. Act.

xiii) The Respondent in column (5)(ii)(c), sl. nos. (iii)(vii) to (x) and (xiii) has declared about the cases pending against him under section 13(2) read with section 13(1)(d) of P.C. Act,

1988 but has not declared about the same in column (5)(ii)(d) of the affidavit.

According to the learned counsel for the Election Petitioner, the Respondent has made false declaration about the pendency of criminal cases against him. Non-disclosure of criminal cases by the Respondent in entirety and in full detail in the prescribed Form 26, as mandated under section 33A of the R.P. Act, 1951 read with Rule 4A of 1961 Rules, creates impediment in free exercise of electoral rights by the voters and therefore, the election of the Respondent from the constituency is to be declared null and void as the misinformed voters could not make an informed choice according to their free will and conscience and the same violates the fundamental rights of the voters to know. To prove the above pleadings made in the Election Petition, the Election Petitioner exhibited Exts.17 to 30 and Ext.49. According to Mr. Kanungo, the submissions made by the learned Senior Advocate for the Respondent that except Exts.26, 27 and 30, there is no pleading in the election petition, is not correct. The Election Petitioner has pleaded the material facts in the election petition regarding false declaration made in the affidavit filed in Form 26 by the Respondent and

substantiated the said pleadings with the exhibits i.e., Exts.17 to 30 and Ext.49.

Mr. Kanungo, learned counsel further argued that the Respondent in reply to the averments made in para 7(C) of the election petition, in para 23(C) of his written statement, contended, inter alia, that he has disclosed all the necessary information in respect of the criminal cases pending against him in his affidavit filed in Form 26. There is no concealment of information or false information provided by the Respondent in the said affidavit, rather he has declared all particulars in respect of all the criminal cases pending against him as required under law and prescribed under the format of the Form 26 affidavit. On the other hand, the Election Petitioner has made above allegations very tactfully on false and frivolous grounds, without disclosing the basic material facts as to what are the information required to be disclosed under law in column (5) of the Form 26 affidavit. According to the Respondent, the Election Petitioner while making allegations under paragraph-7(C) of the election petition has deliberately suppressed the above important material facts which are laid down/prescribed under the column (5)(ii) in its clauses (a) to (g) and as such those allegations do not disclose complete cause of action.

Mr. Kanungo, learned counsel further argued that the Election Petitioner in para 7(G) of the election petition has pleaded that the Respondent has not submitted his nomination paper as required under law in the prescribed form and he has also not filed the affidavit in Form 26 giving true and correct declarations about his criminal cases, assets (both movable and immovable) and liabilities of self and spouse for which his nomination papers ought to have been rejected by the Returning Officer as the Respondent has not complied with the requirement of section 33 of the R.P. Act, 1951. The Election Petitioner in para 7(H) of the election petition has pleaded that non-disclosure or misinformation about the criminal cases pending against him and about the assets (both movable and immovable) and liabilities of himself and his spouse leads to suppression and amounts to making false declaration. Therefore, the Respondent is not entitled to contest the election for the aforesaid suppression and false declarations in the affidavit filed in Form 26 and for which the election of the Respondent is to be declared void.

Learned counsel for the Election Petitioner further argued that non-disclosure/misinformation of criminal cases, assets (both movable and immovable) and the liabilities of

Respondent and his spouse interferes with free exercise of the right of the voters to vote according to their choice and conscience. Free and fair election is the essence of democracy. Without freely and fairly informed voters, votes cast by uninformed voters in favour of the Respondent are meaningless. One sided information, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce. Therefore, casting of votes by misinformed and non-informed voters is bound to affect the democracy seriously. The information required in the nomination Form 2B and in the affidavit filed in Form 26 is vital for giving effect to the 'right to Know' of the citizens. If a candidate fails to file the prescribed nomination form in Form 2B and files affidavit by suppressing the required information in Form 26, his nomination paper is to be rejected. In the present case, the Respondent has not filed his nomination paper in the prescribed Form 2B and has not fully disclosed about the criminal cases pending against him for which the Returning Officer should have rejected his nomination papers as the same was not filed in the prescribed Form 2B and whatever has been filed is also with blank particulars. But the Returning Officer illegally and improperly accepted the nomination papers of the Respondent though the same were not

in the prescribed Form 2B. Therefore, non-filing of nomination paper in the prescribed form and whatever has been filed with blank particulars materially affects the result of the election as such the election of the Respondent declaring him as MLA of 90-Barabati Cuttack Assembly Constituency is to be declared void.

To prove the pleadings made in the election petition relating to criminal cases, the Election Petitioner exhibited Exts.1 to 4, 17 to 30, 32 to 35, 43 to 46 and Ext.49. Exts.B, C, D and B/1, C/1, D/1 were exhibited on behalf of the Respondent.

Exts.1 to 4 and Ext.32 to 35 are the downloaded and printed copies of nomination paper dated 02.04.2019 along with the affidavit dated 03.04.2019 in Form 26 from the website of the Election Commission of India whereas Ext.43 is the original affidavit dated 03.04.2019 and Exts.44 to 46 are the xerox attested copy of Ext.43, the affidavits in Form 26 filed by the Respondent along with the nomination paper dated 02.04.2019.

The Election Petitioner in his evidence affidavit Ext.36 has stated as follows:-

"19. That in column (5)(ii)(a) of the affidavit in Form 26, the Respondent is to declare the FIR numbers with name and address of police

station and in column 5(ii)(b), he is to disclose the corresponding Case Nos. with the name of the Court and in column 5(ii)(c), Section(s) of the concerned Acts/Codes involved and in column 5(ii)(d), brief description of the offences. But he has not declared correct FIR nos. with name and address of police station so also the case numbers with name of the Court and Sections of concerned acts/ codes involved and the brief description of the offences. Thus, the Respondent has given false declaration regarding his criminal antecedents in his affidavit filed in Form 26 along with his nomination papers.

The Respondent in his examination-in-chief (Ext.DW) has stated as follows:-

"I have disclosed all necessary information in respect of the criminal cases pending against me in my affidavit in Form 26 dtd. 03.04.2019 xxx xxx In Exts.43, 44, 45 and 46, I have declared all particulars in respect of all the criminal cases pending against me as required and prescribed under the format of the Form 26 affidavit."

"The further allegation made by the Election Petitioner to the effect that I have given false and misleading declarations with respect to the

FIR Nos. in column (5)(ii)(a) and the corresponding Case Nos. and the name of the Court declared in column (5)(ii)(b) and sections of the concerned Acts/Codes involved, does not point out any particular false and misleading declaration by me and as such the same is a bald and frivolous allegation.”

The Respondent in his cross-examination has stated as follows:-

“Before filing the affidavit, I had carefully gone through the same and being satisfied that it contains the correct facts, I sworn affidavit before the Notary Public. At the time of filing of the nomination papers, some criminal cases were pending against me.”

Exts.43 to 46 show that in Col.5(ii)(a)(i), the Respondent has declared in his affidavit in Form 26 that FIR No.149 dtd. 15.09.2018, Purighat Police Station, Cuttack, Odisha whereas Ext.17 discloses that the said FIR No.149 was registered on 11.09.2018 and not on 15.09.2018.

The Respondent in his examination-in-chief of Ext.DW has admitted that “Ext.17 is the certified copy of F.I.R. No.149 dated 11.09.2018 of Purighat P.S., Cuttack.” The Respondent in his cross-examination has admitted that, “It is a

fact that Ext.17 reveals that Purighat P.S. Case No.149 was registered on 11.09.2018.”

Q. You have not submitted any document to show that F.I.R. No.149 dated 15.09.2018 of Purighat police station, Cuttack, Odisha is pending against you as you have mentioned in Col. No. 5(ii)(a)(i) of your affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46).

Ans. Since Purighat P.S. Case No.149 was not registered on 15.09.2018 and it was registered on 11.09.2018 and it was a typographical error on my part to mention the same in the said column, therefore, I have not filed any document in that respect. Thus, the date of FIR No.149 mentioned in Exts.43 to 46 are false declaration.

Exts.43 to 46 show that in Col.5(ii)(a)(ii), the Respondent has declared in his affidavit in Form 26 that FIR No.150 dtd. 15.09.2018, Purighat Police Station, Cuttack, Odisha whereas Ext.18 discloses that the said FIR No.150 was registered on 11.09.2018 and not on 15.09.2018.

The Respondent in his examination-in-Chief (Ext.DW) has admitted that, “Ext.18 is the certified copy of F.I.R. No.150 dated 11.09.2018 of Purighat P.S., Cuttack.” The Respondent in

his cross-examination has admitted that "It is a fact that Ext.18 reveals that Purighat P.S. Case No. 150 was registered on 11.09.2018."

Q. You have not submitted any document to show that F.I.R. No.150 dated 15.09.2018 of Purighat police station, Cuttack, Odisha is pending against you as you have mentioned in Col. No.5(ii)(a)(ii) of your affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46).

Ans. Since Purighat P.S. Case No.150 was not registered on 15.09.2018 and it was registered on 11.09.2018 and it was a typographical error on my part to mention the same in the said column, therefore, I have not filed any document in that respect."

Exts.43 to 46 show that in Col.5(ii)(a)(iii), the Respondent has declared, in his affidavit in Form 26, that FIR/V.G.R. No.85 dtd. 31.12.2012 of Vigilance Police Station, Cuttack is pending against him but while declaring the case number and the name of the Court in col.5(ii)(b)(vi), the Respondent has declared that G.R Case No.85/2012 dated 31.12.2012 is pending in the Court of Special Judge, Vigilance, Cuttack whereas Ext.23 reveals that the Case No. is V.G.R. No.85/2012 and not G.R. case no.85/2012. The Respondent in

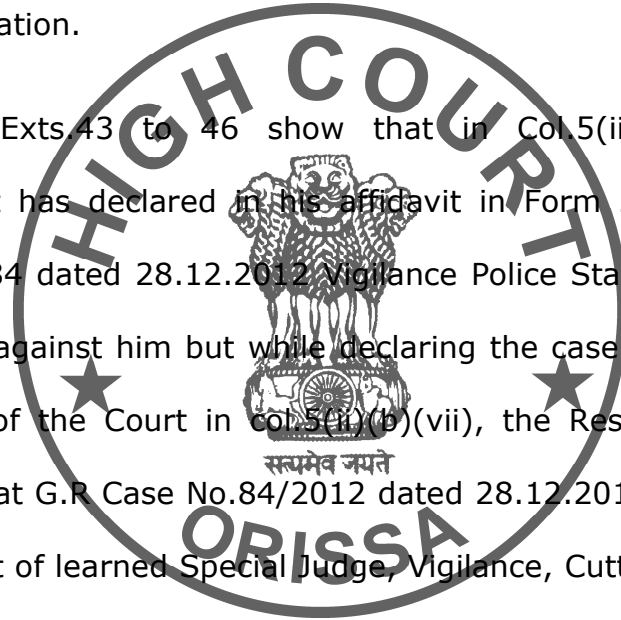
examination-in-chief (Ext.DW) has admitted that Ext.23 is the certified copy of F.I.R. and order sheet of V.G.R. No.85/2012 pending before Special Judge, Vigilance, Cuttack. He has also admitted to have mentioned the details of pendency of the said vigilance case against him in his affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46) in column (5)(ii)(a)(iii), (5)(ii)(b)(vi) and (5)(ii)(c)(vii) as well as furnished related information in column (5)(ii)(d), (5)(ii)(e), (5)(ii)(f) and (5)(ii)(g). The Respondent in his cross-examination has admitted that in Col. No.5(ii)(a)(iii) of his affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46), he has declared that F.I.R./V.G.R. No.85 dated 31.12.2012 of Vigilance Police Station, Cuttack, Odisha is pending against him and while giving its case number and name of the Court in Col. No.5(ii)(b)(vi), he has mentioned G.R. Case No.85 of 2012 dated 31.12.2012 to be pending against him in the Court of learned Special Judge, Vigilance, Cuttack. He conceded it to be a typographical error on his part to mention 'G.R.' in place of 'V.G.R.'." Thus, according to the learned counsel for the Election Petitioner, the case number mentioned in Col.5(ii)(b)(vi) of the affidavit in Form 26 is a false declaration.

Exts.43 to 46 show that in Col.5(ii)(a)(iv), the Respondent has declared in his affidavit in Form 26 that FIR/

V.G.R. No.83 dated 28.12.2012 of Vigilance Police Station, Cuttack is pending against him but while declaring the case number and the name of the Court in col.5(ii)(b)(viii), the Respondent has declared that G.R Case No.83/2012 dated 28.12.2012 is pending in the Court of learned Special Judge, Vigilance, Cuttack whereas Ext.24 reveals that the case number is V.G.R. No.83/2012 and not G.R. Case no.83/2012. The Respondent, in examination-in-chief (Ext.DW), has admitted that Ext.24 is the certified copy of F.I.R. and order sheet of V.G.R. No.83/2012 pending before Special Judge, Vigilance, Cuttack. He further admitted to have mentioned the details of pendency of the said vigilance case against him in his affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46) in column (5)(ii)(a)(iv), (5)(ii)(b)(viii) and (5)(ii)(c)(viii) as well as furnished related information in column (5)(ii)(d), (5)(ii)(e), (5)(ii)(f) and (5)(ii)(g). The Respondent in his cross-examination has admitted that in Col. No.5(ii)(a)(iv) of his affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46), he has declared that F.I.R./V.G.R. No.83 dated 28.12.2012 of Vigilance Police Station, Cuttack, Odisha is pending against him and while giving its case number and name of the Court in Col. No.5(ii)(b)(viii), he has mentioned G.R. Case No.83 of 2012 dated 28.12.2012 to be pending

against him in the Court of learned Special Judge, Vigilance, Cuttack. He further admitted that a bare glance at Ext.24 reveals that the case number has been mentioned to be 'V.G.R. 83/2012'. He also conceded that it was a typographical error on his part to mention 'G.R.' in place of 'V.G.R.'. Thus, according to the learned counsel for the Election Petitioner, the case number mentioned in Col.5(ii)(b)(viii) of the affidavit in Form 26 is a false declaration.

Exts.43 to 46 show that in Col.5(ii)(a)(v), the Respondent has declared in his affidavit in Form 26 that FIR/V.G.R. No.84 dated 28.12.2012 Vigilance Police Station, Cuttack is pending against him but while declaring the case number and the name of the Court in col.5(ii)(b)(vii), the Respondent has declared that G.R Case No.84/2012 dated 28.12.2012 is pending in the Court of learned Special Judge, Vigilance, Cuttack whereas Ext.25 reveals that the case number is V.G.R. No.84/2012 and not G.R. Case no.84/2012. The Respondent, in his examination-in-chief (Ext.DW), has admitted that Ext.25 is the certified copy of F.I.R. and order sheet of V.G.R. No.84/2012 pending before the learned Special Judge, Vigilance. Cuttack. He further admitted to have mentioned the details of pendency of the said vigilance case against him in his affidavit in Form 26 (Ext.43,



Ext.44, Ext.45 and Ext.46) in column (5)(ii)(a)(v), (5)(ii)(b)(vii) and (5)(ii)(c)(ix) as well as furnished related information in column (5)(ii)(d), (5)(ii)(e), (5)(ii)(f) and (5)(ii)(g). The Respondent in his cross-examination has admitted that in Col. No.5(ii)(a)(v) of his affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46), he has declared that F.I.R./V.G.R. No.84 dated 28.12.2012 of Vigilance Police Station, Cuttack, Odisha is pending against him and while giving its case number and name of the Court in Col. No.5(ii)(b)(vii), he has mentioned G.R. Case No.84 of 2012 dated 28.12.2012 to be pending against him in the Court of learned Special Judge, Vigilance, Cuttack. He further admitted that a bare glance at Ext.25 reveals that the case number has been mentioned to be 'V.G.R. 84/2012'. He also conceded that it was a typographical error on his part to mention 'G.R.' in place of 'V.G.R.'. Thus, according to the learned counsel for the Election Petitioner, the case number mentioned in Col.5(ii)(b)(vii) of the affidavit in Form 26 is a false declaration.

Exts.43 to 46 show that in Col.5(ii)(a)(vi), the Respondent has declared in his affidavit in Form 26 that FIR No.136/2012 dated 24.09.2012, Baliana Police Station, Cuttack, Odisha is pending against him whereas Ext.27 discloses that FIR No.136 dated 24.09.2012 Baliana P.S. is under Bhubaneswar

Urban Police District and not at Cuttack. Further, the said FIR (Ext.27) discloses that it has been registered against the Respondent and others under sections 417/341/323/294/506/379/120B/34 of the Indian Penal Code (hereafter, the IPC) whereas in Col.5(ii)(c)(vi), the Respondent has declared sections of the concerned Acts/Codes involved, commission of offences under sections 147/341/323/294/353/427/149 of IPC. But he has not declared about sections 417/506/379/120B/34 of IPC and has falsely declared about sections 147/353/427/149 IPC in the affidavit in Form 26 (Exts.43 to 46). Thus, according to the learned counsel for the Election Petitioner, the Respondent has given false declaration regarding the sections involved in the said FIR no.136/2012 marked Ext.27 in his affidavit filed in Form 26 along with his nomination papers.

Similarly, the Respondent in column (5)(ii)(b)(ix) of Ext.43, the affidavit in Form 26 has mentioned G.R. Case no.680/2012 is pending against him in the Court of learned S.D.J.M., Bhubaneswar, but Ext.27 shows G.R. Case no.680/2012 is pending in the Court of learned J.M.F.C.(O), Bhubaneswar. G.R. Case no.680/2012 was never pending before the Court of learned S.D.J.M., Bhubaneswar. Thus, the

Respondent has given false declaration in his affidavit filed in Form 26 along with his nomination papers.

The Election Petitioner in his evidence affidavit (Ext.36) has stated as follows:-

"That in column (5)(ii)(a)(vi) of Exhibit 1 to 4 and Exhibit 32-35, the Respondent has mentioned FIR No.136/2012 dated 24.09.2012 in Baliana Police Station, Cuttack, Odisha is pending against him but there is no Baliana Police Station in the district of Cuttack. The Baliana Police Station is under Bhubaneswar UPD (Urban Police District) which is evident from the certified copy of the FIR marked exhibit-27. The said FIR has been registered against the Respondent and Ors. U/s.417/341/323/294/506/379/120-B/34 of IPC whereas in column 5(2)(c)(vi), the Respondent has declared sections of concerned Acts/codes involved, commission of offences U/s.147/341/323/294/353/427/149 of IPC. Thus, the Respondent has given false declaration regarding the sections involved in the said FIR no.136/2012 marked Exhibit-27 in his affidavit filed in Form 26 along with his nomination papers. The Respondent in column (5)(ii)(b)(ix) of Exhibit 1 to 4 and Exhibit 32-35 has mentioned G.R. Case no.680/2012 is pending against him in the Court of S.D.J.M.,

Bhubaneswar but Exhibit 27 shows G.R. Case no.680/2012 is pending in the Court of J.M.F.C.(O), Bhubaneswar. G.R. Case no.680/2012 was never pending before the Court of SDJM, Bhubaneswar. The Respondent in Col.5(ii)(a)(vi), 5(ii)(c)(vi) and 5(ii)(b)(ix) has given false declaration in his affidavit filed in Form 26 along with his nomination papers with respect to name of the police station, sections involved and the name of the Court of FIR No.136 dated 24.09.2012 of Baliana P.S. corresponding to G.R. Case No.680/2012 (Ext.27)."

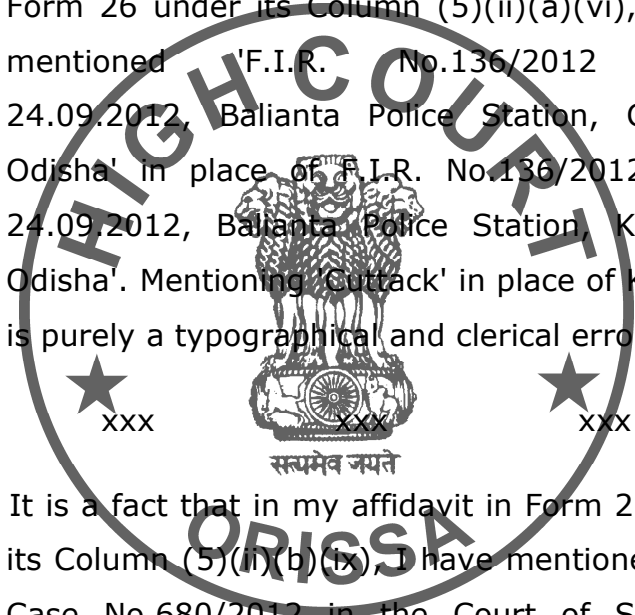
The Election Petitioner during cross-examination has stated as follows:-

"I have filed Ext.27 which relates to Baliana P.S. Case No.136 dated 24.09.2012 registered under sections 417/341/323/294/506/379/120-B/34 of the Indian Penal Code, which corresponds to G.R. Case No.680 of 2012 pending in the Court of J.M.F.C. (O), Bhubaneswar against the Respondent Md. Moquim and others in which the order sheet indicates that on completion of investigation, charge sheet has been submitted on 20.11.2015 under sections 341/294/506/120-B/34 of the Indian Penal Code and accordingly, as per order dated 07.12.2015, cognizance of such offences

has been taken and it further reflects that the Respondent Md. Moquim is on police bail granted by this Court in BLAPL No.27222 of 2012. xxx xxx (last 4 lines) I find that in Col. No.5(ii)(a)(vi) of the affidavit filed by the Respondent Md. Moquim in Form No.26 dated 03.04.2019 in connection with his nomination papers dated 02.04.2019 under Exts.1, 2, 3, 4, 32, 33, 34 and 35, though the F.I.R. number and police station have been correctly reflected in the affidavit but in Col.No.5(i)(b)(ix) of the said affidavit, though the G.R. case number has been correctly reflected, but it is mentioned to be pending in the Court of learned S.D.J.M., Bhubaneswar though as per the order sheet filed by me, the said case was never pending in the Court of learned S.D.J.M., Bhubaneswar and right from the beginning it was pending before the J.M.F.C. (O), Bhubaneswar. Similarly, in Col. No.5(i)(c)(xii) of the said affidavit, some of the offences like section 3 of P.D.P.P. Act, section 7 of Criminal Law Amendment Act and section 96 of Odisha Urban Police Act and sections 147, 353, 427 and 149 of Indian Penal Code have been incorrectly reflected though the case was never filed for such offences nor charge sheeted under such offences.”

The Respondent in his examination-in-chief (Ext.DW) has admitted as follows:-

"Ext.27 is the certified copy of F.I.R. and entire order sheet of G.R. Case No.680/2012 (Balianta P.S. Case No.136 dated 24.09.2012) pending in the Court of J.M.F.C.(O), Bhubaneswar. I have mentioned the details of pendency of the said criminal case against me in my affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46) in column (5)(ii)(a)(vi), (5)(ii)(b)(ix) and (5)(ii)(c)(xii). xxx xxx xxx It is a fact that in my affidavit in Form 26 under its Column (5)(ii)(a)(vi), I have mentioned 'F.I.R. No.136/2012 dated 24.09.2012, Balianta Police Station, Cuttack. Odisha' in place of 'F.I.R. No.136/2012 dated 24.09.2012, Balianta Police Station, Khordha, Odisha'. Mentioning 'Cuttack' in place of Khordha is purely a typographical and clerical error.



It is a fact that in my affidavit in Form 26 under its Column (5)(ii)(b)(ix), I have mentioned 'G.R. Case No.680/2012 in the Court of S.D.J.M., Bhubaneswar' in place of 'G.R. Case No.680/2012 in the Court of J.M.F.C.(O), Bhubaneswar'. Mentioning of 'S.D.J.M.' in place of 'J.M.F.C.(O)' is purely a typographical and clerical error and it does not create any serious confusion in the minds of the electors of 90-Barabati Cuttack Assembly Constituency."

The Respondent in his cross-examination has admitted as follows:-

"Ext.27 is the certified copy of the order-sheet of G.R. Case No.680 of 2012 pending in the Court of J.M.F.C. (O), Bhubaneswar along with the certified copy of the First Information Report in Baliana P.S. Case No.136 dated 24.09.2012. Baliana police station comes under Bhubaneswar Urban Police District (UPD). It is not a fact that I have made a false declaration by mentioning under Col. No.5(ii)(a)(vi) that F.I.R. No.136/2012 dated 24.09.2012, Baliana Police Station comes under Cuttack, Odisha. It was a mistake on my part to mention 'Cuttack' in place of 'Bhubaneswar', however, Bhubaneswar-Cuttack Commissionerate of Police is one and it was a typographical error. It is not a fact that I have made false declaration by mentioning under Col. No.5(ii)(b)(ix) that G.R. Case No.680/2012 is pending in the Court of S.D.J.M., Bhubaneswar though Ext. 27 indicates that the said case is pending in the Court of J.M.F.C. (O), Bhubaneswar. It is a typographical error on my part to mention 'S.D.J.M., Bhubaneswar' in place of 'J.M.F.C. (O), Bhubaneswar'."

(The witness volunteers)

“It is a fact that even though Baliana P.S. Case No.136 dated 24.09.2012 which corresponds to G.R. Case No.680 of 2012 pending in the Court of J.M.F.C. (O), Bhubaneswar was registered under sections 417/341/323/294/506/379/120-B/34 of the Indian Penal Code, but in my affidavits marked as Ext.43, Ext.44, Ext.45 and Ext.46, I have not mentioned these offences under Col. No.5(ii)(c) where it was required to mention ‘section(s)’ of concerned Acts/Codes involved (give no. of the Section, e.g. Section of IPC, etc.) The witness again says that the offences are mentioned under Col. No.5(ii)(c)(vi). The witness again says that he cannot say in which Col. No.5(ii)(c), the same has been mentioned. It is a fact that even though one of the offences under which Baliana P.S. Case No.136 dated 24.09.2012 was registered is section 417 of the Indian Penal Code, in Col. No.5(ii)(c) of my affidavits marked as Ext.43, Ext.44, Ext.45 and Ext.46, where I have mentioned the offences of different cases instituted against me, I have not indicated that a case under section 417 of the Indian Penal Code is pending against me. The witness volunteers that it may be a typographical error to leave such offence in the said column. It is a fact that in none of the offences indicated under Col. No.5(ii)(c), I have mentioned that a case under sections 506/379 of the Indian Penal Code along

with other offences was pending against me as Baliana P.S. Case No.136 dated 24.09.2012 was registered also under such offences, but the omission of section 379 of the Indian Penal Code under such column was a typographical error on my part. It is a fact that in the written statement, I have not mentioned that it was a typographical error on my part to mention under Col. No.5(ii)(b)(ix) that G.R. Case No.680/2012 is pending in the Court of S.D.J.M., Bhubaneswar though Ext.27 indicates that the said case is pending in the Court of J.M.F.C. (O), Bhubaneswar and also omission of offences under sections 417/506/379 of the Indian Penal Code, but since in the pleading of the election petition, nothing was stated by the Election Petitioner in that respect, I have not mentioned it in my written statement."

Q. In paragraph no.7(C) page nos.10 and 11 of the election petition, it is specifically mentioned that the declaration you have made in column 5(ii)(b), Sl.No.(ix) about G.R. Case No.680/2012 in the Court of S.D.J.M., Bhubaneswar is false and misleading declaration and that there is no G.R. Case No.680/2012 pending against you in the Court of S.D.J.M., Bhubaneswar, rather G.R. Case No.680/2012 is pending against you in the Court of J.M.F.C.(O), Bhubaneswar, how do you

say that there is no pleading in the election petition in that respect?

Ans. My advocate can only reply the same.

It is not a fact that by stating that there was no pleading in the election petition as pointed out to me in the above question, I have told falsehood in this Court.

Q. In paragraph no.7(C) page no.11 of the election petition, it is specifically mentioned that the sections of the concerned Acts/Codes involved are false and misleading declarations, how do you say that there is no pleading in the election petition in that respect?

Ans. My advocate can only reply the same.

It is not a fact that in page no.78 of my evidence on affidavit where I have mentioned that the details of the pendency of the said criminal case (G.R. Case No.680/2012 which arises out of Baliana P.S. Case No.136 dated 24.09.2012) against me in my affidavit in Form No.26 (Ext.43, Ext.44, Ext.45 and Ext.46) in Col.Nos.(5)(ii)(a)(vi), (5)(ii)(b)(ix), (5)(ii)(c)(xii) as well as furnished related information in Col.(5)(ii)(d), (5)(ii)(e), (5)(ii)(f), and (5)(ii)(g) are not correct and that I have stated falsehood. My advocate can reply about the same.

Exts.43 to 46 show that in Col.5(ii)(a)(vii), the Respondent has declared in his affidavit in Form 26 that FIR No.75 dated 13.08.2012, Markat Nagar Police Station, Cuttack, Odisha whereas Ext.19 discloses that the said FIR No.75 was registered on 08.08.2012 and not on 13.08.2012. The Respondent in examination-in-chief (Ext.DW) has stated that Ext.19 is the certified copy of F.I.R. No.75 dated 13.08.2012, Markat Nagar P.S., Cuttack whereas in his cross-examination has admitted as follows:-

"It is a fact that Markatnagar P.S. Case No.75 was registered on 08.08.2012 as it appears from Ext.19. I have mentioned in Col. No.5(ii)(a)(vii) of my affidavit Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46) that F.I.R. No.75 dated 13.08.2012, Markatnagar Police Station, Cuttack, Odisha is pending against me. The date '13.08.2012' is a typographical error on my part and it should have been reflected as '08.08.2012'."

Q. Please look at your evidence on affidavit marked as Ext.DW at page no.73 wherein in the sub-paragraph (first sentence), you have mentioned 'Ext.19 is the certified copy of F.I.R. No.75 dated 13.08.2012 of Markatnagar P.S., Cuttack' and the same is also a false statement.

Ans. My advocates can only reply on the same.

Thus, according to the learned counsel for the Election Petitioner, the date of F.I.R. declared in Col.5(ii)(a)(vii) of the affidavit in Form 26 is a false declaration.

Exts.43 to 46 show that in Col.5(ii)(a)(viii), the Respondent has declared in his affidavit in Form 26 that FIR No.69 dated 19.07.2012, Markat Nagar Police Station, Cuttack, Odisha whereas Ext.20 discloses that the said FIR No.69 was registered on 17.07.2012 and not on 19.07.2012. The Respondent in examination-in-chief (Ext.DW) has admitted as follows:-

"Ext.20 is the certified copy of F.I.R. No.69 dated 17.07.2012 of Markat Nagar P.S., Cuttack"



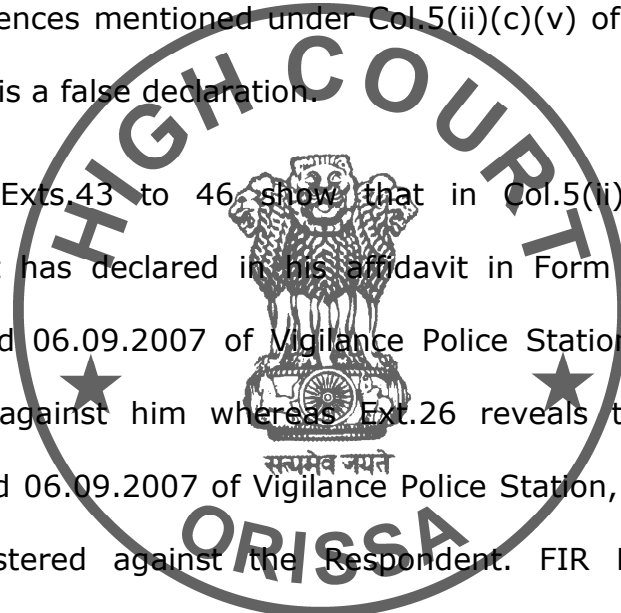
In his cross-examination, the Respondent has admitted as follows:-

"It is a fact that Markatnagar P.S. Case No.69 was registered on 17.07.2012 as it appears from Ext.20. I have mentioned in Col. No.5(ii)(a)(viii) of my affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46) that F.I.R. No.69 dated 19.07.2012, Markatnagar Police Station, Cuttack, Odisha is pending against me. The date '19.07.2012' is a typographical error on my part

and it should have been reflected as '17.07.2012'. While mentioning the offences under Col. No.5(ii)(c)(v) of my affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46), I have left out the offence under section 188 of the Indian Penal Code and it was a clerical error."

Thus, according to the learned counsel for the Election Petitioner, the date of F.I.R. declared in Col.5(ii)(a)(viii) and the offences mentioned under Col.5(ii)(c)(v) of the affidavit in Form 26 is a false declaration.

Exts.43 to 46 show that in Col.5(ii)(a)(xii), the Respondent has declared in his affidavit in Form 26 that FIR No.34 dated 06.09.2007 of Vigilance Police Station, Cuttack is registered against him whereas Ext.26 reveals that the FIR No.34 dated 06.09.2007 of Vigilance Police Station, Cuttack was never registered against the Respondent. FIR No.34 dated 06.09.2007 was registered against the Respondent and others in Bhubaneswar Vigilance Police Station which the Respondent has suppressed in his affidavit in Form 26 that such a case is registered against him in Bhubaneswar Vigilance Police Station. Thus, the Respondent has given false declaration in Col.5(ii)(a)(xii) in his affidavit in Form 26 that FIR No.34 dated



06.09.2007 is registered against him by the Vigilance Police Station, Cuttack.

The Election Petitioner in his examination-in-chief (Ext.36) has stated as follows:-

"That the Respondent has mentioned in column 5(ii)(a)(xii) of his affidavit filed in Form 26 along with his nomination papers (marked Exhibits 1 to 4 and 32 to 35) that FIR No.34 dated 06.09.2007 of Vigilance Police Station, Cuttack, Odisha is pending against him whereas the FIR No.34 dated 06.09.2007 of Vigilance Police Station, Cuttack has not been registered against the Respondent. I have filed the certified copy of the FIR no.34/2007 marked as Exhibit-26 which shows that the said FIR is not registered against the Respondent." सत्यमेव जयते

The Election Petitioner in his cross-examination has stated as follows:-

"I have filed Ext.26 which relates to Cuttack Vigilance P.S. Case No.34 dated 31.08.2007 under section 13(2) read with section 13(1)(c)(d) of P.C. Act and sections 419/120-B of the Indian Penal Code which corresponds to T.R. No.16 of 2010 pending in the Court of learned Special Judge (Vigilance), Cuttack

against Khitindranath Mohanty and Bijay Kumar Marandi and others and also the charge sheet submitted in the said case to show that such a case is not pending against the Respondent Mohammed Moquim, even though in the affidavit filed by the Respondent in Form No.26 in Column No.5(i)(a)(xii), it is mentioned that F.I.R. No.34 dated 06.09.2007 of Vigilance police station, Cuttack, Odisha is pending against him and its T.R. Case number and the offences have not been mentioned in 5(i)(b) and 5(ii)(c) respectively.

The Respondent in examination-in-chief (Ext.DW) has admitted as follows:-

"Ext.26 is the certified copy of F.I.R. and entire order sheet of V.G.R. No.34/2007 corresponding to T.R. No.16/2010 pending before Special Judge, Vigilance, Cuttack, which relates to Cuttack Vigilance P.S. Case No.34 dated 31.08.2007. xxx xxx xxx Order Sheet of T.R. No.16/2010 pending in the Court of Spl. Judge (Vigilance) Cuttack reflects that I am not an accused nor my name finds place in the charge sheet."

The Respondent in his cross-examination has admitted as follows:-

“Ext.43 is the original affidavit in Form 26 filed by me before the Returning Officer on 04.04.2019 which was sworn before the Notary Public on 03.04.2019. While mentioning pending criminal cases against me in the affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46) under Col. No.5(ii)(a)(xii), I have mentioned that F.I.R. No.34 dated 06.09.2007, Vigilance Police Station, Cuttack, Odisha is pending against me. It is a fact that Cuttack Vigilance P.S. Case No.34 dated 31.08.2007 was registered under section 13(2) read with section 13(1)(c)(d) of the Prevention of Corruption Act and sections 419/120-B of the Indian Penal Code and by seeing such F.I.R. which has been marked as Ext.26, I find that the same was registered against one Khitindranath Mohanty, Treasury Officer and Bijaya Kumar Marandi, Accountant, Kendrapara Treasury and others and I have no connection with Ext.26 nor I am an accused in the said case which corresponds to T.R. No.16 of 2010 pending in the Court of learned Special Judge (Vigilance), Cuttack. It is not a fact that I have given false declaration in Col. No.5(ii)(a)(xii) of my affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46) about the pendency of F.I.R. No.34 dated 06.09.2007, Vigilance Police Station, Cuttack, Odisha against me, even though the said case is no way connected with me. In fact, it was a

typographical error to mention about the same in such column.”

Thus, according to the learned counsel for the Election Petitioner, the declaration made in Col.5(ii)(a)(xii) that FIR No.34 dtd. 06.09.2007, Vigilance Police Station, Cuttack, Odisha in the affidavit in Form 26 is a false declaration.

The Election Petitioner in his examination-in-chief has stated as follows:-

“That the Respondent in his affidavit filed in Form 26 along with his nomination papers has suppressed the fact that FIR no.34 dated 06.09.2007 of Vigilance PS, Bhubaneswar has been registered against him and Ors. U/s.120-B/467/468/471/420 IPC and U/s.13(2) r/w 13(1)(d) of PC Act. I have filed the certified copy of the said FIR no.34 dated 06.09.2007 of Bhubaneswar Vigilance PS corresponding to T.R. Case no.41/2013 pending before Spl. Judge (Vig.), Bhubaneswar marked as Exhibit-30. The certified copy of the order sheet of T.R. Case no.41/2013 of the Court of Spl. Judge (Vig.), Bhubaneswar reveals that the learned trial Court has taken cognizance of offences against the Respondent and others on 06.06.2015 and the Respondent appeared in the said case on 09.10.2015 and had filed an application for bail

which was allowed by the learned Spl. Judge (Vig.), Bhubaneswar. The Respondent on the date of filing of his nomination i.e., on 02.04.2019 had the very knowledge about the pendency of the T.R. No.41/2013 in the Court of Spl. Judge (Vig.), Bhubaneswar corresponding to FIR no.34 dated 06.09.2007 of Bhubaneswar Vigilance PS. But, the same has been suppressed in his affidavit filed in Form 26 along with his nomination papers. The Respondent has not disclosed about the pendency of the FIR/V.G.R No.34 dated 06.09.2007 of Vigilance Police Station, Bhubaneswar, Odisha against him and about the pendency of T.R. No.41/2013 in the Court of Spl. Judge (Vig.), Bhubaneswar in his affidavit filed in Form 26 along with his nomination papers.

The Election Petitioner in his cross-examination has stated as follows:-

"I have filed Ext.30 to show that Bhubaneswar Vigilance P.S. Case No.34 dated 06.09.2007 which corresponds to T.R. Case No.41 of 2013 pending in the Court of learned Special Judge, Vigilance, Bhubaneswar for commission of offences under section 13(2) read with section 13(1)(d) of the P.C. Act, 1988 and section 420/467/468/471/120-B of the Indian Penal Code against the Respondent Md. Moquim and

other accused persons. The order sheet of the said case indicates that on 06.06.2015, cognizance of the offences under section 13(2) read with section 13(1)(d) of the P.C. Act, 1988 and sections 420/467/468/471/120-B of the Indian Penal Code has been taken. xxx xxx xxx Though in Ext.30, the F.I.R. relates to Bhubaneswar Vigilance P.S., but in the affidavit of the Respondent Md. Moquim dated 03.04.2019 filed in Form 26 in Col. No.5(ii)(a)(xii), it has been mentioned as Vigilance Police Station, Cuttack, Odisha, but in other columns 5(ii)(b)(iii) and 5(ii)(c)(iii), the T.R. number, name of the Court and offences have been correctly reflected.”

The Respondent in examination-in-chief (Ext.DW) has admitted as follows:-

“Ext.30 is the certified copy of F.I.R. and entire order sheet of F.I.R./V.G.R. Case No.34 of 2007 corresponding to T.R. Case No.41 of 2013 pending in the Court of Special Judge, Vigilance. Bhubaneswar and charge sheet no.08 dated 03.04.2013. I have mentioned the details of pendency of the said vigilance case against me in my affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46) in column (5)(ii)(a)(xii), (5)(ii)(b)(iii) and (5)(ii)(c)(iii) as well as furnished related information in column

(5)(ii)(d), (5)(ii)(e), (5)(ii)(f) and (5)(ii)(g). xxx
 xxx xxx It is a fact that in my affidavit, in Form
 26 under its Column (5)(ii)(a)(xii), I have
 mentioned 'F.I.R. No.34 dated 06.09.2007,
 Vigilance Police Station, Cuttack, Odisha' in
 place of 'F.I.R. No.34 dated 06.09.2007,
 Vigilance Police Station, Bhubaneswar, Odisha'.
 Mentioning 'Cuttack' in place of 'Bhubaneswar' is
 purely a typographical and clerical error. But, in
 other columns (5)(ii)(b)(iii) and (5)(ii)(c)(iii), I
 have correctly mentioned the T.R. number,
 name of the Court and offences involved in the
 said vigilance case.

The Respondent in his cross-examination has
 admitted as follows:-

"It is a fact that Bhubaneswar Vigilance P.S.
 Case No.34 dated 06.09.2007 was registered
 under sections 120-B/467/468/471/420 of the
 Indian Penal Code and section 13(2) read with
 section 13(1)(d) of the Prevention of Corruption
 Act against eight accused persons and I am the
 accused no.8 in the said case as per the formal
 F.I.R. and it appears from the order sheet of the
 said case, which corresponds to T.R. Case No.41
 of 2013 pending in the Court of Special Judge,
 Vigilance, Bhubaneswar that charge sheet has
 been filed in the said case on 06.06.2015 and I
 have entered appearance in the said case on

09.10.2015 in person and applied for bail and the same was allowed on the very day, which appears from the certified copy of the order sheet and the F.I.R. produced before me which have been marked as Ext.30. It is a fact that in Col. No.5(ii)(a)(xii) of my affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46), I have not mentioned about the pendency of Bhubaneswar Vigilance P.S. Case No.34 dated 06.09.2007 against me, but mentioned F.I.R. No.34 dated 06.09.2007, Vigilance Police Station, Cuttack, Odisha. Mentioning 'Cuttack' in place of 'Bhubaneswar' was a typographical error on my part."

Thus, according to the learned counsel for the Election Petitioner, the Respondent has suppressed to declare about the FIR No.34 dtd 06.09.2007, Bhubaneswar Vigilance Police Station made in Col.5(ii)(a)(xii) of the affidavit in Form 26 and has falsely declared that FIR No.34 dtd 06.09.2007, Cuttack Vigilance Police Station is pending against him.

The Respondent in Col.5(ii)(a)(xiii) has declared that FIR No.07 dated 30.03.2005 of Vigilance Police Station, Bhubaneswar is registered against him whereas he has not correctly declared about the offences in Col.5(ii)(c) of Ext.43. In col.5(ii)(c)(xiii), the Respondent has declared that the said FIR is

registered under section 13(2) r/w section 13(1)(d) of P.C. Act, 1988 and sections 420/120B of IPC whereas the FIR No.07 dated 30.03.2005 of Vigilance Police Station, Bhubaneswar (Ext.29) was registered under section 13(2) r/w section 13(1)(d) of P.C. Act, 1988 and section 120B of IPC and not under section 420 IPC.

Further, the Respondent has declared that in Col.5(ii)(f) that in T.R. No.1/2009, charge was framed on 29.08.2013 whereas Ext.29 discloses that on 10.04.2015 charges were framed in T.R. Case No.1/2009 and not on 29.08.2013. Thus, according to the learned counsel for the Election Petitioner, the date of framing of charge also declared by the Respondent is a false declaration.

The Election Petitioner in his examination-in-chief (Ext.36) has stated as follows:-

"18. That in column 5(ii)(f), the Respondent has declared that in T.R. No.1/2009, charge was framed against him on dated 29.08.2013 in the Court of Spl. Judge (Vig.), Bhubaneswar. The above declaration that the charge framed on 29.08.2013 is false. In the said case, charge has been framed on 10.04.2015. I have filed the certified copy of the order sheet in T.R. Case

no.01/2009 of the Court of Spl. Judge (Vig.), Bhubaneswar marked as Exhibit – 29 which discloses that in the said case, charge was framed on 10.04.2015 against the Respondent and others.”

The Election Petitioner in his cross-examination has stated as follows:-

“I have filed Ext.29 to show that Bhubaneswar Vigilance P.S. Case No.07 dated 30.03.2005 which corresponds to T.R. Case No.01 of 2009 is pending in the Court of learned Special Judge, Vigilance, Bhubaneswar for commission of offences under section 13(2) read with section 13(1)(d) of the P.O. Act, 1988 and section 120-B of the Indian Penal Code against the Respondent Md. Moquim and other accused persons. The order sheet of the said case indicates that on 22.01.2009, cognizance of the offences under sections 468/471/420/120-B of the Indian Penal Code has been taken so far as the Respondent Md. Moquim is concerned and on 10.04.2015 charge has been framed against the Respondent Md. Moquim for such offences along with M/s. Metro Builder Odisha Pvt. Ltd., represented by Md. Moquim.”

The Respondent in examination-in-chief (Ext.DW) has admitted as follows:-

“Ext.29 is the certified copy of F.I.R. and entire order sheet of F.I.R/V.G.R. Case No.07 of 2005 corresponding to T.R. Case No.01 of 2009 pending in the Court of Special Judge, Vigilance, Bhubaneswar. I have mentioned the details of pendency of the said vigilance case against me in my affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46) in columns (5)(ii)(a)(xiii), (5)(ii)(b)(xiii) and (5)(ii)(c)(xiii) as well as furnished related information in columns (5)(ii)(d), (5)(ii)(e)(xiii), (5)(ii)(f) and (5)(ii)(g).”

The Respondent in his cross-examination has stated as follows:-

Q. In which column of 5(ii)(c) of your affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46), you have declared the offences under which F.I.R. No.07 dated 30.03.2005, Vigilance Police Station, Bhubaneswar, Khurda, Odisha was registered as per your declaration made in Col. No. 5(ii)(a)(xiii)?

Ans. It is in Col. No.5(ii)(c)(xiii)

Q. Please verify the F.I.R. No.07 dated 30.03.2005, Vigilance Police Station, Bhubaneswar, Khurda, Odisha marked as Ext.29 and it appears that it was not registered under section 420 of the Indian Penal Code, which

offence you have declared while mentioning the details of the offences in Col. No.5(ii)(c)(xiii)?

Ans. Yes, the case was not registered for the offence under section 420 of the Indian Penal Code. Mentioning such offence in Col. No.5(ii)(c)(xiii) was a clerical mistake.

Q. In Col. No.5(ii)(f), you have declared that in T.R. No.01/2009, charge was framed on dated 29.08.2013 in the Court of Special Judge, Vigilance, Bhubaneswar, but Ext.29 indicates that charge was framed on 10.04.2015. What do you say about the same?

Ans. It was a typographical error.

Thus, according to the learned counsel for the Election Petitioner, the Respondent has made false declaration regarding offences in Col.5(ii)(c)(xiii) and the date of framing of charge in Col. 5(ii)(f) of the affidavit in Form 26.

Exts.43 to 46 show that in Col.5(ii)(b)(xii), the Respondent has declared in his affidavit in Form 26 that G.R. Case No.1568/2010 is pending in the Court of S.D.J.M.(S), Cuttack whereas Ext.22 reflects that G.R. Case No.1568/2010 was pending in the Court of J.M.F.C. (City), Cuttack and it was never pending in the Court of S.D.J.M. (S), Cuttack.

The Respondent in examination-in-chief (Ext.DW) has stated as follows:-

"Ext.22 is the certified copy of F.I.R. No.231/2010 dated 27.12.2010 of Madhupatna P.S., Cuttack corresponding to G.R. Case No.1568/2010 and the order sheet of G.R. Case No.1568/2010 pending in the Court of S.D.J.M. (S) Cuttack."

The Respondent in his cross-examination has admitted as follows:-

"It is a fact that in Col.5(b)(xii) in my affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46), while mentioning G.R. Case No.1568/2010, I have indicated the same to be pending in the Court of S.D.J.M.(S), Cuttack. Ext.22 reflects that G.R. Case No.1568/2010 was pending in the Court of J.M.F.C. (City), Cuttack. The wrong noting made in such column regarding the name of the Court was a clerical error."

"It is not a fact that I have stated falsely of my evidence on affidavit (Ext. DW) that G.R. Case No.1568/2010 is pending in the Court of S.D.J.M. (S), Cuttack though the same was pending in the Court of J.M.F.C. (City), Cuttack. My Advocate(s) can say as to why the name of

the Court has been incorrectly mentioned in the evidence on affidavit in page no.75.”

Thus, according to the learned counsel for the Election Petitioner, the Respondent has made false declaration regarding the pendency of G.R. Case no.1568/2010 in the Court of S.D.J.M.(S), Cuttack, in place J.M.F.C. (City), Cuttack in Col.5(ii)(b)(xii) of the affidavit in Form 26.

Exts.43 to 46 show that in Col.5(ii)(c)(xi), the Respondent has declared in his affidavit in Form 26, commission of offence u/s 147/148/353/332/336/337/427/323/324/506/149 of I.P.C. whereas Ext.21 shows that the said F.I.R. was registered u/s 147/148/353/332/336/337/427/323/324/506/149 of I.P.C. and Section 3 P.D.P.P. Act/7 CrI. A. Act/96 O.U.P. Act, 2003. The Respondent in his affidavit in Form 26 at Col.5(ii)(c)(xi) has not disclosed about the registration of the said FIR u/s 3 P.D.P.P. Act/7 CrI. A. Act/96 O.U.P. Act, 2003.

The Respondent in his examination-in-chief (Ext.DW) has admitted as follows:-

“Ext.21 is the certified copy of F.I.R. No.113/2011 dated 22.09.2011 of Purighat P.S., Cuttack corresponding to G.R. Case No.1168/2011 along with the final form of G.R.

Case No.1168/2011 pending in the Court of S.D.J.M.(S), Cuttack. I have mentioned the details of pendency of the said criminal case against me in my affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46) in columns (5)(ii)(a)(ix), (5)(ii)(b)(xi) and (5)(ii)(c)(xi) as well as furnished related information in column (5)(ii)(d), (5)(ii)(e), (5)(ii)(f) and (5)(ii)(g)."

The Respondent in his cross-examination has admitted as follows:-

"71. It is a fact that while mentioning the offences in Col.5(ii)(c)(xi) in my affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46), I have left out the offences under sections 3 P.D.P.P. Act, 7 Criminal Law Amendment Act and 96 OUP Act, 2003 though the F.I.R. (Ext.21) reflects registration of the offences under those three offences apart from the offences which I have mentioned in the said column. The same was a clerical error. xxx xxx xxx My advocate(s) can only say about the omission of the three offences in the evidence on affidavit."

The Election Petitioner in the election petition has pleaded and in his evidence on affidavit Ext.36 has stated as follows:-

“The Respondent in column (5)(ii)(d) has declared that two charge related to wrongful restraint (IPC section 341) is registered against him but in column (5)(ii)(c) sl. no.(v), (vi) and (xii), he has declared three cases under section 341 of the IPC is pending against him. Similarly, the Respondent in column (5)(ii)(d) has declared that two charge related to obscene acts and songs (IPC section 294) is registered against him but in column (5)(ii)(c) sl. nos.(i), (ii), (iv), (v), (vi) and (xii), he has declared six cases under section 294 of the IPC is pending against him. So also, the Respondent in column (5)(ii)(d) has declared five charges related to cheating and dishonestly inducing delivery of property (IPC section 420) are registered against him whereas in column (5)(ii)(c) sl. nos.(iii), (vii) to (x) and (xiii), he has declared six cases under section 420 of the IPC is pending against him. The Respondent in column (5)(ii)(d) has declared five charges related to punishment of criminal conspiracy (IPC section 120-B) are registered against him whereas in column (5)(ii)(c) sl. nos.(iii),(vii) to (x) and (xiii), he has declared six cases under section 120B of the IPC is pending against him. The Respondent in column (5)(ii)(d) has declared two charges related to mischief by injury to public road, bridge, river, channel (IPC section 143) are registered against him whereas in

column (5)(ii)(c) sl. nos.(i), (iv) and (v), he has declared three cases under section 143 of the IPC is pending against him. The Respondent in column (5)(ii)(d) has declared two charge related to mischief by doing any act in respect of any public property (section 7/3 and 7/4 of P.D.P.P. Act) are registered against him whereas in column (5)(ii)(c) sl. nos.(i),(ii),(xii), he has declared three cases under the P.D.P.P Act are pending against him. The Respondent in column (5)(ii)(c) sl. nos.(iii),(vii) to (x) and (xiii) has declared about the cases pending against him under section 13(2) read with section 13(1)(d) of P.C. Act, 1988 but has not declared about the same in column (5)(ii)(d) of the affidavit filed in Form 26 along with his nomination papers. Thus, the Respondent has made false declaration in the affidavit filed in Form 26 along with his nomination papers about the pendency of criminal cases against him. Therefore, the election of the Respondent from 90 - Barabati Cuttack Assembly Constituency is to be declared null and void."

The Respondent in his examination-in-chief (Ext.DW) has stated as follows:-

"In column (5)(ii)(c) against the heading 'Sections of the concerned Acts/Codes involved, I have correctly furnished the required

information vide its sl. nos.(v), (vi) and (xii) that section 341 of IPC is involved in the pending cases against me. Similarly, in column (5)(ii)(d) against the heading 'Brief description of offence', I have correctly disclosed that section 341 of IPC relates to the offence of wrongful restraint. xxx xxx Therefore, the allegation made by the Election Petitioner pointing out the number of charges/cases mentioned in columns (5)(ii)(c) and (5)(ii)(d) is unnecessary and frivolous and as such the same is legally not sustainable. In column (5)(ii)(c) against the heading 'Sections of the concerned Acts/Codes involved', I have correctly furnished the required information vide its sl. nos.(i), (ii), (iv), (v), (vi) and (xii) that section 294 of IPC is involved in the pending cases against me. Similarly, in column (5)(ii)(d) against the heading 'Brief description of offence', I have correctly disclosed that section 294 of IPC relates to the offence of obscene acts and songs. xxx xxx xxx Therefore, the allegation made by the Election Petitioner pointing out the number of charges/cases mentioned in columns (5)(ii)(c) and (5)(ii)(d) is unnecessary and frivolous and as such the same is legally not sustainable. In column (5)(ii)(c) against the heading 'Sections of the concerned Acts/Codes involved', I have correctly furnished the required information vide its sl. nos.(iii), (vii) to (x) and (xiii) that section 420 of IPC is involved in the pending cases

against me. Similarly, in column (5)(ii)(d) against the heading 'Brief description of offence', I have correctly disclosed that section 420 of IPC relates to the offence of cheating and dishonestly inducing delivery of property. xxx xxx Therefore, the allegation made by the Election Petitioner pointing out the number of charges/cases mentioned in columns (5)(ii)(c) and (5)(ii)(d) is unnecessary and frivolous and as such the same is legally not sustainable. In column (5)(ii)(c) against the heading 'Sections of the concerned Acts/Codes involved', I have correctly furnished the required information vide its sl. nos.(iii), (vii) to (x) and (xiii) that section 120B of IPC is involved in the pending cases against me. Similarly, in column (5)(ii)(d) against the heading 'Brief description of offence', I have correctly disclosed that section 120B of IPC relates to the offence of criminal conspiracy. xxx xxx xxx Therefore, the allegation made by the Election Petitioner pointing out the number of charges/cases mentioned in columns (5)(ii)(c) and (5)(ii)(d) is unnecessary and frivolous and as such the same is legally not sustainable. In column (5)(ii)(c) against the heading 'Sections of the concerned Acts/Codes involved', I have correctly furnished the required information vide its sl. nos.(i), (iv) and (v) that section 143 of IPC is involved in the pending cases against me. Similarly, in column (5)(ii)(d) against the

heading 'Brief description of offence', I have correctly disclosed that section 143 of IPC relates to the offence for punishment whoever is a member of an unlawful assembly. xxx xxx xxx Therefore, the allegation made by the Election Petitioner pointing out the number of charges/cases mentioned in columns (5)(ii)(c) and (5)(ii)(d) is unnecessary and frivolous and as such the same is legally not sustainable. In column (5)(ii)(c) against the heading 'Sections of the concerned Acts/Codes involved', I have correctly furnished the required information vide its sl. nos.(i), (ii), (xii) that sections 7/3 and 7/4 of P.D.P.P. Act are involved in the pending cases against me. Similarly, in column (5)(ii)(d) against the heading 'Brief description of offence', I have correctly disclosed that Sections 7/3 and 7/4 of P.D.P.P. Act relate to the offence of mischief by doing any act in respect of any public property. xxx xxx xxx Therefore, the allegation made by the Election Petitioner pointing out the number of charges/cases mentioned in columns (5)(ii)(c) and (5)(ii)(d) is unnecessary and frivolous and as such the same is legally not sustainable."

"In column (5)(ii)(c) under the heading 'Sections(s) of concerned Acts/Codes involved (give no. of the Section, e.g. Section....of IPC, etc.)' vide its sl. no.(iii), I have mentioned

'Commission of offences U/s. 120(B), 467, 468, 471, 420 and section 13(2), 13(1)(d) of P.C. Act, 1988', vide its sl. no.(vii), I have mentioned 'Commission of offences U/s. 420, 120(B) IPC and 13(2) r/w 13(1)(d) of P.C. Act, 1988', vide its sl. no.(viii), I have mentioned 'Commission of offences U/s. 13(2) r/w 13(1)(d) of P.C. Act, 1988 and sections 420, 120(B) of IPC', vide its sl. no.(ix), I have mentioned 'Commission of offences U/s. 13(2) r/w 13(1)(d) of P.C. Act, 1988 and sections 420, 120(B) of IPC', vide its sl. no.(x), I have mentioned 'Commission of offences U/s. 13(2) r/w 13(1)(d) of P.C. Act, 1988 and U/s 120-B, 420 IPC' and vide its sl. no.(xiii), I have mentioned 'Commission of offences U/s. 13(2) r/w 13(1)(d) of P.C. Act, 1988 and sections 420, 120(B) of IPC."

"I have not mentioned ^{सामर्थ्य प्राप्त} in column (5)(ii)(d) of the affidavit under the heading 'Brief description of offence' with respect to section 13(2) and section 13(1)(d) of P.C. Act, 1988 as the said sections of the P.C. Act, 1988 relate to criminal misconduct by a public servant and the said sections were not applicable to me as by that time I was not elected as a M.L.A."

In his cross-examination, the Respondent has stated

as follows:-

“In col. no.5(ii)(d) of my affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46), where I have to give brief description of offence, I have mentioned as to number of charges of a particular offence was pending against me at the time of filing of nomination paper. Charge means, according to me, under which offence, the case had been registered against me.”

“It is a fact that while describing the sections of concerned Act/Codes involved in col. no.5(ii)(c) in my affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46) in sl.no.(ii), I have mentioned one of the offences to be under section 395 of the Indian Penal Code, but in col. no.5(ii)(d) while giving brief description of the offence, I have omitted to mention any case of offence under section 395 of the Indian Penal Code to be pending against me. The omission in col. no.5(ii)(d) was a clerical error.”

“It is a fact that though I have mentioned six cases for commission of offences under section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act to be pending in col. no.5(ii)(c) of my affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46) at sl. nos.(iii), (vii), (viii), (ix), (x) and (xiii), but in col. no.5(ii)(d) of the affidavit, I have omitted to mention such offences (as those offences are applicable to Mr. Vinod Kumar and other

Government officials, who are the co-accused in such cases and they were public servants).”

Q. If you have omitted to mention the offence under section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act to be pending in col. no.5(ii)(d) of your affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46), why then you mentioned those offences in col. no.5(ii)(c) at sl. nos.(iii), (vii), (viii), (ix), (x) and (xiii)?

Ans. As the six cases were registered under the offence under section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, I thought it proper to mention the same in col. no.5(ii)(c) whereas deleting the same in col. no.5(ii)(d) as those offences are not applicable to me.

Q. When those six cases were registered against you and the co-accused persons who were Government servants under section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, whether you yourself decided that such offences are not applicable to you or there was any decision of the Court in that respect?

Ans. My lawyers who verified my affidavit in Form 26 suggested to omit such offences in col. no.5(ii)(d) as those were not applicable to me.

Q. If the offences under section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act are not applicable to you, then while making declaration about the criminal cases in Format C-1 in news papers (Ext.B/1, Ext.C/1, Ext.D/1), why did you mention such offences?

Ans. Since F.I.R. of those cases were registered under section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, as per the advice of my advocate(s), I mentioned the same in Ext.B/1, Ext.C/1, Ext.D/1.

The Respondent, in his cross-examination, has stated as follows:-

"It is a fact that though I have mentioned the offence under section 427 of the Indian Penal Code in four cases to be pending against me in col. no.5(ii)(c) vide sl. nos.(ii), (vi), (xi) and (xii), but I have mentioned in col. no.5(ii)(d) that three charges under section 427 of the Indian Penal Code were pending against me. It was not required on my part to mention how many charges of a particular offence were pending against me in col. no.5(ii)(d) and only brief description of the offence was required to

be mentioned in it which I have mentioned, but due to clerical mistake, I have omitted to mention one more charge under section 427 of the Indian Penal Code to be pending against me in col. no.5(ii)(d)."

Q. If it was not required at all to mention the number of charges of a particular offence in col. no.5(ii)(d), but you have mentioned the same in such column, whether you were required to mention the same correctly or wrongly?

Ans. My advocate can only reply about the same.

"It is a fact that though I have mentioned the offence under section 341 of the Indian Penal Code in three cases to be pending against me in col. no.5(ii)(c) vide sl. nos.(v), (vi) and (xii), but I have mentioned in col. no.5(ii)(d) that two charges under section 341 of the Indian Penal Code were pending against me. I have omitted to mention one more charge under section 341 of the Indian Penal Code to be pending against me in col. no.5(ii)(d) on account of clerical error."

"It is a fact that though I have mentioned the offence under section 294 of the Indian Penal Code in six cases to be pending against me in col. no.5(ii)(c) vide sl. nos.(i), (ii), (iv), (v), (vi)

and (xii), but I have mentioned in col. no.5(ii)(d) that two charges under section 294 of the Indian Penal Code were pending against me. I have omitted to mention four more charges under section 294 of the Indian Penal Code to be pending against me in col. no.5(ii)(d) on account of clerical error.”

“It is a fact that though I have mentioned the offence under section 149 of the Indian Penal Code in seven cases to be pending against me in col. no.5(ii)(c) vide sl. nos.(i), (ii), (iv), (v), (vi), (xi) and (xii), but I have mentioned in col. no.5(ii)(d) that five charges under section 149 of the Indian Penal Code were pending against me. I have omitted to mention two more charges under section 149 of the Indian Penal Code to be pending against me in col. no.5(ii)(d) on account of clerical error.” सत्यमेव जयते

“It is a fact that though I have mentioned the offence under section 332 of the Indian Penal Code in two cases to be pending against me in col.no.5(ii)(c) vide sl. nos.(ii) and (xi), but I have mentioned in col. no.5(ii)(d) that three charges under section 332 of the Indian Penal Code were pending against me. I have added one more charge under section 332 of the Indian Penal Code to be pending against me in col. no.5(ii)(d) on account of clerical error.”

"It is a fact that though I have mentioned the offence under section 420 of the Indian Penal Code in six cases to be pending against me in col.no.5(ii)(c) vide sl. nos.(iii), (vii), (viii), (ix), (x) and (xiii), but I have mentioned in col. no.5(ii)(d) that five charges under section 420 of the Indian Penal Code were pending against me. I have omitted to mention one more charge under section 420 of the Indian Penal Code to be pending against me in col. no.5(ii)(d) on account of clerical error."

"It is a fact that though I have mentioned the offence under section 120-B of the Indian Penal Code in six cases to be pending against me in col.no.5(ii)(c) vide sl. nos.(iii), (vii), (viii), (ix), (x) and (xiii), but I have mentioned in col. no.5(ii)(d) that five charges under section 120-B of the Indian Penal Code were pending against me. I have omitted to mention one more charge under section 120-B of the Indian Penal Code to be pending against me in col. no.5(ii)(d) on account of clerical error."

"It is a fact that though I have mentioned the offence under section 143 of the Indian Penal Code in three cases to be pending against me in col.no.5(ii)(c) vide sl. nos.(i), (iv) and (v) but I have mentioned in col. no.5(ii)(d) that two charges under section 143 of the Indian Penal Code were pending against me. I have omitted

to mention one more charge under section 143 of the Indian Penal Code to be pending against me in col. no.5(ii)(d) on account of clerical error.”

“It is a fact that though I have mentioned the offence under sections 7/3 and 7/4 of the P.D.P.P. Act in three cases to be pending against me in col.no.5(ii)(c) vide sl. nos.(i), (ii) and (xii), but I have mentioned in col. no.5(ii)(d) that two charges under section 7/3 and 7/4 of the P.D.P.P. Act were pending against me. I have omitted to mention one more charge under section 7/3 and 7/4 of the P.D.P.P. Act to be pending against me in col. no.5(ii)(d) on account of clerical error.”

“It is a fact that though I have mentioned the offence under sections 9 and 96 of U.P. Act in three cases to be pending against me in col.no.5(ii)(c) vide sl. nos.(iv), (v) and (xii), but I have mentioned in col. no.5(ii)(d) that two charges under sections 9 and 96 of U.P. Act were pending against me. I have omitted to mention one more charge under sections 9 and 96 of U.P. Act to be pending against me in col. no.5(ii)(d) on account of clerical error.”

The Respondent, in order to show that he had made correct declaration in his affidavit in Form 26 (Exts.43 to 46),

has exhibited Ext.B/1, Ext.C/1 and Ext.D/1 and in his examination-in-chief has stated as follows:-

“In compliance with the instruction of the Returning Officer (P.W.3), I published in newspapers on three occasions, declaration about criminal cases declaring therein all the 13 criminal cases pending against me.”

In his cross-examination, the Respondent has stated as follows:-

“85. I have made identical declaration about criminal cases in Format C-1 in three newspapers already marked as Ext.B/1, Ext.C/1 and Ext.D/1.”

Mr. Kanungo, learned counsel argued that the Respondent in Ext.B/1, Ext.C/1 and Ext.D/1 has made false and misleading declarations in the newspaper in violation of the direction of the Constitution Bench judgment of the Hon'ble Supreme Court reported in **Public Interest Foundation** (supra):

(i) In sl. no.1 of Ext.B/1, Ext.C/1, Ext.D/1, the Respondent has declared that the G.R. Case No.1722/18 is registered u/s. 143/294/431/149 IPC and 7/4 of PDPP Act whereas Ext.17 discloses that the FIR of the said G.R. Case was

registered u/s.147/148/342/450/395/332/427/
354/294/506/149 IPC and 7/3 of PDPP Act.

The Respondent, in his cross-examination to the question put to him in this regard, has stated as follows:-

“Q. Please verify Ext.B/1, Ext.C/1 and Ext.D/1 and see that in sl. no.1 so far as G.R. Case No.1722/2018 which was pending in the Court of S.D.J.M., Cuttack, Ext.17 shows that the offences you have declared against such column are false declaration, what do you say?

Ans. My advocate(s) can only reply.”

(ii) In sl. no.2 of Ext.B/1, Ext.C/1, Ext.D/1, the Respondent has declared that the G.R. Case No.1723/18 is registered u/s. 147/148/342/450/395/32/427/354/294/506/149 IPC and 7/3 of PDPP Act whereas Ext.18 discloses that the FIR of the said G.R. case was registered u/s. 143/294/431/149 IPC and 7/4 of PDPP Act.

The Respondent, in his cross-examination to the question put to him in this regard, has stated as follows:-

“Q. Please verify Ext.B/1, Ext.C/1 and Ext.D/1 and see that in sl. no.2 so far as G.R. Case No.1723/2018 which was pending in the Court of S.D.J.M., Cuttack, Ext.18 shows that the

offences you have declared against such column are false declaration, what do you say?

Ans. My advocate(s) can only reply.”

(iii) In sl. no.4 of Ext.B/1, Ext.C/1, Ext.D/1, the Respondent has declared that the G.R. Case No.1137/12 is registered u/s. 143/294/283/149 I.P.C. and 9 of OUP Act whereas Ext.19 discloses that the F.I.R. of the said G.R. Case was also registered u/s. 96 of the OUP Act and not u/s. 9 of OUP Act.

(iv) In sl. no.5 of Ext.B/1, Ext.C/1, Ext.D/1, the Respondent has declared that the G.R. Case No.1020/12 is registered u/s. 143/431/186/341/426/440/294/506/149 I.P.C. and 96 of OUP Act, whereas Ext.20 discloses that the F.I.R. of the said G.R. Case was also registered u/s. 188 I.P.C. which the Respondent has suppressed.

The Respondent in his cross-examination to the question put to him in this regard, has stated as follows:-

“**Q.** Please verify Ext.B/1, Ext.C/1 and Ext.D/1 and see that in sl.no.5 so far as G.R. Case No.1020/2012 which was pending in the Court of S.D.J.M., Cuttack, Ext.20 shows that the offence under section 188 of the Indian Penal Code has

not been declared in Ext.B/1, Ext.C/1 and Ext.D/1, what do you say?

Ans. My advocate(s) can only reply."

(v) In sl. no.6 of Ext.B/1, Ext.C/1, Ext.D/1, the Respondent has declared that G.R. Case No.85/12 and offences u/s. 147/341/323/294/353/427/149 IPC pending in the Court of Spl. Judge, Vigilance, Cuttack whereas no G.R. Case No.85/2012 is pending against the Respondent before the Spl. Judge, Vigilance, Cuttack u/s. 147/341/323/294/353/427/149 I.P.C. Further, Ext.23 discloses that V.G.R. 85/2012 is pending against the Respondent in the Court of Spl. Judge, Vigilance, Cuttack and not G.R. 85/12, and the said V.G.R. Case 85/2012 is registered u/s 13(2) r/w 13(1)(d) of PC Act, 1988 and u/s 420/120B I.P.C. सत्यमेव जयते

The Respondent, in his cross-examination to the question put to him in this regard, has stated as follows:-

"Q. Please verify Ext.B/1, Ext.C/1 and Ext.D/1 and see that in sl.no.6 so far as G.R. Case No.85/2012 which was pending in the Court of Special Judge, Vigilance, Cuttack, Ext.23 shows that the case number is actually V.G.R. No.85/2012 and the offences you have declared against such column are false declaration, what do you say?

Ans. My advocate(s) can only reply.”

(vi) In sl. no.7 of Ext.B/1, Ext.C/1, Ext.D/1, the Respondent has declared that G.R. Case No.84/12 is pending in the Court of Spl. Judge, Vigilance, Cuttack whereas no G.R. Case No.84/2012 is pending against the Respondent before the Spl. Judge, Vigilance, Cuttack, whereas Ext.25 discloses that the V.G.R. Case No.84/2012 is pending against the Respondent before the Spl. Judge, Vigilance, Cuttack and not G.R. Case No.84/12.

The Respondent, in his cross-examination to the question put to him in this regard, has stated as follows:-

“**Q.** Please verify Ext.B/1, Ext.C/1 and Ext.D/1 and see that in sl.no.7 so far as G.R. Case No.84/2012 which was pending in the Court of Special Judge, Vigilance, Cuttack, Ext.25 shows that the case number is actually V.G.R. Case No.84/2012 and you have made false declaration about the case, what do you say?”

Ans. My advocate(s) can only reply.”

(vii) In sl. no.8 of Ext.B/1, Ext.C/1, Ext.D/1, the Respondent has declared that G.R. Case No.83/12 is pending against him before the Spl. Judge, Vigilance, Cuttack u/s. 13(2) r/w 13(1)(d) of P.C. Act, whereas no G.R. Case

No.83/2012 is pending against the Respondent before the Spl. Judge, Vigilance, Cuttack, and Ext.24 discloses that the case number is V.G.R. Case No.83/2012 and not G.R. Case No.83/12. Further, the F.I.R. of the said case was registered u/s. 13(2) r/w 13(1)(d) of PC Act, 1988 and u/s. 420/120B I.P.C. So, the Respondent in Ext.B/1, C/1 and D/1 has suppressed to declare about the pendency of the said case u/s. 420 and 120B I.P.C.

The Respondent, in his cross-examination to the question put to him in this regard, has stated as follows:-

"Q. Please verify Ext.B/1, Ext.C/1 and Ext.D/1 and see that in sl.no.8 so far as G.R. Case No.83/2012 which was pending in the Court of Special Judge, Vigilance, Cuttack, Ext.24 shows that the case number is actually V.G.R. No.83/2012 and the offences you have declared against such column are false declaration and the offences under sections 420 and 120-B of the Indian Penal Code under which the case was actually registered have not been declared in Ext.B/1, Ext.C/1 and Ext.D/1, what do you say?

Ans. My advocate(s) can only reply."

(viii) In sl. no.9 of Ext.B/1, Ext.C/1, Ext.D/1, the Respondent has declared that G.R. Case No.680/2012 is pending in the Court of S.D.J.M.,

Bhubaneswar u/s. 420/120B I.P.C. and 13(2) r/w 13(1)(d) of P.C. Act, whereas Ext.27 discloses that the said case was never pending before the S.D.J.M., Bhubaneswar and the said case was pending in the Court of J.M.F.C. (O), Bhubaneswar from its inception and the F.I.R. was registered u/s. 417/341/323/294/506/379/120B/34 I.P.C.

The Respondent, in his cross-examination to the question put to him in this regard, has stated as follows:-

Q. Please verify Ext.B/1, Ext.C/1 and Ext.D/1 and see that in sl.no.9 so far as G.R. Case No.680/2012 which was pending in the Court of S.D.J.M., Bhubaneswar, Ext.27 shows that the case was actually pending in the Court of J.M.F.C.(O), Bhubaneswar and the offences you have declared against such column are false declaration, what do you say?

Ans. My advocate(s) can only reply."

(ix) In sl. no.11 of Ext.B/1, Ext.C/1, Ext.D/1, the Respondent has declared that G.R. Case No.1168/11 is registered u/s. 147/148/353/332/336/337/427/323/324/506/149 I.P.C. whereas Ext.21 discloses that the F.I.R. of the said G.R. Case was registered u/s. 147/148/353/332/336/337/427/323/324/506/149 IPC and section 3 of PDPP Act/7 CrI. A. Act/96 OUP Act. The

Respondent has suppressed to declare the offence u/s. 337 I.P.C. and 3 PDPP Act/7 CrI. A. Act/96 OUP Act in Ext. B/1, C/1 and D/1.

The Respondent, in his cross-examination to the question put to him in this regard, has stated as follows:-

“Q. Please verify Ext.B/1, Ext.C/1 and Ext.D/1 and see that in sl.no.10 so far as G.R. Case No.1168/2011 which was pending in the Court of S.D.J.M., Cuttack, Ext.21 shows that the case was registered not under section 37 of Indian Penal Code, but you have declared such offence to be under section 37 of the Indian Penal Code in Ext.B/1, Ext.C/1 and Ext.D/1 and it was a false declaration, what do you say?

Ans. My advocate(s) can only reply.”

(x) In sl. no.12 of Ext.B/1, Ext.C/1, Ext.D/1, the Respondent has declared that the G.R. Case No.1568/10 is pending in the Court of S.D.J.M. Cuttack u/s. 147/341/323/294/353/427/149 IPC and section 3 PDPP Act/7 CrI. A. Act/96 OUP Act whereas Ext.22 discloses that the said case is pending before the J.M.F.C.(City), Cuttack and not before the S.D.J.M., Cuttack. Further, F.I.R. of the said G.R. Case was registered u/s. 147/341/294/353/427/149 I.P.C. and not u/s.

147/341/323/294/353/427/149 I.P.C. and section 3 PDPP Act/7 CrI. A. Act/96 OUP Act.

The Respondent, in his cross-examination to the question put to him in this regard, has stated as follows:-

“Q. Please verify Ext.B/1, Ext.C/1 and Ext.D/1 and see that in sl.no.12 so far as G.R. Case No. 1568/2010 which was pending in the Court of S.D.J.M., Cuttack, but Ext.22 shows that the case was pending in the Court of J.M.F.C. (City), Cuttack and you have made false declaration about the name of the Court in Ext.B/1, Ext.C/1 and Ext.D/1, what do you say?

Ans. My advocate(s) can only reply.”

The Respondent, in his cross-examination to the question put to him in this regard, has stated as follows:-

“Q. After verifying Ext.B/1, Ext.C/1 and Ext.D/1 and the corresponding F.I.Rs., whether you can say that you have made correct declaration in the said exhibits?

Ans. My advocate(s) can only reply.”

“I knew about the requirement of publication of details of criminal cases pending against a candidate in newspapers in three occasions as per the order of the Hon’ble Supreme Court. It is

not a fact that I have deliberately made false declaration in the publications on each occasion as per Ext.B/1, Ext.C/1 and Ext.D/1 to mislead the voters of 90-Barabati Cuttack Assembly Constituency. My advocate(s) can only say as to why there are wrong mention about the details of the criminal cases in Ext.B/1, Ext.C/1 and Ext.D/1.”

Learned counsel for the Respondent objected to all questions put by the learned counsel for the Election Petitioner with respect to Exts.17 to 25, Ext.28 and Ext.29 in the cross-examination to the Respondent as those are beyond the pleadings.

Mr. Kanungo, learned counsel submitted that the Respondent himself exhibited Exts.B/1, C/1 and D/1 to show that he has correctly disclosed about the criminal cases pending against him which was not a fact. To prove and establish that the Respondent had made false declaration in the affidavit in Form 26 (Exts.43 to 46) as well as in the newspaper i.e., Exts.B/1, C/1 and D/1 which were contrary to the directions issued by the Hon'ble Supreme Court of India, the Election Petitioner exhibited Exts.17 to 25, 28 & 29.

To the questions put by the Court, the Respondent has stated as follows:-

"It is a fact that out of thirteen cases pending against me at the time of filing of the nomination papers and the affidavits in Form 26, one case was of the year 2005, one case was of the year 2007, one case was of the year 2010, two cases were of the year 2011, six cases were of the year 2012 and two cases were of the year 2018. It is a fact that the F.I.R. and other connected documents of all the thirteen cases were available with me as well as my advocate(s) when the nomination papers were filed and the affidavits in Form 26 were prepared. I was aware that I should furnish the correct details about the F.I.R. and G.R. case numbers, names of Courts, details of offences, and description of the offences in my affidavits in Form 26. I am realizing at present that if after preparation of the affidavits in Form 26, those would have been verified minutely with reference to the documents which were available, the clerical mistakes or typographical mistakes that have cropped up in the affidavits, would not have been there. The election was notified on 28.03.2019 and the last date of filing of nomination papers along with affidavits in Form 26 was there till 04.04.2019 and I filed the

nomination papers on 02.04.2019 and the affidavits in Form 26 marked as Ext.43, Ext.44, Ext.45 and Ext.46 were filed on 04.04.2019. According to me, this period was not sufficient on my part to verify the affidavits in Form 26 minutely with reference to the documents as I was busy in election campaigning and due to paucity of time, I could not get time to minutely verify the same."

Mr. Kanungo, learned counsel argued that the Respondent in his affidavit in Form 26 (Ext.43) has mentioned that the candidate is responsible for supplying all information in compliance of Hon'ble Supreme Court's Judgment in W.P.(C) 536/2011 and he has also stated that the contents of affidavit are true and correct to the best of his knowledge and belief and no part of it is false and nothing material has been concealed therefrom. It is argued that a bare perusal of the affidavit in Form 26 (Exts.43 to 46) filed along with the nomination papers and in the newspapers (Exts. B, C, D vide Exts.B/1, C/1, D/1), the Respondent has made false and misleading declaration about the criminal cases pending against him and has suppressed to give true and correct declaration in the affidavit in Form 26 for which the nomination paper filed by the Respondent is to be

rejected and consequently his election from the Constituency is to be declared as void and to be set aside.

Mr. Kanungo, learned counsel submitted though it was argued on behalf of the Respondent that he had declared all thirteen criminal cases pending against him and as the P.C. Act is not applicable to him, he has not disclosed the same in the affidavit filed in Form 26 (Ext.43), but the details of said criminal cases like date of F.I.R., name of Police Station, name of the Court, Sections involved in the F.I.R., brief description of the offences and date of framing of charge in T.R. No.1/2009 were all false and misleading declarations.

So far as the pleading is concerned, Mr. Kanungo, learned counsel submitted that the Election Petitioner in para 7(C), 7(G), 7(H), 7(I) has pleaded that in the affidavit in Form 26 filed by the Respondent, he has made false and misleading declaration. So also, the declarations made in Exts.B/1, C/1 and D/1 are also false. Exts.B/1, C/1 and D/1 were exhibited to mislead this Court that the Respondent had made true and correct declaration in the newspaper pursuant to the directions of the Constitution Bench of the Supreme Court and to prove the averments made in para 7(C) r/w Ext.43 and declarations made

in Exts.B/1, C/1 and D/1 are false, the Election Petitioner exhibited Exts.17 to 19, 21 to 25, 28, 29 and 49.

In the case of **Dhartipakar Madan Lal Agarwal -Vrs.- Rajiv Gandhi reported in 1987 (Supp) SCC 93**, it is held that Section 81 prescribes a period of 45 days from the date of the election for presenting election petition calling in question, the election of a returned candidate. After the expiry of that period, no election petition is maintainable and the High Court or this Court has no jurisdiction to extend the period of limitation. An order of amendment permitting a new ground to be raised beyond the time specified in Section 81 would amount to contravention of those provisions and beyond the ambit of section 81 of the Act. It necessarily follows that a new ground cannot be raised or inserted in an election petition by way of amendment after the expiry of the period of limitation. Similarly, reliance is placed in the case of **Hari Shanker Jain -Vrs.- Sonia Gandhi reported in (2001) 8 Supreme Court Cases 233**, the Hon'ble Supreme Court held as follows:-

"23. Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts

required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See *Samant N. Balkrishna v. George Fernandez, Jitendra Bahadur Singh v. Krishna Behari*) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In *V.S. Achuthanandan v. P.J. Francis*, this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish

existence of a cause of action. Failure to plead “material facts” is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.”

Further, in case of **Karam Kapahi and Others -Vrs.- Lal Chand Public Charitable Trust and Others reported in MANU/SC/0240/2010**, the Hon’ble Supreme Court interpreted Order 12 Rule 1 of C.P.C. and Order 12 Rule 6 of C.P.C. and held that if the provisions of Order 12 Rule 1 is compared with Order 12 Rule 6 C.P.C., it becomes clear that the provision of Order 12 Rule 6 is wider in as much as the provision of Order 12 Rule 1 is limited to admission by ‘pleading or otherwise in writing’ but in Order 12 Rule 6, the expression or otherwise is much wider in view of the words used therein namely, ‘admission of fact either in pleading or otherwise, whether orally or in writing’ and the Hon’ble Supreme Court further held as follows:-

“56. Order 12 Rule 6 of the Code has been very lucidly discussed and succinctly interpreted in a Division Bench judgment of Madhya Pradesh High Court in the case of **Shikharchand and Ors. -Vrs.- Mst. Bari Bai and Ors.** reported in

MANU/MP/0018/1974: AIR 1974 Madhya Pradesh 75. Justice G.P. Singh (as His Lordship then was) in a concurring judgment explained the aforesaid rule, if we may say so, very authoritatively at page 79 of the report. His Lordship held:

"...I will only add a few words of my own. Rule 6 of Order 12 of the Code of Civil Procedure corresponds to Rule 5 of Order 32 of the Supreme Court Rules (English), now Rule 3 of Order 27, and is almost identically worded (see Annual Practice 1965 edition Part I. p. 569). The Supreme Court Rule came up for consideration in *Ellis v. Allen* (1914) Ch 904. In that case a suit was filed for ejection, mesne profits and damages on the ground of breach of covenant against sub-letting. Lessee's solicitors wrote to the plaintiff's solicitors in which fact of breach of covenant was admitted and a case was sought to be made out for relief against forfeiture. This letter was used as an admission under Rule 5 and as there was no substance in the plea of relief against forfeiture, the suit was decreed for ejection under that rule. Sargant, J. rejected the argument that the rule is confined to admissions

made in pleadings or under Rules 1 to 4 in the same order (same as ours) and said: the rule applies wherever there is a clear admission of facts in the face of which it is impossible for the party making it to succeed."

Rule 6 of Order 12, in my opinion, must bear the same construction as was put upon the corresponding English rule by Sargent, J. The words "either on the pleadings or otherwise" in Rule 6 enable us not only to see the admissions made in pleadings or under Rules 1 to 4 of the same order but also admissions made elsewhere during the trial."

In **Himani Alloys Ltd. -Vrs.- Tata Steel Ltd.**
 reported in **(2011) 15 Supreme Court Cases 273**, the
 Hon'ble Supreme Court held as follows:-

"11. 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 preemptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial

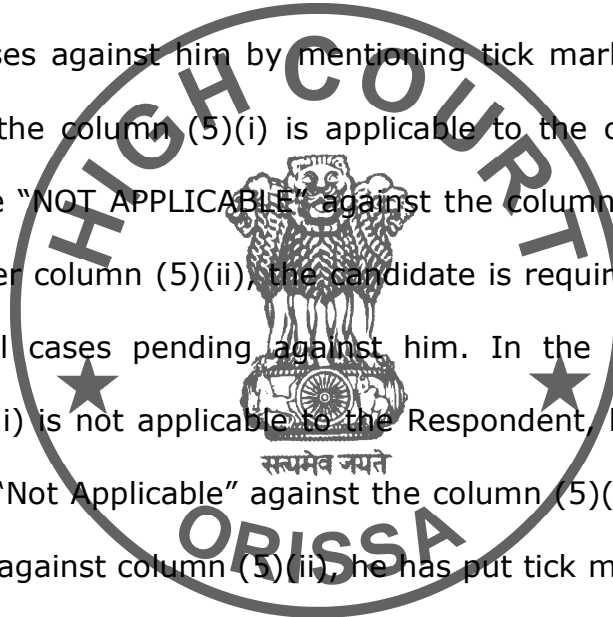
discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the Defendant, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny 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."

According to Mr. Kanungo, the issue nos.17 and 21 are to be answered in favour of the Election Petitioner and against the Respondent.

Mr. Bidyadhar Mishra, learned Senior Advocate, on the other hand, argued that the allegations made by the Election Petitioner in his election petition are completely based on surmises, out and out false, fabricated, concocted. The Respondent has disclosed all the necessary information in respect of the criminal cases pending against him in his affidavit filed in Form 26. There is no concealment of information or false information provided by the Respondent in his affidavit rather he had declared all particulars in respect of all the criminal cases

pending against him as required under law and prescribed under the format of the Form 26 affidavit.

According to Mr. Mishra, all the nominated candidates are required to furnish respective information about the criminal cases pending against them, if any, under column (5) in their respective affidavit in Form 26. Under column (5)(i), it is required by the candidate to declare that there is no pending criminal cases against him by mentioning tick mark against the column. If the column (5)(i) is applicable to the candidate, he has to write "NOT APPLICABLE" against the column (5)(ii) given below. Under column (5)(ii), the candidate is required to declare the criminal cases pending against him. In the instant case, column (5)(i) is not applicable to the Respondent, hence he has mentioned "Not Applicable" against the column (5)(i) and on the other hand against column (5)(ii), he has put tick mark declaring thereby that criminal cases are pending against him. Under the column (5)(ii)(a), the candidate is required to declare "FIR No. with name and address of Police Station concerned". Under the column (5)(ii)(b), the candidate is required to declare "Case No. with Name of the Court". Under the column (5)(ii)(c), the candidate is required to furnish information about "Section(s) of concerned Acts/Codes (give no. of the Section, e.g. Section.....of



IPC, etc.)". Under the column (5)(ii)(d), the candidate is required to furnish information about "Brief description of offence". Under the column (5)(ii)(e), the candidate is required to furnish information about "Whether charges have been framed (mention YES or NO)." Under the column (5)(ii)(f), the candidate is required to furnish information to the effect that "If answer against (e) above is YES, then give the date on which charges were framed". Under the column (5)(ii)(g), the candidate is required to furnish information as to "Whether any Appeal/ Application for revision has been filed against the proceedings (Mention YES or NO)." Mr. Mishra argued that the Election Petitioner while making allegations under paragraph-7(C) of the election petition has deliberately suppressed the above important material facts which are laid down/prescribed under the column (5)(ii) in its clauses (a) to (g) and as such those allegations do not disclose complete cause of action.

According to Mr. Mishra, the allegations made under paragraph-7(C) of the election petition, are bereft of material facts, do not disclose complete cause of action, wholly unnecessary, frivolous, scandalous, vexatious and tend to prejudice, embarrass the fair trial of the case with ulterior political motive which is otherwise an abuse of the process of the

Court. The submissions made by Mr. Mishra with respect to the issues in question are as follows:-

(a) The Respondent has correctly mentioned the F.I.R. No., date of F.I.R. and name of the police station in column (5)(ii)(a) vide sl. no.(vi) i.e. F.I.R. No. 136/2012 dated 24.09.2012 at Baliana police station. There is no allegation about the corresponding entries/information furnished in respect of the said F.I.R. under columns (5)(ii)(b) to (5)(ii)(g). The only discrepancy as alleged is that mentioning of Baliana police station, Cuttack whereas in the district of Cuttack, there is no Baliana police station. The said allegation is made without any pleading to the effect that on account of such typographical mistake as to why and how the result of the election, in so far as it concerns the returned candidate, has been materially affected. Even if the district of the Baliana police station has been wrongly mentioned to be in Cuttack district in place of Khordha district, the same is inconsequential, immaterial and a mere typographical error and such mistake cannot be a ground on the basis of which the election is to be declared void and be set aside. The electors of the Constituency in general are well informed that the Baliana Police Station comes under Khordha district and as such on

account of mentioning of the name of the district as Cuttack in place of Khordha, does not create any serious confusion or misinformation in the mind of the electors;

(b) The Respondent has correctly disclosed under column (5)(ii)(a) regarding pendency of F.I.R. No. 34 dated 06.09.2007 in Vigilance police station. There is no allegation with respect to all other corresponding information furnished under column nos.(5)(ii)(b) to (5)(ii)(g) against the said F.I.R. number. The only allegation is made pointing out the typographical error with respect to place of the police station as Cuttack instead of Bhubaneswar, without any pleading to the effect that on account of such typographical mistake as to why and how the result of the election, in so far as it concerns the returned candidate, has been materially affected. Such typographical error as alleged is inconsequential and immaterial and such error cannot be said to be a ground on the basis of which the election is to be declared void and be set aside.

(c) The allegation to the effect that the Respondent has not disclosed T.R. No.41/2013 pending in the Court of Spl. Judge, Vigilance, Bhubaneswar against him and others is entirely false, concocted, unnecessary, frivolous and scandalous inasmuch as the said allegation is bereft of the material fact to the effect that the

Respondent has disclosed the said T.R. No.41/2013 pending before the Court of Spl. Judge, Vigilance under column no.(5)(ii)(b) in its sl. no.(iii) along with all other corresponding information in respect of the said pending case which have been furnished correctly in column nos. (5)(ii)(c) to (5)(ii)(g).

(d) The allegation made with respect to the declaration made in column (5)(ii)(b) sl. no.(ix) by the Respondent about G.R. Case No.680/2012 pending in the Court of S.D.J.M., Bhubaneswar instead of Court of J.M.F.C.(O), Bhubaneswar, is not worth acceptable as because the source of information of such allegation has not been disclosed by the Election Petitioner. There is also no allegation made with respect to the corresponding information furnished against the said pending case under column nos.(5)(ii)(a), (5)(ii)(c) to (5)(ii)(g).

(e) The allegation made to the effect that the F.I.R. Nos. given in column (5)(ii)(a) and the corresponding Case Nos. and the name of the Court declared in column (5)(ii)(b) and sections of the concerned Acts/Codes involved are false and misleading declarations, is wholly bald, baseless, unnecessary and frivolous, without pleading of the material facts disclosing/ pointing out thereby any particular false and misleading declarations in those two columns

and as such the same does not disclose any cause of action.

(f) The Respondent in column (5)(ii)(c) against the heading "Sections of the concerned Acts/Codes involved" has correctly furnished the required information vide its sl. nos.(v), (vi) and (xii) that section 341 of I.P.C. is involved in the pending cases against him. Similarly, the Respondent in column (5)(ii)(d) against the heading "Brief description of offence" has correctly disclosed that Section 341 of I.P.C. relates to the offence of wrongful restraint. It is worthwhile to mention here that in the election petition, there is no other allegation(s) made with respect to the information furnished by the Respondent in columns (5)(ii)(a), (5)(ii)(b), (5)(ii)(e), (5)(ii)(f) and (5)(ii)(g) regarding charges/cases pending under section 341 of I.P.C. It is not mandatorily required to furnish number of charges/cases in columns (5)(ii)(c) and (5)(ii)(d) of Form 26 affidavit.

(g) The Respondent in column (5)(ii)(c) against the heading "Sections of the concerned Acts/Codes involved" has correctly furnished the required information vide its sl. nos.(i), (ii), (iv), (v), (vi) and (xii) that section 294 of I.P.C. is involved in the pending cases against him. Similarly, the Respondent in column (5)(ii)(d) against the heading "Brief description of offence"

has correctly disclosed that Section 294 of I.P.C. relates to the offence of obscene acts and songs. In the election petition, there is no other allegation(s) made with respect to the information furnished by the Respondent in columns (5)(ii)(a), (5)(ii)(b), (5)(ii)(e), (5)(ii)(f) and (5)(ii)(g) regarding charges pending under section 294 of IPC. It is not mandatorily required to furnish number of charges/cases in columns (5)(ii)(c) and (5)(ii)(d) of Form 26 affidavit.

(h) The Respondent in column (5)(ii)(c) against the heading "Sections of the concerned Acts/Codes involved" has correctly furnished the required information vide its sl. nos.(ii), (vii) to (x) and (xiii) that section 420 of I.P.C. is involved in the pending cases against him. Similarly, the Respondent in column (5)(ii)(d) against the heading "Brief description of offence" has correctly disclosed that Section 420 of I.P.C. relates to the offence of cheating and dishonestly inducing delivery of property. In the election petition, there is no other allegation(s) made with respect to the information furnished by the Respondent in columns (5)(ii)(a), (5)(ii)(b), (5)(ii)(e), (5)(ii)(f) and (5)(ii)(g) regarding charges pending under section 420 of I.P.C. It is not mandatorily required to furnish number of charges/cases in columns (5)(ii)(c) and (5)(ii)(d) of Form 26 affidavit.

(i) The Respondent in column (5)(ii)(c) against the heading "Sections of the concerned Acts/Codes involved" has correctly furnished the required information vide its sl. nos.(iii), (vii) to (x) and (xiii) that section 120B of I.P.C. is involved in the pending cases against him. Similarly, the Respondent in column (5)(ii)(d) against the heading "Brief description of offence" has correctly disclosed that Section 120B of I.P.C. relates to the offence of criminal conspiracy. In the election petition, there is no other allegation(s) made with respect to the information furnished by the Respondent in columns (5)(ii)(a), (5)(ii)(b), (5)(ii)(e), (5)(ii)(f) and (5)(ii)(g) regarding charges pending under section 120B of I.P.C. It is not mandatorily required to furnish number of charges/cases in columns (5)(ii)(c) and (5)(ii)(d) of Form 26 affidavit.

(j) The Respondent in column (5)(ii)(c) against the heading "Sections of the concerned Acts/Codes involved" has correctly furnished the required information vide its sl. nos.(i), (iv) and (v) that section 143 of I.P.C. is involved in the pending cases against him. Similarly, the Respondent in column (5)(ii)(d) against the heading "Brief description of offence" has correctly disclosed that Section 143 of I.P.C. relates to the offence for punishment whoever is

a member of an unlawful assembly. The pleading made by the Election Petitioner to the effect that in column (5)(ii)(d), the Respondent has declared two charges related to mischief by injury to public road, bridge, river, channel (IPC section 143), is completely false, evasive, frivolous, vexatious and scandalous. In the election petition, there is no other allegation(s) made with respect to the information furnished by the Respondent in columns (5)(ii)(a), (5)(ii)(b), (5)(ii)(e), (5)(ii)(f) and (5)(ii)(g) regarding charges pending under section 143 of I.P.C. It is not mandatorily required to furnish number of charges/cases in columns (5)(ii)(c) and (5)(ii)(d) of Form 26 affidavit.

(k) The Respondent in column (5)(ii)(c) against the heading "Sections of the concerned Acts/Codes involved" has correctly furnished the required information vide its sl. nos.(i), (ii), (xii) that Sections 7/3 and 7/4 of P.D.P.P. Act are involved in the pending cases against him. Similarly, the Respondent in column (5)(ii)(d) against the heading "Brief description of offence" has correctly disclosed that Sections 7/3 and 7/4 of P.D.P.P. Act relate to the offence of mischief by doing any act in respect of any public property. It is worthwhile to mention here that in the election petition, there is no other allegation(s) made with respect to the

information furnished by the Respondent in columns (5)(ii)(a), (5)(ii)(b), (5)(ii)(e), (5)(ii)(f) and (5)(ii)(g) regarding charges pending under Sections 7/3 and 7/4 of P.D.P.P. Act. It is not mandatorily required to furnish number of charges/cases in columns (5)(ii)(c) and (5)(ii)(d) of Form 26 affidavit.

(I) The Respondent in column (5)(ii)(c) sl. nos.(iii), (vii) to (x) and (xiii) has declared about the cases pending against him under section 13(2) read with section 13(1)(d) of P.C. Act, 1988 but has not declared about the same in column (5)(ii)(d) of the affidavit, is not worth acceptable and not legally sustainable. The offences under Section 13(2) read with Section 13(1)(d) of P.C. Act, 1988 relate to criminal misconduct by a public servant and as such the Respondent not being a public servant till declared elected, was not required under law to furnish the description of the offence which relates to a public servant inasmuch as such offences are not applicable to him.

Mr. Mishra, learned counsel for the Respondent argued that on account of absence of above material facts in pleadings of the election petition, the same does not disclose complete cause of action as law is well settled that the election petitioner is to be restricted and cannot be permitted to adduce

any evidence beyond his pleadings. Mr. Mishra drew the attention of this Court to the following questions put by the Court to the Election Petitioner and the answers given:-

To Court

“For the second time, I contested election of M.L.A. against the Respondent Md. Moquim. Though I had knowledge that some criminal cases have been instituted against the Respondent Md. Moquim prior to the election in the year 2019, but I had no knowledge about the details of those cases including the offences involved and the Courts where those cases were pending. In order to verify whether Respondent Md. Moquim has reflected correctly about the pendency of the cases against him in the affidavit, I applied for the certified copy of the F.I.Rs., charge sheet and order-sheets and then I came to know about the correct state of affairs. From the date of application of certified copy and grant of certified copy, it reveals that I got those documents after filing of the election petition.

Q. If you have got the certified copies of the F.I.R., charge sheet and order-sheet after filing of the election petition, how you mentioned in the election petition that the Respondent Md.

Moquim has not correctly reflected about the case details in the affidavit in Form 26?

Ans. After verifying from different agencies and making research, prior to obtaining the certified copies I came to know that the Respondent Md. Moquim has given wrong statements in the affidavit in Form 26.”

Mr. Mishra drew the attention of this Court to the following answer given by the Election Petitioner in the cross-examination:-

“It is a fact that at the time of filing of the election petition Exts 17, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29 and 30 were not available with me, which I received in between August 2022 to November 2022.”

According to Mr. Mishra, learned counsel for the Respondent, since the documents were not available with the Election Petitioner with respect to pendency of criminal cases against the Respondent at the time of filing of election petition, vague and incorrect averments have been taken and without necessary pleading, the Election Petitioner has tried to make out something new at a later stage to cause surprise to the Respondent and thereby the Respondent has been seriously prejudiced. The Respondent has given declaration with respect to

all thirteen criminal cases pending against him in his affidavit in Form 26 and as such the Election Petitioner has signally failed to prove his allegations made under Paragraph-7(C) of the election petition. The Election Petitioner has also not pleaded about the criminal cases where charge has been framed or cognizance has been framed by the concerned Courts.

I am of the view that even though Exts.17, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29 and 30 were not available with the Election Petitioner at the time of filing of the election petition, since according to him, after verifying from different agencies and making research, he came to know that the Respondent had given wrong statements in the affidavit in Form 26 and accordingly, he had informed to his counsel at the time of preparation of election petition as well as evidence affidavit, there is nothing wrong in it. Moreover, at the stage of trial, since all the material documents were brought on record and duly proved, this Court has to verify whether the pleadings made in the election petition and evidence on affidavit filed by the Election Petitioner are factually correct or not or there is ring of truth in the written statement and evidence adduced by the Respondent in this respect. It would be beneficial to refer to the following observations made by the Hon'ble Supreme Court in

the case of **Ajay Maken -Vrs.- Adesh Kumar Gupta reported in (2013) 3 Supreme Court Cases 489:**

“41. The purpose of the stipulation under Section 81(3) is to put the returned candidate on notice of the various allegations made against him in order to enable him to defend himself effectively in the election petition—a stipulation flowing from the requirement of one of the basic postulates of the principles of natural justice. Once the content of the annexure, the whole of which pertains to the commission of the corrupt practice alleged in the election petition, is described in the body of the election petition with sufficient clarity, the returned candidate cannot complain that he was denied a reasonable opportunity of defending himself or that he was taken by surprise at the trial. Therefore, non-supply of the annexure in such cases was held to be immaterial and the copy of the election petition supplied to the returned candidate sans the annexure would still be a true copy within the meaning of the expression under Section 81(3).”

(Emphasis supplied)

Therefore, the submission on behalf of the Respondent that the election petition must be dismissed since the Election Petitioner obtained certain exhibited documents

subsequent to the filing of the election petition, is not worthy of acceptance. The requirement under section 81(1) read with section 83(1)(a) is that the Election Petitioner is to file the election petition, providing a concise statement of all the material facts in his election petition, within forty-five days of declaration of the result of the election. The terms 'concise statement' and 'material facts' ought to be emphasized here. The meaning of 'material fact' is no more ambiguous, as has been discussed in the preceding issues. Material facts essentially connote those facts which form the basis of an election petition. Thus, an Election Petitioner is required to provide the essential facts in a 'concised manner' in his election petition. If the petition sets forth the allegations against the returned candidate in clear terms then the requirement under the above provision stands fortified and merely because the Election Petitioner did not possess certain documents which were exhibited and relied later on, cannot be a ground to reject his petition *in limine*.

Mr. Mishra drew the attention of this Court to the following question put by the Court to the Election Petitioner and the answer given:-

TO COURT

Q. You have mentioned in para 7(H) of the Election Petition that the Respondent has not

fully disclosed about the criminal cases pending against him. Please verify the election petition and the evidence affidavit filed by you and say which are those cases according to you, the Respondent has not disclosed in his affidavit in Form 26?

Ans. The answer to this question lies in paragraph 7(C) of my election petition.

Mr. Mishra drew the attention of this Court to the evidence of P.W.3, the Returning Officer which is as follows:-

“On 02.04.2019, I issued Ext.A to the Respondent instructing him to publish a declaration of the criminal cases pending against him for wide publicity in newspapers with wide circulation in the constituency area as well as on TV channels, ~~at least~~ on three different occasions each during the dates from the day following the last date for withdrawal of candidature and up to two days before the date of poll.”

To Court

Q. Whether after publishing the details of the criminal cases in the newspapers with wide circulation in the constituency area, the Respondent submitted the proof of the same before you?

Ans. It is not required to be submitted before me as Returning Officer, but it is to be submitted before the District Election Officer along with his account of election expenses.

Q. Whether after telecasting on TV channels regarding criminal cases, the Respondent submitted the proof of the same before you?

Ans. It is not required to be submitted before me as Returning Officer. I cannot say whether there is any provision to submit proof of the same before the District Election Officer.

"As per the instruction given to the Respondent vide Ext.A, he published the details of the criminal cases pending against him in Format C-1 in the newspapers which have already been marked as Ext.B/1, Ext.C/1 and Ext.D/1. On verification of Ext.B/1, Ext.C/1 and Ext.D/1, I find that the Respondent has published the same within time as stipulated under Ext.A. When the Respondent submitted his revised affidavits dated 03.04.2019 on 04.04.2019 vide Ext.43, Ext.44, Ext.45 and Ext.46, he mentioned pendency of as many as 13 criminal cases against him under item no.5(ii) in pages 3 to 8 of Ext.43, Ext.44, Ext.45 and Ext.46. After verifying the details of criminal cases mentioned in pages 3 to 8 of Ext.43, Ext.44, Ext.45 and Ext.46 with that of Ext.B/1, Ext.C/1 and Ext.D/1,

I find that the Respondent has correctly published the details of pendency of all 13 criminal cases pending against him in the news papers. I got no proof of telecasting on TV channels of the details of criminal cases pending against the Respondent on three occasions as was directed in Ext.A, but nobody including the Election Petitioner or anybody on his behalf complained before me regarding non-telecasting details of the criminal cases of the Respondent violating my instruction in Ext.A.”

Mr. Mishra, learned counsel argued that plain reading and close scrutiny of the evidence on record would lead to irresistible conclusion that the Respondent had disclosed correctly all the thirteen criminal cases pending against him in his affidavit in Form 26. The Election Petitioner (P.W.1) has also stated that he did not know as to whether any other criminal case(s) other than the disclosed thirteen criminal cases to be pending against the Respondent.

Mr. Mishra drew the attention of this Court to the evidence of P.W.3, the Returning Officer which is as follows:-

“Before the commencement of scrutiny of nominations i.e. on 05.04.2019 at 11.00 a.m., the nomination papers in Form 2B i.e. Ext.39, Ext.40, Ext.41 and Ext.42 and the affidavits in

Form 26 dated 03.04.2019 i.e. Ext.43, Ext.44, Ext.45 and Ext.46 filed by the Respondent were very much available on my office notice board, with the media persons, in the office of the District Election Officer, Cuttack and in the official website of the Election Commission of India for view by the general public. In spite of availability of the nomination papers and affidavits of the Respondent to the general public in the aforesaid manner as stated by me in the previous sub-paragraph, nobody including the Election Petitioner or his agents or any of his supporters raised any objection before me to the nomination papers and affidavits filed by the Respondent before or during scrutiny of nominations.”

According to Mr. Mishra, on applications filed on behalf of the Election Petitioner to direct concerned Courts to grant certified copies of FIRs, charge sheets and day to day order sheets of all the pending criminal cases against the Respondent, this Court passed orders directing the concerned Courts to grant such copies to the Election Petitioner. Accordingly, the Election Petitioner collected certified copies of the documents and filed the same before this Court and marked those documents as exhibits on his behalf. In course of the trial, it became known to the Election Petitioner that some clerical/

typographical errors/omissions existed in the affidavit in Form 26 filed by the Respondent with respect to criminal cases pending against him. He argued that there was no corresponding pleading with respect to those clerical/typographical errors/omissions in the election petition. The Election Petitioner did not apply for necessary amendment of the election petition under section 86(5) read with section 87 of the R.P. Act to include and bring home the above clerical/typographical errors/omissions in the affidavit in Form 26 filed by the Respondent with respect to criminal cases pending against him. The election petition falls short of appropriate pleadings and liable to be dismissed for not disclosing complete cause of action.

Reliance is placed in the case of **Yendapalli Srinivasulu Reddy -Vrs.- Vemireddy Pattabhirami Reddy & Others reported in 2022 SCC OnLine 1467**, wherein the Hon'ble Supreme Court held as follows:-

"3. By way of this appeal, the appellant-returned candidate, whose election has been called into question by the respondent No.1 by way of Election Petition No.1 of 2017 before the High Court of Andhra Pradesh, seeks to question the order dated 06.12.2019 whereby, an

application for amendment of the petition has been granted.

4. Shorn of unnecessary details, the relevant aspects to be noticed for the purpose of this appeal are that in the election petition filed by the respondent No.1 herein, essentially two broad grounds have been urged. One being of improper acceptance of the nomination of the returned candidate, i.e., the appellant herein, and the second being of improper receipt of invalid votes and improper rejection of valid votes.

5. The second ground as referred hereinabove is not of relevance for the purpose of the present appeal. The relevant part of the matter herein is that in the petition as filed, the appellant has, inter alia, prayed for the following relief:

"B. Declare the acceptance of the nomination paper filed by the 1st Respondent/the Returned candidate with substantial defects in the affidavit as illegal, improper and consequently set aside/reject the same."

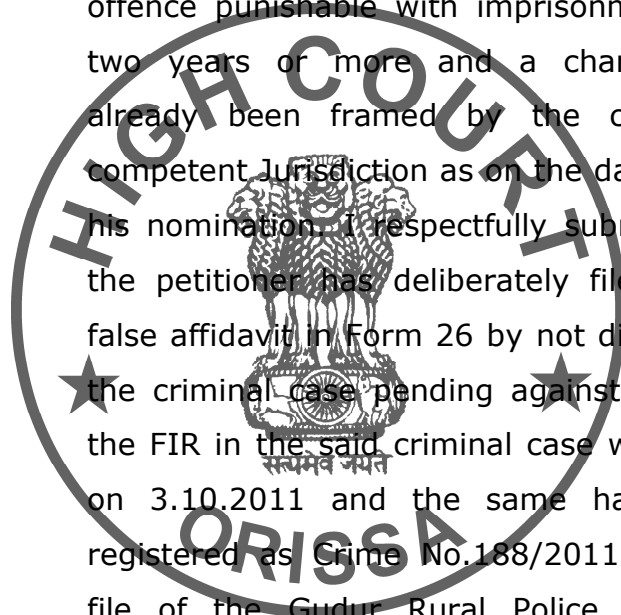
6. In relation to the aforementioned relief, the election petitioner (respondent No.1) has stated that the nomination paper of the appellant ought to have been rejected for being not accompanied

by a proper affidavit, particularly when the verification part was not carrying the signature of the appellant. The other submissions are that the affidavit was drawn up on certain stamp papers but, one of them was not purchased in the name of the appellant and was purchased by some other person and then, the name of the appellant was inserted by erasing the name of the original purchaser. It had also been submitted that there had been certain blank spaces for which, the affidavit was rendered nugatory and these being the defects of substantial nature, the nomination was required to be rejected.

7. It would be apposite to notice that the result of the election in question was declared on 21.03.2017 and the election petition under consideration was filed on 27.04.2017. Leaving aside other proceedings, the relevant aspect for the present appeal is that on 27.03.2018, the election petitioner (respondent No.1) moved an application, being Interlocutory Application No.2 of 2018, seeking permission to amend the election petition, so as to incorporate the averments in the following terms:

"8a. It is submitted that as per section 33(A)(i) of the Representation of the People Act, 1951, a candidate shall furnish the information as to whether he is

accused of any offence punishable with imprisonment for two years or more in a pending case in which charge has been framed by the court of competent Jurisdiction. It is further submitted that the returned candidate/1st respondent herein filed a false in Form 26 by not disclosing the criminal case pending against him in which he is accused of an offence punishable with imprisonment for two years or more and a charge has already been framed by the court of competent Jurisdiction as on the date filing his nomination. I respectfully submit that the petitioner has deliberately filed as a false affidavit in Form 26 by not disclosing the criminal case pending against him as the FIR in the said criminal case was filed on 3.10.2011 and the same has been registered as Crime No.188/2011 on the file of the Gudur Rural Police Station, Nellore District. The petitioner has been arrayed as A3. The Court has taken cognizance of the same as C.C. No.370/2012 and the charges were also framed as on the day of filing nomination. Later the returned candidate/1st respondent herein has been convicted for the offences under Section 143, 147, 148, 447, 290 and 332 r/w. 149 IPC and the



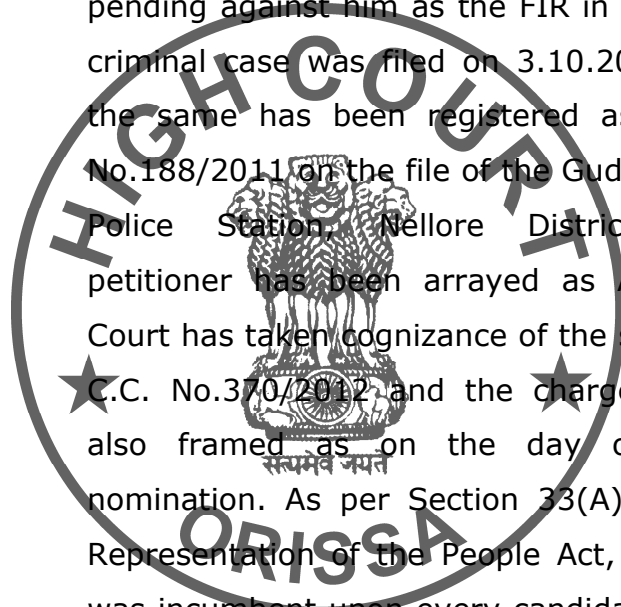
details of the sentence and fine imposed on the returned candidate/the 1st respondent herein on 12.01.2018 by the Hon'ble Additional Judicial Magistrate of First Class, Gudur, Nellore District are as follows:

Sl.No.	Provision of Law	Sentence	Fine (Rs)
1	Sec.143 IPC	6 months	1000/-
2	Sec.147 IPC	One year	1000/-
3	Sec.148 IPC	Two years	1000/-
4	Sec.447 IPC	3 months	500/-
5	Sec.332 IPC	Two years	1000/-
6	Sec.290 IPC	----	200/-

★ The returned candidate/1st ★ respondent herein did not disclose the criminal case pending against him in the election affidavit filed in Form 26 and the non-disclosure of such an important fact has rendered the affidavit defective and invalid in law as per the law laid down by the Hon'ble Apex Court in the case of *Kisan Shankar Kathore v. Arun Dattatray Sawant and others* reported in (2014) 14 SCC 162.

8b. It is submitted that as per the Section 33 of the Representation of the People Act, 1951, a nomination paper complete in the

prescribed Form, signed by a candidate and by an elector of the constituency as proposer should be delivered to the returning officer within the prescribed period. A candidate has to file an affidavit along with his nomination paper as prescribed in Form 26. The petitioner has deliberately filed a false affidavit in Form-26 by not disclosing the criminal case pending against him as the FIR in the said criminal case was filed on 3.10.2011 and the same has been registered as Crime No.188/2011 on the file of the Gudur Rural Police Station, Nellore District. The petitioner has been arrayed as A3. The Court has taken cognizance of the same as C.C. No.370/2012 and the charges were also framed as on the day of filing nomination. As per Section 33(A) of The Representation of the People Act, 1951 it was incumbent upon every candidate, who is contesting election, to give information about his assets, criminal antecedents and other affairs, which requirement is not only essential part of fair and free elections, inasmuch as, every voter has a right to know about these details of the candidates, such a requirement is also covered by freedom of speech granted under Article 19(1)(a) of the Constitution



of India. The right to get information in democracy is recognized all throughout and it is a natural right flowing from the concept of democracy. Under our Constitution Article 19(1)(a) provides for freedom of speech and expression. Voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is a must. Voter's right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. Voter may think over before making his choice of electing law breakers as law-makers.

8c. It is submitted that the solemnity of the affidavit has been ridiculed by suppressing the material information resulting in disinformation and misinformation to the voters. The sanctity of true disclosure to be made by the candidate has failed to comply with said obligation in its letter and spirit. The result of the election in so far as it concerned the returned candidate/1st respondent herein has therefore been materially affected by

improper acceptance of his information and the election result of the returned candidate therefore is required to be declared void under U/s. 100(1)(d)(i) of the Representation of the People Act, 1951.

8d. It is further submitted that the respondents herein who is the returned candidate has failed and neglected to disclose the information of pending criminal case against him in which the charges have already been framed in the affidavit in Form 26. The non-disclosure is a material lapse on the part of the returned candidate/1st respondent herein. The non-disclosure to the voters is fatal and amount to suppression of vital and material information rendering the affidavit defective and the election of the returned candidate/1st respondent herein is liable to be set aside."

8. The aforesaid application seeking leave to amend was contested by the present appellant, essentially with the submissions that after expiry of the period of limitation for filing of election petition, it was not permissible for the election petitioner (respondent No.1) to amend the petition so as to include any other and new ground of challenge to the election. It was also

submitted that the alleged non-disclosure of offence of the petty nature was neither intentional nor wanton and any such omission was not of any material bearing on the matter.

xxx

xxx

xxx

18. Applying the principles aforesaid to the facts of the present case with reference to the pleadings already taken in this matter, we are unable to find any fault in the approach of the High Court in allowing the amendment as prayed for. This is for the simple reason that the election petitioner (respondent No.1) had never taken "corrupt practice" as a ground to challenge the election of the appellant. The grounds, as noticed above, have precisely been of improper acceptance of the nomination form of the returned candidate and improper acceptance of invalid votes as also improper rejection of valid votes. That being the position, the pleadings sought to be taken by way of amendment so as to indicate that the nomination form was not to be accepted for yet another reason, that is, for non-compliance of the statutory requirements, cannot be said to be of introduction of any new cause of action or new ground of challenge. It cannot be said that the ground as sought to be pleaded does not have any foundation whatsoever in the petition as filed; or that pleading of such particulars would change the

character of the election petition. That being the position, we are at one with the High Court that the amendment as prayed for was required to be allowed.

19. For what we have discussed as above, this appeal fails and is, therefore, dismissed.”

According to Mr. Mishra, learned counsel for the Respondent, whatever discrepancies/ clerical/ typographical/ errors/ omissions have been brought in course of the cross-examination of the Respondent (R.W.1), being beyond the pleadings in the election petition, the same are to be ignored. Reliance is placed in the cases of **Gajanan Krishnaji Bapat and another -Vrs.- Dattaji Raghobaji Meghe and others reported in (1995) 5 Supreme Court Cases 347, Ananga Uday Singh Deo -Vrs.- Ranga Nath Mishra and Others reported in (2002) 1 Supreme Court Cases 499, Hari Shanker Jain -Vrs.- Sonia Gandhi reported in (2001) 8 Supreme Court Cases 233, Kalyan Singh Chouhan -Vrs.- C.P. Joshi reported in (2011) 11 Supreme Court Cases 786 and Arikala Narasa Reddy -Vrs.- Venkata Ram Reddy Reddygari and another reported in (2014) 5 Supreme Court Cases 312.**

In the case of **Gajanan Krishnaji Bapat** (supra),
the Hon'ble Supreme Court held as follows:-

"85. Before parting with the judgment we would, however, like to express our disapproval of the manner in which amendments of the election petition were allowed on occasions more than once and how evidence was allowed to be brought on the record against the pleadings and settled legal principles.

86. Section 86(5) of the Act deals with the amendment of an election petition. It lays down that the High Court may upon such terms as to costs or otherwise as it deems fit, allow amendment in respect of particulars but there is a complete prohibition against any amendment being allowed which may have the effect of introducing either material facts not already pleaded or of introducing particulars of a corrupt practice not previously alleged in the petition. The first part of Section 86(5) of the Act, therefore, is an enabling provision while the second part creates a positive bar. Of course, the power of amendment given in the Code of Civil Procedure can be invoked by the High Court because Section 86 of the Act itself makes the procedure applicable, as nearly as may be, to the trial of election petition, but it must not be ignored that some of the Rules framed under the

Act itself override certain provisions of the Civil Procedure Code and thus, the general power of amendment drawn from the Code of Civil Procedure must be construed in the light of the provisions of the election law and applied with such restraints as are inherent in an election petition. It appears to us that the High Court did not properly consider the provisions of the election law while repeatedly allowing amendments of the election petition in the present case. The High Court allowed an application Ex.27 filed by the election petitioner for permission to amend the petition on 28-11-1991. Yet another application for amendment of the election petition, Ex.44 was again allowed by the High Court on 18-12-1991. The petitioner filed still another application, Ex.47-A, to again amend the election petition and the High Court allowed the same on 18-1-1992. Even after the pleadings were completed and the issues framed on 21-1-1992 and a part of evidence had been led by the parties, the High Court allowed one more application filed by the election petitioner 1, Ex.701, and permitted an amendment of the election petition, apparently to bring the evidence in conformity with the pleadings. In the first place, the High Court ought not to have allowed evidence to be led by the election petitioners which was beyond the pleadings of the parties for no amount of evidence can cure a

defect in the pleadings but it was all the more improper for the trial court to have allowed the pleadings to be amended so as to be brought in conformity with the evidence already led in the case. To say the least, it was not a desirable or a proper course to be adopted in an election petition where, as pointed out by this Court in *Jagan Nath v. Jaswant Singh*, the statutory requirements of the law of election must be strictly observed. Of course, since evidence was allowed to be led, though beyond the pleadings without any objections from the opposite side, the court could have evaluated and analysed the same to determine the worth of that evidence, which in the facts and circumstances of the case came under a cloud but to allow the amendment of the pleadings with a view to confer a "legal status" on the evidence already led was to say the least improper. The reasons given by the learned trial Judge to allow the election petition to be amended repeatedly ignores the sanctity which is attached to the pleadings and the affidavit filed in support of an election petition, which under law is required to be filed within a prescribed time and those reasons do not impress us. We need say no more on this aspect of the case."

In the case of **Ananga Uday Singh Deo** (supra), a three Judge Bench of the Hon'ble Supreme Court held as follows:-

"39. As already noticed, there was no pleading at all, except some vague assertion in the grounds, with regard to the allegation of corrupt practice relating to alleged bribery indulged by Respondent 1. No issue had been framed, as rightly none could be framed in that respect on the basis of vague and incomplete pleadings. The learned Designated Judge, however, permitted evidence to be led during the trial by the appellant, relating to the allegations of bribery. No such evidence could have been permitted to be led. The learned Designated Judge appears to have ignored salutary principles that evidence can only be permitted to be led on a plea properly raised and issue framed. A Designated Judge trying an election petition must be careful to see that irrelevant, impermissible and inadmissible evidence is not allowed to be brought on the record. Let alone allowing evidence to be led, for which there were no pleadings, even Respondent 1 was subjected to unnecessary cross-examination on the allegations of bribery, which of course he stoutly denied. The evidence led in the case was inadmissible and should have been excluded and

not allowed to form a part of the record. The Designated Judge trying the election petition appears to have lost control over the proceedings and conducted the trial of the election petition in a manner not acceptable in law. Insofar as the allegations relating to the charge of horse-trading and bribery are concerned, we must in fairness to Mr P.N. Lekhi, learned Senior Counsel appearing for the appellant, record that he did not pursue this charge before us any further."

In the case of **Hari Shanker Jain** (supra), a three Judge Bench of the Hon'ble Supreme Court held as follows:-

"Question 4

22. We now proceed to examine whether the pleadings of any of the two election petitioners disclose any cause of action and raise a triable issue which should have been put to trial.

23. Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the

allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See *Samant N. Balkrishna v. George Fernandez, Jitendra Bahadur Singh v. Krishna Behari*) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In *V.S. Achuthanandan v. P.J. Francis*, this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after

the time-limit prescribed for filing the election petition.

24. It is the duty of the court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings.

25. There are two features common to both the election petitions. Firstly, both the petitions are verified as "true to personal knowledge" of the two petitioners respectively which is apparently incorrect as the very tenor of pleadings discloses that any of the petitioners could not have had personal knowledge of various facts relating to the respondent personally and during the course of hearing we had put this across to the two petitioners and they responded by submitting only this much that the verification if incorrect was capable of being cured. The second common feature in the two petitions is that there are bald assertions made about the Italian law without stating what is the source of such law as has been pleaded by the election petitioners or what

is the basis for raising such pleadings. These averments also have been verified as "true to my knowledge" by each of the election petitioners, a position wholly unacceptable."

In the case of **Kalyan Singh Chouhan** (supra), the Hon'ble Supreme Court held as follows:-

"18. In *Gajanan Krishnaji Bapat v. Dattaji Raghobaji Meghe* this Court held that the court cannot consider any fact which is beyond the pleadings of the parties. The parties have to take proper pleadings and establish by adducing evidence that by a particular irregularity/illegality the result of the election has been materially affected.

19. Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is settled legal proposition that "as a rule relief not founded on the pleadings should not be granted". Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to

narrow the area of conflict and to see just where the two sides differ. (Vide *Sri Mahant Govind Rao v. Sita Ram Kesho*, *Trojan & Co. v. Nagappa Chettiar*, *Raruha Singh v. Achal Singh*, *Om Prakash Gupta v. Ranbir B. Goyal*, *Ishwar Dutt v. Collector (L.A.)* and *State of Maharashtra v. Hindustan Construction Co. Ltd.*)

20. This Court in *Ram Sarup Gupta v. Bishun Narain Inter College* held as under: (SCC pp. 562-63, para 6)

"6...It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. ... In such a case it is the duty of the court to ascertain the substance of the pleadings to determine the question."

21. This Court in *Bachhaj Nahar v. Nilima Mandal* held as under: (SCC pp. 496 & 500, paras 12-13 & 23)

12. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration....

13. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the pleadings, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue....Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

23. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc.”

22. In **J.K. Iron & Steel Co. Ltd. v. Mazdoor Union**, this Court observed: (AIR p. 235, para 24)

“24. ... It is not open to the tribunals to fly off at a tangent and, disregarding the pleadings, to reach any conclusions that they think are just and proper.”

23. Order 14 Rule 1 CPC reads:

“1. Framing of issues.—(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.”

24. Therefore, it is neither desirable nor required for the court to frame an issue not arising on the pleadings. The court should not decide a suit on a matter/point on which no issue has been framed. (Vide *Bommadevara Venkata Narasimha Naidu v. Bommadevara Bhashykarlu Naidu*, *Sita Ram v. Radha Bai*, *Gappulal v. Thakurji Shriji Shriji Dwarakadheeshji* and *Biswanath Agarwalla v. Sabitri Bera*)

25. The object of framing issues is to ascertain/shorten the area of dispute and pinpoint the points required to be determined by the court. The issues are framed so that no party at the trial is taken by surprise. It is the issues fixed and not the pleadings that guide the parties in the matter of adducing evidence. (Vide *Sayad Muhammad v. Fatteh Muhammad*)

26. In *Kashi Nath v. Jaganath* this Court held that where the evidence is not in line with the pleadings and is at variance with it, the said evidence cannot be looked into or relied upon. While deciding the said case, this Court placed a very heavy reliance on the judgment of the Privy Council in *Siddik Mohd. Shah v. Saran*.

27. There may be an exceptional case wherein the parties proceed to trial fully knowing the rival case and lead all the evidence not only in support of their contentions but in refutation thereof by the other side. In such an eventuality, absence of an issue would not be fatal and it would not be permissible for a party to submit that there has been a mistrial and the proceedings stood vitiated. (Vide *Nagubai Ammal v. B. Shama Rao, Nedunuri Kameswamma v. Sampati Subba Rao, Kunju Kesavan v. M.M. Philip, Kali Prasad Agarwalla v. Bharat Coking Coal Ltd., Sayeda Akhtar v. Abdul*

Ahad and Bhuwan Singh v. Oriental Insurance Co. Ltd.)

28. Therefore, in view of the above, it is evident that the party to the election petition must plead the material fact and substantiate its averment by adducing sufficient evidence. The court cannot travel beyond the pleadings and the issue cannot be framed unless there are pleadings to raise the controversy on a particular fact or law. It is, therefore, not permissible for the court to allow the party to lead evidence which is not in the line of the pleadings. Even if the evidence is led that is just to be ignored as the same cannot be taken into consideration.”

In the case of **Arikala Narasa Reddy** (supra), a three Judge Bench of the Hon'ble Supreme Court held as follows:-

“26. The instant case requires to be considered in light of the above settled legal propositions. In the instant case, as explained hereinabove, there were 706 total votes, out of which 701 votes were polled. At the time of initial counting on 2-4-2009, both the candidates got equal votes as 336 and 29 votes were found invalid. On the request of the appellant, the Returning Officer permitted re-counting of the votes and the appellant got 336 votes while Respondent 1

got 335 votes and 30 votes were found to be invalid. In the election petition, the only grounds had been that 3 votes i.e. Exts. X-1 to X-3 polled in favour of Respondent 1 which had wrongly been rejected and one vote Ext. Y-13 which had been counted in favour of the appellant ought to have been declared invalid.

27. In view of the pleadings in the election petition, the case should have been restricted only to these four votes and even if the re-creation petition is taken into account, there could have been no occasion for the High Court to direct re-counting of all the votes and in case certain discrepancies were found out in re-counting of votes by the Registrar of the High Court as per the direction of the High Court, it was not permissible for the High Court to take into consideration all such discrepancies and decide the election petition or re-creation petition on the basis thereof. The course adopted by the High Court is impermissible and cannot be taken note of being in contravention of the statutory requirements. Therefore, the case has to be restricted only to the four votes in the election petition and the allegations made in the re-creation petition ignoring altogether what had been found out in the re-counting of votes as under no circumstance the re-counting of votes at that stage was permissible.”

Mr. Mishra, learned counsel for the Respondent argued that section 33A(1) of the R.P. Act, 1951 was brought to the statute book by way of amendment on 24.08.2002. The Hon'ble Supreme Court even prior to coming into force of section 33A of the R.P. Act, 1951 in its decision in **Association for Democratic Reforms** (supra) delivered on 02.05.2002, held as follows:-

"22. For health of democracy and fair election, whether the disclosure of assets by a candidate, his/her qualification and particulars regarding involvement in criminal cases are necessary for informing voters, may be illiterate, so that they can decide intelligently, whom to vote? In our opinion, the decision of even illiterate voter, if properly educated and informed about the contesting candidate, would be based on his own relevant criteria of selecting a candidate. In democracy, periodical elections are conducted for having efficient governance for the country and for the benefit of citizens -- voters. In a democratic form of government, voters are of utmost importance. They have right to elect or re-elect on the basis of the antecedents and past performance of the candidate. He has choice of deciding whether holding of educational qualification or holding of property is relevant for electing or re-electing a person to be his

representative. Voter has to decide whether he should cast vote in favour of a candidate who is involved in criminal case. For maintaining purity of elections and healthy of democracy, voters are required to be educated and well informed about the contesting candidates. Such information would include assets held by the candidate, his qualification including educational qualification and antecedents of his life including whether he was involved in a criminal case and if the case is decided--its result, if pending--whether charge is framed or cognizance is taken by the Court? There is no necessity of suppressing the relevant facts from the voters.

xxx

xxx

xxx

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.”

Section 33A of the R.P. Act, 1951 came into force on 24.08.2002. But, the said section was only confined to ‘charge framed’ and does not include ‘cognizance taken’. In a subsequent decision in **People’s Union for Civil Liberties** (supra), the Hon’ble Supreme Court held as follows:-

“114. I shall now discuss the specifics of the problem. With a view to promote the right to information, this Court gave certain directives to the Election Commission which, as I have already clarified, were ad hoc in nature. The Election Commission was directed to call for details from the contesting candidates broadly on three points, namely, (i) criminal record, (ii) assets and liabilities, and (iii) educational qualification. The Third Amendment to the RP Act which was preceded by an ordinance provided for disclosure of information. How far

the Third Amendment to the Representation of the People Act, 2002 safeguards the right of information which is a part of the guaranteed right under Article 19(1)(a), is the question to be considered now with specific reference to each of the three points spelt out in the judgment of this Court in *Assn. for Democratic Reforms* case.

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

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

(2) Prior to six months of filing of nomination, whether the candidate is an accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law.

As regards the second directive, Parliament has substantially proceeded on the same lines and made it obligatory for the

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

information on a vital aspect. Cases in which cognizance has been taken should therefore be comprehended within the area of information accessible to the voters/citizens, in addition to what is provided for in clause (i) of Section 33-A.

xxx

xxx

xxx

123. Finally, the summary of my conclusions:

(1).....

(2).....

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

xxx

xxx

xxx

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

xxx

xxx

xxx

(9) The Election Commission has to issue revised instructions to ensure implementation of Section 33-A subject to what is laid down in this judgment regarding the cases in which cognizance has been taken....”

A three Judge Bench of Hon'ble Supreme Court in the case of **Satish Ukey -Vs- Devendra Gangadharrao Fadnavis and Anr.** reported in (2019) 9 Supreme Court **Cases 1**, a matter which was concerned with filing of false affidavit in Form 26, held as follows:

“24. A cumulative reading of Section 33-A of the 1951 Act and Rule 4-A of the 1961 Rules and Form 26 along with the letters dated 24.8.2012, 26.9.2012 and 26.4.2014, in our considered view, make it amply clear that the information to be furnished under Section 33-A of the 1951 Act

includes not only information mentioned in clauses (i) and (ii) of Section 33-A(1), but also information, that the candidate is required to furnish, under the Act or the Rules made thereunder and such information should be furnished in Form 26, which includes information concerning cases in which a competent Court has taken cognizance (Entry 5(ii) of Form 26). This is apart from and in addition to cases in which charges have been framed for an offence punishable with imprisonment for two years or more or cases in which conviction has been recorded and sentence of imprisonment for a period of one year or more has been imposed (Entries 5(i) and 6 of Form 26 respectively).

25. In the light of the view that we have taken and in view of the clear averment made in the complaint to the effect that the First Respondent had knowledge of the two cases against him which had not been mentioned in the affidavit filed by the First Respondent along with his nomination papers, we unhesitatingly arrive at the conclusion that the order of the learned trial Court upheld by the High Court by the impugned judgment and order dated 3rd May, 2018 is legally not tenable and the same deserves to be set aside which we hereby do. The complaint of the appellant will be considered afresh by the

learned trial Court from the stage where it was interdicted by the order dated 30.5.2016.”

Adverting to the contentions raised by the learned counsel for the respective parties, there is no dispute over the proposition of law that the elector/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. The disclosure of criminal antecedents of a candidate, especially pertaining to heinous or serious offence or offences relating to corruption or moral turpitude, at the time of filing of nomination paper, as mandated by law, is a categorical imperative. When there is non-disclosure of the offences pertaining to these areas, it creates an impediment in the free exercise of electoral right. Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate. The question whether it materially affects the election or not will not arise in cases of this nature.

Though the Respondent has declared in his affidavit in Form 26 that thirteen cases were pending against him, but as

it appears, in some cases he has mentioned the date of registration of F.I.R. wrongly, in some cases names of police station have been wrongly reflected, in some cases names of Courts where the cases were pending have been erroneously mentioned, in some cases offences have been incorrectly mentioned or offences have been deleted and the date of framing of charge in one case is wrongly reflected. In some cases, where cases under P.C. Act has been registered against him, he has omitted to mention the same in the affidavit in appropriate columns on the ground that offence under such Act is not applicable to him. The Respondent is not to judge at that stage whether the offence under P.C. Act would be applicable to him or not. If he had any grievance regarding institution of case or filing of charge sheet for commission of offence under P.C. Act against him as he was not a public servant, he has to take appropriate remedy in accordance with law to challenge such institution or cognizance order or framing of charge. If a non-public servant is also a party to a criminal conspiracy on behalf of a public servant to commit any offence under the P.C. Act, or if such non-public servant has abetted any of the offences which the public servant commits, such non-public servant is also liable to be tried along with the public servant before the Court of a

Special Judge having jurisdiction in the matter. The Legislature, while framing P.C. Act, 1988 made no room for any doubt about the applicability of certain provisions of Penal Code for offences under the Act. The absence of such a provision as found in the P.C. Act will only lead to the conclusion that the legislature did not want to wipe out all the provisions of the Penal Code except sections 161 to 165A which are found redrafted in the 1988 Act. Under section 3 of the 1988 Act, the Special Judge has power to try not only any offences punishable under this Act, but also any conspiracy to commit or any attempt to commit or any abetment of any of the offences under the Act. The private individuals, therefore, can be prosecuted by the Court on the ground that they have abetted the act of criminal misconduct falling under section 13(1)(e) of the P.C. Act, 1988 committed by the public servant. (Ref:-**P. Nallamma and Ors. -Vrs.- State Rep. by Inspector of Police : (1999) 6 SCC 559**).

When specific questions were put by the learned counsel for the Election Petitioner to the Respondent with reference to exhibited documents regarding incorrect/false declaration made in respect to different criminal cases, the Respondent only answered that his advocate could reply. Such types of answers clearly indicate that the Respondent is clueless

to the mistakes he had committed while making declaration regarding the criminal cases pending against him in his affidavit in Form 26. The Respondent has admitted about the omissions/wrong declaration and in most of the cases, either he had offered no explanation or his explanation in some cases are not at all acceptable in law. Most of the time he has given explanation that it was a clerical error/typographical error which cannot be accepted at all. The Respondent was duty bound as a candidate to make true disclosure about the criminal cases pending against him. Taking defence of clerical or printing error cannot be countenanced when it is apparent that such errors have occurred at multiple places. A responsible man seeking election to the House of the State Legislature is not expected to file his nomination whimsically without verifying the contents thereof, specifically taking into account the fact that voters shall judge him on the basis of disclosure he makes in his nomination papers as well as the affidavit. Suppression/wrong information/false information has affected the voter's fundamental right to know about the criminal cases pending against the Respondent correctly. The newspaper declaration made by the Respondent about the criminal cases are also not been correctly made. When according to the Respondent, the

F.I.R. and other connected documents of all the thirteen cases were available with him as well as with his advocate(s) when nomination papers were filed and affidavits in Form 26 were prepared and he was also aware that he should furnish the correct details about the F.I.R., G.R. case numbers, names of Courts, details of offences, description of offences in his affidavits in Form 26, it was not expected of him to furnish wrong information/false information which amounts to concealment of truth from the voters. The submission of learned counsel for the Respondent regarding absence of pleading on some points is not acceptable inasmuch as on a careful scrutiny, I find that specific pleadings have been made in the election petition in this respect and the Respondent has also answered vividly to such pleadings in his written statement and filed documents to that respect. Thus, I am of the humble view that the Respondent has not made proper and full declaration about the criminal cases pending against him in the affidavit filed in Form 26 and as such issue nos.17 and 21 are answered in favour of the Election Petitioner and against the Respondent.

12. **Issue Nos.22, 23, 24, 25, 26 & 27:-**

Issues nos.22, 23, 24, 25, 26 & 27 are interlinked with each other and thus, are dealt with and answered together.

The issues are extracted herein below for ready reference:-

22. Whether the Respondent has disclosed the name and other details of the Joint Account Holder of the Bank account no.1377010031593 in the Federal Bank Ltd. and about the A/c. no.10861745745 in S.B.I. Main Branch, Cuttack in the affidavit filed in Form 26?

23. Whether the sole Respondent is required under law to disclose the name of the joint account holder of the bank accounts standing in his name in his Affidavit in Form 26 or not?

24. Whether the bank accounts as mentioned under paragraph 7(D) of the Election Petition stand in the name of the sole Respondent and his wife Firdousia Bano with operational instruction "Either or Survivor" or not?

25. Whether the Respondent has declared the book value of the shares as per the books of the company held by him in the affidavit filed in Form-26?

26. Whether the Respondent has furnished the details in the affidavit filed in Form 26 about the

investment made in his name and his spouse's name in the insurance policies?

27. Whether the Respondent is required to give details in respect of each investment made by him and as to whether he has disclosed about the loans given to the companies in the affidavit filed in Form 26?

The Election Petitioner in para 7(D) of the election petition has pleaded as follows:-

(i) column (7)(a) Note 1 of the prescribed form of Form 26 requires assets in joint name indicating the extent of joint ownership will also have to be given but the Respondent in the affidavit, though has mentioned about the Account No.13770100031593 (joint account) in the Federal Bank Ltd, B.K. Road, Cuttack and about the Account No.10861745745 (joint account) in S.B.I., Main Branch, Cuttack, but has not disclosed the name and other details of the joint account holder of the above said bank accounts and has not indicated about the extent of ownership in the said bank accounts;

(ii) In column no.(7)(iii), the Respondent has declared about the investment made in shares of different companies but has not declared the book value of shares as per the books of the company;

(iii) In column (7)(iv) the Respondent is required to declare the details of investment in NSS, Postal Savings, Insurance Policies and in any financial instruments in Post Office or Insurance Company and the amount but the Respondent has not given the details of investment made in his and his spouse's insurance policies. The Respondent is required to give details separately in respect of each investment. He has given loans to six companies but the details of the same have not been given.

The Respondent in reply to averments made in para 7(D) of the election petition contented, in his written statement, that the allegations made by the Election Petitioner are completely based on surmises and are out and out false, fabricated, concocted and hence, stoutly and vociferously denied and argued that the pleadings made in para 7(D) are bereft of material facts and the same do not disclose complete cause of action.

The contentions of Mr. Kanungo, learned counsel for the Election Petitioner are as follows:-

Column 7(A) Note-1 of Ext.43 prescribes, "Assets in joint name indicating the extent of joint ownership will also have to be given." In Col.7(ii) Sl.2 of Ext.43, the Respondent has

declared that, "The Federal Bank Ltd., B.K. Road, Cuttack, A/C No.13770100031593 (joint account) and at Sl.3 has declared S.B.I. Main Branch, Chandnichowk, Cuttack A/C No.10861745745 (joint account), but has not declared the name of the joint owner and the extent of the joint ownership of the above said joint accounts in his affidavit in Form 26 filed along with his nomination papers and has not declared about the above said two bank accounts in his spouse column as she is the joint account holder. Thus, the Respondent, has not declared in his affidavit in Form 26 as per the instructions of the Election Commission of India in Col.7(A) Note-1.

The Election Petitioner in his examination-in-chief has stated as follows:-

"That in column (7)(A) Note-1 of the prescribed Form 26 requires assets in joint name indicating the extent of joint ownership will also have to be given in the affidavit filed along with the nomination papers. But the Respondent in his affidavit filed in Form 26 along with his nomination papers, though has mentioned about the Account No.13770100031593 (joint account) in the Federal Bank Ltd, B.K. Road, Cuttack and about the Account No.10861745745 (joint account) in S.B.I, Main Branch, Badambadi,

Cuttack, but has not disclosed the name of the joint owner and the extent of joint ownership of the above said joint accounts in the said Federal Bank and State Bank of India.

The Respondent, in his examination-in-chief (Ext.DW), has stated as follows:-

"An instruction has been given in column (7)(A) vide Note-1 that, 'Assets in joint name indicating the extent of joint ownership will also have to be given. Under any of the instructions vide Note-1 to Note-6, there is no instruction to disclose the name and other details of the joint account holder."

"Both the abovementioned bank accounts are joint accounts standing in my name and in the name of my spouse namely Firdousia Bano and those bank accounts are opened with the operational instruction 'EITHER OR SURVIVOR'."

"Since both the abovementioned bank accounts have been shown in my affidavit in Form 26 in the column applicable to me, the same has not been shown again in the column applicable to my spouse in order to avoid duplication."

The Respondent, in his cross-examination, has admitted as follows:-

“It is a fact that as per col. no.7(A) Note-1, as a candidate, I am required to disclose the extent of joint ownership in respect of the assets in joint name. Since the accounts in the Federal Bank Ltd., B.K. Road, Cuttack and S.B.I., Main Branch, Chandinchowk, Cuttack were joint accounts, but it was ‘either or survivor’, according to me, there was no necessity on my part to disclose the extent of joint ownership of the amount reflected in those two accounts. It is a fact that I have not mentioned that these two accounts in the Federal Bank Ltd., B.K. Road, Cuttack and S.B.I., Main Branch, Chandinchowk, Cuttack are the joint accounts under the category of ‘either or survivor’, since it was only required to reflect the joint account part in col. no.7(A) sl.no.(ii). It is a fact that I have not mentioned these two accounts in col. no.2 of 7(A) sl.no.(ii) in which I have reflected the other two bank accounts of my spouse Firdousia Bano standing at Bank of India, Ranihat, Cuttack and Kotak Mahindra Bank, as according to me, mentioning those two accounts which were operated in the category of ‘either or survivor’ in this particular column would have been a repetition and would have created confusion.”

According to Mr. Kanungo, the Respondent in his affidavit in Form 26 (Exts.43 to 46) has not declared the extent

of ownership of the above said two bank accounts and has not disclosed the same that they are under the category of "Either or Survivor" and has not followed the instructions of Col.7(A) Note-1.

Column 7(A) Note-3 of Ext.43 prescribes, "Value of Bonds/Share Debentures as per Current market Value in Stock Exchange in respect of listed companies and as per books in case of non-listed companies should be given."

In Col.7(A)(iii) of Ext.43, the Respondent has declared about the investment made in shares of different companies but has not disclosed that the same are the book value as per books of the company.

The Election Petitioner, in his examination-in-chief, has stated as follows:-

"Similarly, according to column 7(A) Note-3, the Respondent is to declare value of bonds/shares, debentures as per current market value in Stock Exchange in respect of listed companies and as per books in case of non-listed companies. The Respondent in his affidavit, filed in Form 26 in column no.(7)(iii), has declared about the investment made in shares of different companies but has not disclosed that the same

are the book value as per the books of the company.”

The Respondent in his cross-examination has stated as follows:-

“It is a fact that the amount reflected in sl.nos.1, 2, 3, 4 and 5 of col.no.7(A)(iii), I have invested in share equity in Metro Builders (Orissa) Pvt. Ltd., City Trade Arcade Pvt. Ltd. (The Blue Lagoon), Metro Garden Estate Pvt. Ltd., Metro Super Market and Metro Guards(O) Pvt. Ltd. respectively. It is also a fact that the amount reflected in sl.nos.1, 2 and 3, my spouse Firdousia Bano has invested in share equity in ASF Construction Pvt. Ltd., City Trade Arcade Pvt. Ltd. and Metro Garden Estate Pvt. Ltd. respectively. It is a fact that the companies in which I and my spouse have made investment in share equity as reflected in col.no.7(A)(iii) are private companies and not listed in Stock Exchange. It is a fact that though it was required to disclose the book values of the investment in shares in case of non-listed companies as per col.no.7(A) Note-3, as per the advice given by my company Chartered Accountant, I reflected the figures as share equity in different private companies in respect of me as well as my spouse Firdousia Bano in col.no.7(A)(iii). I know what is ‘book value of a share’. I cannot say

whether the amounts reflected in col. nos.1 and 2 of col.no.7(A)(iii) are the book value of the shares or not. It is not a fact that deliberately I have not declared the book value of the investments in shares in col. nos.1 and 2 of col.no.7(A)(iii) and suppressed the same so that the voters of 90-Barabati Cuttack Assembly Constituency would get no idea about the same."

According to Col.7(A) Note-2 of Ext.43, it has been prescribed, "In case of deposit/investment, the details including serial number, amount, date of deposit, the scheme, name of the bank/institution and branch are to be given" and according to Note-5, "Details including amount is to be given separately in respect of each investment"

In Col.7(A)(iv) of the affidavit in Form 26 (Ext.43), the Respondent has mentioned that, "Details of investment in NSS, Postal Saving, Insurance Policies and Investment in any financial instruments in Post office or insurance company and the amount" but, while declaring the same with respect to self, he has declared that, "1) LIC No.582316154 dtd. 28.11.1996, yearly Rs.2,53,600/- (Surrender Value), 2) LIC No.588536325 dtd. 05.05.2009, half-yearly Rs.25,99,797/- (Surrender Value), 3) HDFC Life Pol. No.18691865 dtd. 28.09.2016, yearly for Rs.

50,000/-" and with respect to his spouse he has declared that, "1) LIC No.582316150 dtd. 28.11.1996, yearly Rs.1,70,155/- (Surrender Value), 2) LIC No.588536326 dtd. 05.05.2009, half-yearly Rs.25,99,797/- (Surrender Value) and with respect to his dependent he has declared, "1) LIC Pol. No.588536129 dtd. 06.05.2019, HLY Rs.6,49,949/- (Surrender Value)." The Respondent while declaring the same has not disclosed about the amount of investment/deposit, date of deposit, the policy name and the name of the branch from where the policy has been purchased.

The Election Petitioner in his evidence affidavit has stated as follows:-

"That in column (7)(iv) the Respondent is required to declare the details of investment in NSS, Postal Savings, Insurance Policies and in any financial instruments in Post Office or Insurance Company and the amount but the Respondent in the said column of his affidavit filed in Form 26 has not given the details of investment made by him and his spouse's and dependent regarding the investment made in the LIC policies and HDFC life policy. The Respondent is required to give details separately in respect of each investment made in the LIC policies and HDFC life policy. Thus, the

Respondent has suppressed the investments made by him and his spouse in the said insurance policies.”

The Election Petitioner, in his cross-examination, has stated as follows:-

“In para 7(D) of the election petition, I have mentioned that in col.7(iv), though the Respondent is required to declare the details of investment in NSS, postal savings, insurance policies and in any financial instruments in post office or insurance company and the amount, but the Respondent has not given the details of investment made in his and his spouse's insurance policies. It is correct that my allegation is limited to the details of investment made by the Respondent and his spouse in the insurance policies.”

The Respondent, in his examination-in-chief, has stated as follows:-

“In my affidavit in Form 26 under column (7)(A)(iv) against the heading 'Details of investment in NSS, Postal Saving, Insurance Policies and investment in any Financial instruments in post office or Insurance Company and the amount', I have correctly disclosed the names of insurance companies, policy numbers,

policy date and the surrender value of such insurance policies made in my name and in the name of my spouse. In column 7(A)(v) against the heading 'Personal loans/advance given to any person or entity including firm, company, Trust etc. and other receivables from debtors and the amount', I have correctly mentioned the name of the companies/entity/firm along with the amount of loans given to those respective companies/entity/ firm."

In his cross-examination, the Respondent has stated as follows:-

"It is a fact that as per Note 5 of col. no.7(A) of the affidavit in Form 26, a candidate has to furnish the details including the amount separately in respect of each investment. It is a fact that as per Note-2 of col. no.7(A) of the affidavit in Form 26, a candidate has to furnish, in case of deposit/investment, the details including sl. no., amount, date of deposit, the scheme, the name of the Bank/Institution and Branch. It is a fact that col. no.7(A)(iv) of the affidavit in Form 26, while giving the details of investment of the L.I.C. policy Nos.582316154 and 588536325, I have mentioned the date of policy and the period of policy and its surrender value, however, I have not indicated the amount of investment and the scheme of the L.I.C.

policy in which the investments have been made in the said two policies.

(Witness volunteers)

“Since I have furnished the surrender value of the aforesaid two policies and the maturity value had already been credited to my account, I did not think it was further necessary on my part to furnish the amount of investment and scheme of the policies in which the investments have been made. (The witness again says that he is not sure whether the maturity value had already been credited to his account or not).”

The Election Petitioner, in his examination-in-chief, has stated as follows:-

“That the Respondent in column no.7(A)(v) of his affidavit has mentioned that he has given loans to six companies but the details of the same have not been furnished in the said affidavit.”

The Respondent, in his examination-in-chief (Ext.DW), has stated as follows:-

“In the prescribed format of the affidavit in Form 26, every candidate is required to disclose the details of movable assets under column no.7(A) of the affidavit against its sl. nos.(i) to (ix).”

"In column (7)(A) against its sl. no.(ii) against the heading 'Details of deposit in Bank accounts (FDRs, Term Deposits and all other types of deposits including saving accounts). Deposits with Financial Institutions, Non-banking Financial Companies and Cooperative societies and the amount in each such deposit', every candidate is required to furnish information of self, his spouse, his HUF and his dependents, which I have furnished in detail in my affidavits in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46)."

In the cross-examination, the Respondent has stated as follows:-

"It is a fact that in col. no.7(A)(iv) of the affidavit in Form 26 at sl. no.3, while indicating the investment in H.D.F.C. Life policy no.18691865 dated 28.09.2016, I have mentioned it was a yearly and for Rs.50,000/-. I have not mentioned in detail the year-wise investment made in that particular policy."

(Witness volunteers)

"After initial investment made on 28.09.2016 of Rs.50,000/-, I have not deposited any amount in that policy in the years 2017 and 2018 and after the election was over, I deposited not only the

arrear dues for the years 2017 and 2018 so also for the year 2019.'

Q. In col.no.7(A)(iv) of the affidavit in Form 26 under the heading of 'Spouse Name: Firdousia Bano', you have mentioned only the L.I.C. No.582316150 dated 28.11.1996, yearly Rs.1,70,155/- (surrender value) and No.588536326 dated 05.05.2009, half-yearly Rs.25,99,797/- (surrender value), but you have not mentioned the details of deposit, the date of deposits, the scheme of the L.I.C. policies under which such deposits were made?

Ans. Since my L.I.C. agents informed me after calculation about the surrender value of the two policies of my spouse, I thought it proper to mention the same in col.no.7(A)(iv) of the affidavit in Form 26 without giving the further details of deposits, the date of deposits and the scheme of the L.I.C. policies under which such deposits were made.

Q. You have made false declaration in col.no.7(A)(iv) of the affidavit in Form 26 that surrender values of the two L.I.C. policies No.582316150 dated 28.11.1996 and No.588536326 dated 05.05.2009 of your spouse were Rs.1,70,155/- and Rs.25,99,797/- respectively and that you have not mentioned

the total investment made by your spouse in these two policies?

Ans. No. I have not made any false declaration in that respect. Since I had indicated the surrender values of the said two policies, I did not feel it necessary to further mention the total investment made by my spouse in the aforesaid two policies.

Q. There was instruction by the Election Commission of India to mention the details of investment and not the surrender value only and by suppressing the details of investment, you have flouted the instruction of the Election Commission of India. What do you have to say?

Ans. No. I have not flouted any instruction of the Election Commission of India.

सत्यमेव जयते

To Court

ORISSA

Q. Whether by mentioning the surrender value of a L.I.C. policy without mentioning the name of the policy and the period of policy, can a voter know as to how much deposits/investment you have made in that policy?

Ans. I cannot answer this question. My advocate(s) can only reply.

"It is a fact that in col. no.7(A)(iv) of the affidavit in Form 26 (Ext.43), though I have mentioned under the headings of details of investment that there has been investment of mine in the L.I.C. policy no.588536129 dated 06.05.2009 which stands in the name of my dependent Nayeema Tazeen, but I have only indicated the surrender value of the L.I.C. policy in the said column, but not the actual investment made by me in the said policy."

"It is not a fact that though as per col. no.7(A) (Note-2), I was supposed to give the details of investment amount, but I have withheld such information in col. no.7(A)(iv) of the affidavit in Form 26 (Ext.43) deliberately not to bring the correct picture before the voters of 90-Barabati Cuttack Assembly Constituency."

According to Mr. Kanungo, learned counsel for the Election Petitioner, the Respondent in his affidavit in Form 26 (Exts.43 to 46) has not declared the book value of the investment in shares of different companies in col. no.7(A)(iii) and has not declared about the details of investment made and the date of deposit made in the insurance policies in col. no.7(A)(iv) of the affidavit in Form 26 (Exts.43 to 46) and has suppressed the same. Thus, the Respondent has made false and misleading declaration with regard to his movable assets,

investments and loan liabilities in the affidavit filed in Form 26 along with his nomination papers as such his election from the constituency held in the year 2019 is liable to be declared void and the issue nos.22, 23, 24, 25, 26 and 27 are to be answered in favour of the Election Petitioner.

Mr. Bidyadhar Mishra, learned counsel for the Respondent, on the other hand, urged that under Paragraph-7(D) of the election petition, the Election Petitioner has taken the following stand against the Respondent:-

(a) The Respondent in the affidavit, though has mentioned about the Account No.13770100031593 (joint account) in the Federal Bank Limited, B.K. Road, Cuttack, but has not disclosed the name and other details of the joint account holder of the above said bank account and has not indicated about the extent of ownership in the said bank account;

(b) The Respondent in the affidavit, though has mentioned about the Account No.10861745745 (joint account) in S.B.I, Main Branch, Badambadi, Cuttack, but has not disclosed the name and other details of the joint account holder of the above said bank account and has not indicated about the extent of ownership in the said bank account;

(c) In column (7)(iii), the Respondent has declared about the investment made in shares of different companies but has not declared the book value of shares as per the books of the company;

(d) In column (7)(iv), the Respondent is required to declare the details of investments in NSS, Postal Savings, Insurance Policies and in any financial instruments in Post Office or Insurance Company and the amount but the Respondent has not given the details of investment made in his and his spouse's insurance policies. The Respondent is required to give details separately in respect of each investment;

(e) The Respondent has given loans to six companies but the details of the same have not been given.

The Respondent, in his written statement, has dealt with the averments taken under Paragraph-7(D) of the election petition which are as follows:-

“The above allegations made by the Election Petitioner in his election petition are completely based on surmises, out and out false, fabricated, concocted and hence stoutly denied.”

"It is submitted by the sole Respondent that all the above allegations/pleadings are bereft of material facts and the same do not disclose complete cause of action inasmuch as those allegations are wholly unnecessary, frivolous, vexatious, scandalous and tend to prejudice the fair trial of the case and as such the pleadings made under paragraph-7(D) of the election petition are liable to be struck down being hit by Order-VI Rule-16 of the C.P.C. on the grounds/provisions of law as described herein below:

(a) The allegation/pleading as enumerated under (a) above is bereft of following material facts

(i) It has not been pleaded/disclosed in the election petition as to whether the candidate is required under the law to give the details of the joint account holder or not. It is submitted by the Respondent that in fact there is no such legal provision for disclosure of the details of the joint account holder in affidavit in Form 26;

(ii) While making such allegation, the Election Petitioner has not disclosed/pleaded the column number of the affidavit under which the Respondent has furnished such information;

(iii) The Election Petitioner has suppressed the material fact that under column (7)(A)(ii), the

candidate is required to furnish information about "Details of deposit in Bank accounts (FDRs, Term Deposits and all other types of deposits including saving accounts), Deposit with Financial Institutions, Non-banking Financial Companies and Cooperative societies and the amount in each such deposit";

(iv) Though the Respondent has disclosed the amount available in the said account, the same has not been disclosed/pleaded by the Election Petitioner;

(v) The Election Petitioner has suppressed the very important material fact that the said bank account is a joint account along with the spouse of the Respondent, namely Firdousia Bano and the said bank account is opened with the operational instruction "EITHER OR SURVIVOR";

(vi) There is no pleading to the effect that on account of such non-mentioning of the extent of ownership in the said bank account, the electors have been misled and the result of the election, in so far as it concerns the returned candidate, has been materially affected.

(b) The allegation/pleading as enumerated under (b) above is bereft of following material facts-

(i) The averments made with respect to name of the branch i.e. S.B.I., Main branch, Badambadi is wrong. It is worthwhile to submit here that the Respondent in his affidavit has mentioned the said bank account as S.B.I., Main Branch, Chandinichowk, Cuttack;

(ii) It has not been pleaded/disclosed in the election petition as to whether the candidate is required under the law to give the details of the joint account holder or not. It is submitted by the Respondent that in fact there is no such legal provision for disclosure of the details of the joint account holder in affidavit in Form 26;

(iii) While making such allegation, the Election Petitioner has not disclosed/pleaded the column number of the affidavit under which the Respondent has furnished such information;

(iv) The Election Petitioner has suppressed the material fact that under column (7)(A)(ii), the candidate is required to furnish information about "Details of deposit in Bank accounts (FDRs, Term Deposits and all other types of deposits including saving accounts), Deposit with Financial Institutions, Non-banking Financial Companies and Co-operative societies and the amount in each such deposit";

(v) Though the Respondent has disclosed the amount available in the said account, the same has not been disclosed/pleaded by the Election Petitioner;

(vi) The Election Petitioner has suppressed the very important material fact that the said bank account is a joint account along with the spouse of the Respondent namely Firdousia Bano and the said bank account is opened with the operational instruction "EITHER OR SURVIVOR";

(vii) There is no pleading to the effect that on account of such non-mentioning of the extent of ownership in the said bank account, the electors have been misled and the result of the election, in so far as it concerns the returned candidate, has been materially affected;

(c) The allegation/pleading as enumerated under (c) above is bereft of following material facts-

(i) The Election Petitioner has suppressed the material fact that under column (7)(A)(iii), the candidate is required to furnish information about "Details of investment in Bonds, Debentures/shares and unit in companies/mutual funds and others and the amount".

(ii) Though the Respondent has mentioned the names of companies wherein he has made

investments, the Election Petitioner has not disclosed the same in his election petition;

(iii) Though the Respondent has mentioned the amount in rupees in respective companies, the Election Petitioner has not disclosed the same in his election petition;

(iv) There is no pleading of the material fact to the effect that under column the (7)(A) Note-3, the candidate is instructed to furnish information about "Value of Bonds/Share Debentures as per current market value in Stock Exchange in respect of listed companies and as per books in case of non-listed companies should to given";

(v) There is no pleading to the effect that the companies mentioned in column (7)(A)(iii) wherein the Respondent has made investment, are not listed companies but non-listed companies;

(vi) There is no pleading to the effect that the amount shown against respective companies is not the book value of the shares;

(vii) There is no pleading about the numbers of shares owned by the Respondent in different companies;

(viii) There is no pleading to the effect that on account of such non-mentioning of the book

value of shares as per the books of the companies, the electors have been misled and the result of the election, in so far as it concerns the returned candidate, has been materially affected.

(d) The allegation/pleading as enumerated under (d) above is bereft of following material facts-

(i) Though the Respondent in his affidavit in Form 26 under column (7)(A)(iv) has disclosed the names of insurance companies, policy nos., policy date and the surrender value of such policies made in his name and in name of his spouse, such material information/facts have not been pleaded in the election petition;

(ii) There is no pleading to the effect that on account of such non-mentioning of details of investments made in Respondent's and his spouse's insurance policies, the electors have been misled and the result of the election, in so far as it concerns the returned candidate, has been materially affected.

(e) The allegation/pleading as enumerated under (e) above is bereft of following material facts-

(i) There is no pleading showing that under which column of the affidavit the Respondent

has furnished information about the loans given to six companies;

(ii) Though the Respondent under column (7)(A)(v) has mentioned the name of the companies/entity/firm along with the amount of loans given to respective companies/entity/firm, the same has not been pleaded/disclosed in the election petition;

(iii) There is no pleading to the effect that on account of such allegation, the result of the election, in so far as it concerns the returned candidate, has been materially affected.

Mr. Mishra, learned counsel for the Respondent argued that on account of absence of material facts in pleadings of the election petition, the same does not disclose complete cause of action and as such is liable to be dismissed at the very threshold. According to him, the Election Petitioner is to be restricted and cannot be permitted to adduce any evidence beyond his pleadings.

Mr. Mishra, learned counsel for the Respondent argued that the following documents have been marked as exhibits on behalf of the Respondent:-

Ext.ED i.e. First original Bank Passbook of Federal Bank Ltd., Bajrakabati Road Branch,

Cuttack bearing Savings Bank Account No.13770100031593 standing in the name of the Respondent Mohammed Moquim and in the name of his spouse Firdousia Bano with operational instruction 'Either or Survivor'.

Ext.ED/1 i.e. Second original Bank Passbook of Federal Bank Ltd., Bajrakabati Road Branch, Cuttack bearing Savings Bank Account No.13770100031593 standing in the name of the Respondent Mohammed Moquim and in the name of his spouse Firdousia Bano with operational instruction 'Either or Survivor'.

Ext.EE i.e. First original Bank Passbook of State Bank of India, Main Branch, Collectorate Compound, Chandinichouk, Cuttack bearing Savings Bank Account No.10861745745 standing in the name of the Respondent Mohammed Moquim and in the name of his spouse Firdousia Bano with operational instruction 'Either or Survivor'.

Ext.EE/1 i.e. Second original Bank Passbook of State Bank of India, Main Branch, Collectorate Compound, Chandinichouk, Cuttack bearing Savings Bank Account No.10861745745 standing in the name of the Respondent Mohammed Moquim and in the name of his spouse Firdousia Bano with operational instruction 'Either or Survivor'.

Mr. Mishra, learned counsel for the Respondent drew the attention of this Court to the evidence on affidavit of the Election Petitioner (P.W.1)(Ext.36) which are as follows:-

"That column no.7(A) Note-1 of the prescribed Form 26 requires assets in joint name indicating the extent of joint ownership will also have to be given in the affidavit filed along with the nomination papers. But the Respondent in his affidavit filed in Form 26 along with his nomination papers, though has mentioned about the Account No.13770100031593 (joint account) in The Federal Bank Ltd. B.K. Road, Cuttack and about the Account No.10861745745 (joint account) in S.B.I, Main Branch, Badambadi, Cuttack, but he has not disclosed the name of the joint owner and the extent of joint ownership of the above said joint accounts in the said Federal Bank and State Bank of India."

"Similarly, according to column 7(A) Note-3, the Respondent is to declare value of bonds/shares, debentures as per current market value in Stock Exchange in respect of listed companies and as per books in case of non-listed companies. The Respondent in his affidavit filed in Form 26 in column no.7(iii), has declared about the investment made in shares of different companies but has not disclosed that the same

are the book value as per the books of the company.”

“That in column no.7(iv), the Respondent is required to declare the details of investment in NSS, Postal Savings, Insurance Policies and in any financial instruments in Post Office or Insurance Company and the amount but the Respondent in the said column of his affidavit filed in Form 26 has not given the details of investment made by him and his spouse's and dependent regarding the investment made in the LIC policies and HDFC life policy. The Respondent is required to give details separately in respect of each investment made in the LIC policies and HDFC Life policy. Thus, the Respondent has suppressed the investments made by him and his spouse in the said insurance policies.”

“That the Respondent in column 7(A)(v) of his affidavit has mentioned that he has given loans to six companies but the details of the same have not been furnished in the said affidavit.”

Mr. Mishra, learned counsel for the Respondent drew the attention of this Court to the cross-examination of P.W.1 on behalf of the Respondent which are follows:-

“On going through the affidavit filed by the Respondent in Form 26 in col.7(A) under Exts.1 to 4 and Exts.32 to 35, I find that there is no necessity for the candidate to mention the name of the joint account holder. It is not a fact that in view of col.7(A) in Form 26, the Respondent is not required to disclose the name and other details of the joint account holder of the two bank accounts which I have mentioned in my election petition in para 7(D) which are of Federal Bank Ltd., B.K. Road, Cuttack and S.B.I., Main Branch, Badambadi, Cuttack. The Respondent has mentioned in Col. 7(A)(ii) that he has an account in S.B.I., Main Branch, Chandinchowk, Cuttack bearing A/c. No.10861745745 (Jt. A/c.) of Rs.23,78,001/-, but in the election petition in para 7(D), I have mentioned that the said account of the Respondent is at S.B.I., Main Branch, Badambadi, Cuttack. It is not a fact that the Respondent has no such account at S.B.I., Main Branch, Badambadi, Cuttack.”

“On going through the affidavit filed by the Respondent in Form 26 in col.7(A) under Exts.1 to 4 and Exts.32 to 35, I find under Note-3, the candidate has to mention the value of bonds/share debenture as per current market value in stock exchange in respect of listed companies and as per books in case of non-

listed companies should be given. In col.7(A)(iii), the Respondent has mentioned share equity of his own in five different companies and that of his wife in three different companies. It is not a fact that as per the requirement in the affidavit in col.7(A)(iii), the Respondent has correctly declared the book value of the shares as per the books of the companies and that my averment made in para 7(D) that the Respondent has not declared the book value of the shares as per books of companies is not correct. It is not a fact that the companies in which share equity of the Respondent as well as his wife has been reflected are all non-listed companies.”

“In para 7(D) of the election petition, I have mentioned that in col.7(iv), though the Respondent is required to declare the details of investment in NSS, postal savings, insurance policies and in any financial instruments in post office or insurance company and the amount, but the Respondent has not given the details of investment made in his and his spouse’s insurance policies. It is correct that my allegation is limited to the details of investment made by the Respondent and his spouse in the insurance policies. On going through the affidavit filed by the Respondent in Form 26 in Col.7(A)(iv) under Exts.1 to 4 and Exts.32 to 35,

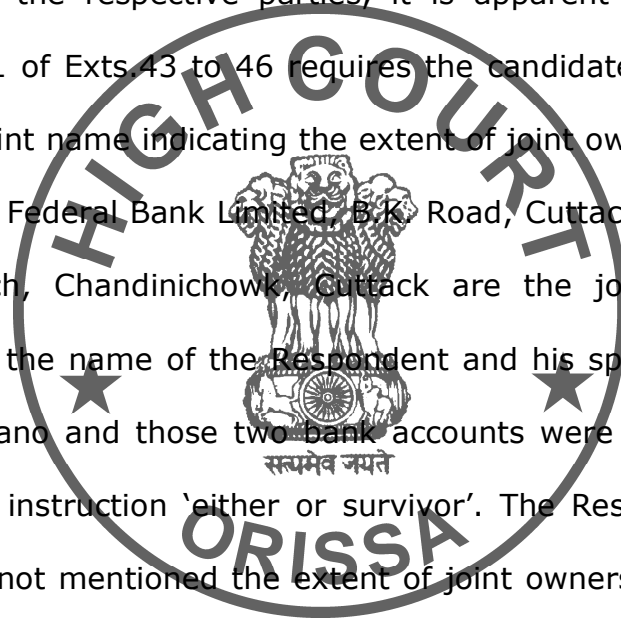
I find that the Respondent has indicated his investment in two LIC policies as well as one HDFC Life policy and that of his spouse in two LIC policies. Though the number of the policies, date of investment and its surrender value has been indicated in all the cases, but the investment value so also the period has not been indicated. It is not a fact that as per col.7(A) under the heading of 'details of movable assets' under the six notes, the Respondent was not required to mention the investment value so also the period of investment in his and his spouse's insurance policies."

"It is a fact that in my election petition in para 7(D), I have mentioned that the Respondent has given loans to six companies, but the details of the same have not been given. On going through the affidavit filed by the Respondent in Form 26 in col.7(A) under Exts.1 to 4 and Exts.32 to 35, under the heading of 'details of movable assets' in six notes, I do not find that any such details is required to be given by a candidate. In the affidavit in Form 26 in col.7(A)(v) under Exts.1 to 4 and Exts.32 to 35, the Respondent has mentioned the names of six companies and the amount advanced to such companies. According to me, some more details should have been given about these loan advances."

Q. Is there any instruction from the Election Commission of India or by any other statutory authority requiring a candidate to furnish any other details by a candidate relating to loans or advances?

Ans. Yes. I can produce such instruction.”

Adverting to the contentions raised by the learned counsel for the respective parties, it is apparent that column 7(A) Note-1 of Exts.43 to 46 requires the candidate to give the assets in joint name indicating the extent of joint ownership. The accounts in Federal Bank Limited, B.K. Road, Cuttack and S.B.I., Main Branch, Chandinichowk, Cuttack are the joint accounts standing in the name of the Respondent and his spouse namely Firdousia Bano and those two bank accounts were opened with operational instruction 'either or survivor'. The Respondent has admittedly not mentioned the extent of joint ownership of those two accounts in his affidavit in Form 26 filed along with his nomination papers. He has not even declared those two bank accounts in his spouse column which he was required to indicate as she was the joint account holder. The explanation given by the Respondent that since he had shown the bank accounts in his affidavit in Form 26 in the column applicable to him, the same was not shown in the column applicable to his spouse in



order to avoid duplication, is not at all acceptable. Similarly, the explanation given by the Respondent that since the two accounts were 'either or survivor', there was no necessity on his part to disclose the extent of joint ownership of the amount reflected in those two accounts, is not acceptable. Similarly, the explanation given by the Respondent that he had not mentioned these two accounts in col. no.2 of 7(A) sl. no.(ii) as it would have been a repetition and would have created confusion, is also not acceptable. Nowhere in his affidavits in Form 26, the Respondent has either declared the extent of ownership of these two bank accounts nor has mentioned that those two were under the category of 'either or survivor'. Similarly, in col. no.7(A)(iii) of Exts.43 to 46, though the Respondent has declared about the investment made in shares of different companies but he had not disclosed that those were the correct book values as per books of company. The Respondent was required to indicate the value of bonds/share debentures as per current market value in Stock Exchange in respect of listed companies and as per books in case of non-listed companies in view of col. no.7(A) Note-3. The Respondent admits that it was required to disclose the book values of the investment in shares in case of non-listed companies, but as per the advice given by his company

Chartered Accountant, he only reflected the figures as share equity in different private companies in respect of him as well as his spouse. Similarly, so far as the life insurance policies are concerned, the Respondent while making declaration about the same, has not disclosed about the amount of investment/deposit, date of deposit, the policy name and the name of the branch from where the policy was purchased which was in contravention to col. no.7(A)(iv) of the affidavit in Form 26. The Respondent admits that as per col. no.7(A) Note-2 of the affidavit in Form 26, a candidate has to furnish in case of deposit/investment, the details including Sl. No., amount, date of deposit, the scheme, the name of the bank/institution and branch and he further admits that he had not indicated the amount of investment and the scheme of the L.I.C. policy in which the investments have been made in those policies in his affidavit. He has stated that he did not feel it necessary to mention the total investment made by his spouse in the two L.I.C. policies. He further admits that though he had mentioned that he had invested in the L.I.C. policy of his dependant Nayeema Tazeen, he had only indicated the surrender value but not the actual investment made by him in the said policy. The contention of the learned counsel for the Respondent that there

is absence of material pleadings in the election petition on these issues and that the same does not disclose complete cause of action is not at all acceptable. An element of sanctity and solemnity is attached to the declaration made by a candidate and this very fact is evidently apparent as it is required to be in the form of an affidavit sworn. Therefore, there is scarcely any doubt that it is to be strictly followed. Suppression of material information and/or giving false information is not permissible. The information should be correct and complete in all respect. A citizen/voter has the right to know about the contesting candidate and that right is a part of the fundamental right. The information about the candidate to be selected is essential as it would be conducive to transparency and purity in the process of election.

In view of the foregoing discussions, I am of the considered view that the Respondent had not disclosed the name of the joint account holder of the two bank accounts so also other details which he was required to furnish as per the instruction given in the affidavit in Form 26. The Respondent has also not declared the book value of the shares as per the books of the company and he has not furnished the details about the investment made in his name and in the name of his spouse in

the insurance policies so also the details in respect of his investment made by him and therefore, the issues no.22, 23, 24, 25, 26 and 27 are answered in favour of the Election Petitioner and against the Respondent.

13. **Issue Nos.28, 29, 30, 31 & 32:-**

As issue nos.28, 29, 30, 31 and 32 are interlinked with each other, the same are being discussed and answered together. The issues are extracted herein below for ready reference:-

28. Whether the Respondent has disclosed true and correct details of the properties held by him, his spouse and dependents in the affidavit filed in Form 26?

29. Whether mentioning the name of Mouza as "Patpur" instead of "Patapur" in Cuttack district creates any confusion or not?

30. Whether the sole Respondent has correctly disclosed all the movable and immovable assets of self and his spouse in his affidavit in Form 26 dated 03.04.2019 or not?

31. Whether the Respondent has disclosed about the loans taken by his company from

Orissa Rural Housing Development Corporation (OHRDC)?

32. Whether the Respondent has declared the purchase price and development/construction cost of immovable properties of his spouse in the affidavit filed in Form 26?

The Election Petitioner in para 7(E) of the election petition has pleaded that in column (7)(B)(ii), the Respondent has declared about the non-agricultural land at Mouza: Chandini Chowk, Unit-13, Khata No.799, Plot No.220 and 221, but there is no Plot No.221 in Khata No.799 as per the R.O.R. downloaded from the official website i.e., bhulekh.

The Respondent in reply to averments made in para 7(E) has contented, in his written statement, that the allegations made by the Election Petitioner in his election petition are completely based on surmises, out and out false, fabricated, concocted and hence, stoutly denied and pleaded that the same does not disclose complete cause of action.

The Election Petitioner in his evidence on affidavit (Ext.36) has stated as follows:-

"25. That the Respondent has further declared that he is the owner of the Mouza Unit-13, Chandini Chowk, Khata No.799, Plot No.220 and

221, but Plot No.221 has not been recorded in Khata No.799 as per the certified copy of the R.O.R filed and marked as Exhibit-5.

Further, one Ezad Ali, S/o- Sayed Irfan Ali is the recorded owner of the said Khata no.799, Plot no.220 only. Similarly, the area of Plot no.220 and 221 has not been declared or described separately by the Respondent in his affidavit filed in Form 26."

The Election Petitioner in his cross-examination has stated as follows:-

"The copy of the R.O.R. which has been downloaded by me on 28.06.2022 at 3.44.28 p.m. relating to Mouza: Unit No.13 Chandini Chowk, Khata No.799 indicates that there is only one plot i.e. 220 under the said khata number. The downloaded copy of the R.O.R. is marked as Ext.K. There is no plot number 221 in it."

The Respondent, in his examination-in-chief, has stated as follows:-

"This is the certified copy of the registered sale deed bearing No.3458 dated 11.04.2011 with respect to Plot No.220 under Khata No.799 for an area of Ac.0.013 dec., out of its total area Ac.0.130 dec and Ac.0.004 dec from Plot No.221 under Khata No.48, out of its total area Ac.0.014

dec., total area purchased Ac.0.017 dec. of Unit-13, Chandinichowk, Cuttack purchased from one Sayed Ijad Ali on 11.04.2011 for a consideration of Rs.6,00,000/- by me and the same is marked as Ext.EH.”

“I have purchased a compact area of Ac.0.017 dec. i.e. Ac.0.013 dec. from Plot No.220 under Khata No.799, out of its total area Ac.0.130 dec. and Ac.0.004 dec. from Plot No.221 under Khata No.48 out of its total area Ac.0.014 dec. of Unit-13, Chandini Chowk, Cuttack from one Sayed Ijad Ali on 11.04.2011 for a consideration of Rs.6,00,000/- through registered sale deed. This is the certified copy of the said registered sale deed bearing No.3458 dated 11.04.2011 and the same be marked as exhibit. I have furnished all the required information with respect to the said property in my affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46) under its column (7)(B)(ii) vide item no.2.”

The Respondent, in his cross-examination, has stated as follows:-

“Ext.EH, the certified copy of the registered sale deed bearing No.3458 dated 11.04.2011 indicates that I have purchased two plots and one of such plots appertains to Khata No.48, Plot No.221, area Ac.0.014 dec. It is a fact that in

col. no.7(B)(ii)(sl.no.2) under the heading of 'non-agricultural land', I have omitted to mention Khata No.48, though I have mentioned the plot no.221 which was purchased by me vide Ext.EH."

According to Mr. Kanungo, the Respondent has suppressed to disclose the khata number of plot no.221 in his affidavit in Form 26 (Ext.43).

The Election Petitioner in para 7(F) of the election petition has pleaded as follows:-

"That in Para (7)(B)(iv), the Respondent has declared about the residential building known as "City Shelter" in the district of Cuttack, Mouza: Cuttack Town Unit No.15, plot no.1882/3019, 2743, 1882/3020, Ground Floor Flat Nos.1/A, 2/B, F/5. In the above declaration, the Respondent has not declared the Khata No. of the above said plot nos. whereas in the declaration made with respect to his spouse, he has declared in serial no.(2) that Khata No.04/79, 04-80 plot no.1882/3019, 1882/3020 and in serial no.(3), he has mentioned Khata No.992 with respect to same plot nos. i.e plot no.1882/3019, 1882/3020, 2743. The Respondent has mentioned about the above said plots in three Khatas which are false declarations

as all the above plots cannot be recorded in three different Khata of same Mouza.”

The Respondent, on the other hand, has pleaded that a bare reference to the information furnished by the Respondent with respect to the apartment “City Shelter” situated at Cuttack Town, Unit 15 along with its flat nos. owned by the Respondent and by his spouse will make it abundantly clear that the required information i.e., residential buildings (including apartment) location, survey nos. have been furnished and there is no concealment of the required information.

The Election Petitioner, in his examination-in-chief (Ext.36), has stated as follows:-

“That in Para (7)(B)(iv), the Respondent has declared that he is the owner of the residential building known as “City Shelter” in the district of Cuttack, Mouza: Cuttack Town, Unit No.15, plot nos.1882/3019, 2743, 1882/3020. Ground Floor Flat Nos.1/A, 2/B, F/5; First Floor Flat Nos.2/B, 1/A, 05/E, 06/F; Second Floor Flat nos.5/E, 2/B; Third Floors Flat Nos.2/B, 5/E, 1/A (1/2 share in all above properties). In the above declaration, the Respondent has not declared the Khata No. of the above said plot nos., whereas in the declaration made with respect to his spouse in serial no.2, that Khata No.04-79, 04-80 plot

no.1882/3019, 1882/3020 and in serial no.3, he has declared Khata no.992, plot no.1882/3019, 1882/3020, 2743. I have filed the certified copy of the ROR of Mouza-Cuttack Town, Unit no. 15, Choudhury Bazaar, Khata no.04-79, plot no.1882/3019 and Khata no.04-80, plot no.1882/3020 marked as Exhibit 7 and 8 respectively. Exhibit 7 & 8 discloses that the said Khata has been recorded in the name of Benudhar Sahu, Nibarana Sahu, S/o-Ramachandra Sahu. I have also filed the certified copy of ROR of Cuttack Town, Unit no.15, Choudhury Bazaar, Khata no.992 in which plot nos.1882/3019, 1882/3020 has not been recorded. The certified copy of the ROR of Khata no.992 has been marked as Exhibit 9. In Exhibit 7, 8 & 9, there is no plot no.2743. So also, plot nos.1882/3019, 1882/3020, 2743, has been mentioned in three different Khatas are also false as all the above plots cannot be recorded in three different Khata of same Mouza. Thus, the declarations made by the Respondent in his affidavit filed in Form 26 regarding the above said residential properties are misleading and false.”

The Respondent, in his examination-in-chief, has stated as follows:-

“In column 7(B) of the affidavit in Form 26, every candidate is required to furnish information about 'Details of immovable assets' of his own, his spouse, his HUF and his dependents. Under column 7(B)(iv) of the affidavit in Form 26, every candidate is required to furnish information in a tabular form about 'Residential Buildings (including apartments) its locations(s) and survey number(s), area (total measurement in sq. ft.), built-up area (total measurement in sq. ft.), whether inherited property (Yes or No), date of purchase in case of self-acquired property, cost of property (in case of purchase) at the time of purchase, any investment on the land by way of development, construction etc. and approximate current market value' of his own, his spouse and his dependents, which I have furnished correctly in my affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46).”

“I have furnished required information in my affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46) in its column 7(B)(iv) under my name vide item no.1 by giving the name of the apartment i.e. 'City Shelter', the location and survey numbers of the apartment i.e. Dist: Cuttack Mouza: Cuttack Town, Unit No.15, Plot No.1882/3019, 2743, 1882/3020, Ground Floor Flat Nos.1/A, 2/B, F/5; 1st Floor Flat Nos.2/B,

1/A, 05/E, 06/F; 2nd Floor Flat Nos.5/E, 2/B; 3rd Floor Flat Nos.2/B,S/E. 1/A (1/2 share in all above properties).”

“Similarly, I have furnished required information in my affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46) in its column 7(B)(iv) under my spouse's name vide item no.3 by giving the name of the apartment i.e. 'City Shelter', the location and survey numbers of the apartment i.e. Dist: Cuttack Mouza: Cuttack Town, Unit No.15, Khata No.992 Plot No.1882/3019, 1882/3020, 2743 Flat No. Ground Floor 1A, 2B, 05 1st Floor 2B, 1A, 5E, 6F; 2nd Floor 2B, 5E; 3rd Floor 2B, 5E, 1A (1/2 share in above properties).”

“I have also furnished required information in my affidavit in Form 26 (Ext.43, Ext.44, Ext.45 and Ext.46) in its column 7(B)(iv) under my spouse's name vide item no.2 by giving the name of the apartment i.e. 'City Shelter', the location and survey numbers of the apartment i.e. Dist: Cuttack Mouza: Unit-15 Khata No.04/79, 04-80 Plot No.1882/3019, 1882/3020 Flat No.106 1st Floor.”

The Respondent, in his cross-examination, has stated as follows:-

“It is a fact that the property described in the sale deed vide Ext.EM/2 has been reflected under Schedule ‘B’ of the said sale deed to be Flat No.05/E situated in the ground floor of the multi-storeyed building of the complex in the name and style of ‘City Shelter’, but while mentioning the property in col.7(B)(iv) under the heading of ‘Residential buildings’ (including apartment), I have mentioned the flat number to be F/5 inadvertently so far as my column is concerned and in the column of my spouse, the Flat number has been mentioned to be 05 and such mistakes are typographical. It is not a fact that deliberately I have made a false declaration by mentioning the wrong flat number of ‘City Shelter’ in my affidavit in Form 26 (Ext.43).

The Election Petitioner, in para 7(F) of the election petition, has pleaded as follows:-

“In column (11) of Part B of the affidavit, the Respondent is required to declare the abstract of the details given in (1) to (10) of part A and in column (8)(i), he is to declare the purchase price of self-acquired immovable properties of himself and his spouse. The Respondent while declaring the purchase price of self-acquired immovable property of his spouse has declared “NOT APPLICABLE”. He has not declared the purchase price of the self-acquired properties by

his spouse. He has also not declared the development/construction cost of immovable property after purchase by his spouse. The Respondent has also not declared in Part B column (8)(iii) about the approximate current price and the total value of self-acquired assets by his spouse. Thus the Respondent has filed the affidavit in Form 26 along with his nomination paper by making false declarations and as such his nomination has been accepted illegally and improperly by the Returning Officer. Therefore, the election of the Respondent is to be declared void by this Hon'ble Court as he has violated the mandate of section 33 of the R.P. Act, 1951 read with Rule 4A of the Conduct of Election Rules, 1961."

The Election Petitioner, in his examination-in-chief,

has stated as follows:-

"That in Part B column (11) of the affidavit filed in Form 26, the Respondent is required to declare the abstract of the details given in (1) to (10) of part A and in column (11)(8)(B) of Part B of the affidavit, the Respondent is to declare the purchase price of self-acquired immovable properties of himself, his spouse and dependents. But, the Respondent while declaring the purchase price of self-acquired immovable property of his spouse has declared "NOT

APPLICABLE" which is a false declaration as in column no.7(B)(ii), (iii) and (iv) of Part A, he has declared the purchase price of the properties that his spouse has purchased property worth Rs.38,000/-, Rs.10,000/-, Rs.22,51,844/-, Rs.11,11,360/-, Rs.5,62,750/-, Rs.17,41,414/-, Rs.2,86,650/- and Rs.1,10,700/-. The Respondent has suppressed the purchase price of the self-acquired properties by his spouse in column (11)(8)(B) of Part B of the affidavit filed in Form 26. Similarly, he has suppressed about the investments made on the properties by way of development/construction etc. made by his spouse in the immovable properties purchased by her. So also in column (11)(8)(B) of Part B, the approximate current market price of the properties and the total assets of his spouse has not been declared and it has been falsely declared as 'NOT APPLICABLE'. Thus, the Respondent has filed the affidavit in Form 26 along with his nomination papers by making false declarations and as such his nomination has been accepted illegally and improperly by the Returning Officer. Therefore, the election of the Respondent is to be declared void by this Hon'ble Court for filing false affidavit in Form 26 along with his nomination papers."

The Respondent, in his examination-in-chief (Ext.DW), has stated as follows:-

"The further allegation of the Election Petitioner is to the effect that in column (11) of Part B of the affidavit, I am required to declare the abstract of the details given in (1) to (10) of Part A and in column 8(i), I am to declare the purchase price of self-acquired immovable properties of mine and my spouse. I, while declaring the purchase price of self-acquired immovable property of my spouse, have declared "NOT APPLICABLE". I have not declared the purchase price of the self-acquired properties by my spouse. I have also not declared the development/construction cost of immovable property after purchase by my spouse. I have also not declared in Part B column (8)(iii) about the approximate current price and the total value of self acquired assets of my spouse."

"Since I have furnished all the required information in detail with respect to immovable assets of my spouse in column (7)(B) vide its sl. nos.(i) to (vi) under Part-A of my affidavit in Form 26 as well as total value of immovable assets of my spouse in column 8(B) under Part-B of my affidavit in Form 26, mentioning of 'Not Applicable' inadvertently under the name of my spouse against the column nos.(8)(B)(I), (8)(B)(II) and (8)(B)(III) of Part-B of my affidavit in Form 26, does not create any serious

confusion in the minds of the electorate of the Constituency and the same cannot be said to be suppression of information.”

The Respondent, in his cross-examination, has stated as follows:-

“It is a fact that in Part B of my affidavit in Form 26 (Ext.43) in col.8(B)(I), under the heading of ‘purchase price of self-acquired immovable property’, col.8(B)(II), under the heading of ‘development/construction cost of immovable property after purchase (if applicable) and col.8(B)(III), under the heading of ‘approximate current market price of (a) self-acquired assets- total value and (b) inherited assets- total value, I have mentioned the purchase price, development/construction cost, approximate current market price of my self-acquired immovable property, but so far as my spouse is concerned, I have mentioned as ‘Not Applicable’. Since I have mentioned in Part A col.7(B)(ii),(iii) and (iv) of my affidavit in Form 26 regarding the purchase price of the land, development/ construction cost, approximate current market price with respect to my spouse, I did not mention it in Part B of my affidavit in Form 26 (Ext.43) in col.8(B)(I), (II) & III. Such omissions are clerical errors.”

The Respondent in his affidavit in Form 26 (Ext.43) at sl no.2 has declared that his spouse is the owner of the property situated in Dist: Cuttack, Mouza: Odia Bazar, Unit No.11, Khata No.41, Plot No.231 and the cost of land purchased is Rs.10,000/-.

The Election Petitioner, in his evidence on affidavit (Ext.36), has stated as follows:-

“In Para 7(B)(ii) sl. no.2 of the affidavit in Form 26 (Ext.43), the Respondent has declared that his spouse is the owner of non-agricultural land in the District of Cuttack, Mouza- Oriya Bazar, Unit no.11, Khata no.41, Plot no.231. I have filed the certified copy of the ROR of Mouza- Cuttack Town, Unit no.11, Oriya Bazar, Khata no.41 marked as Exhibit 12 which discloses that the said Khata has been recorded in the name of Jayanta Kumar Pattnaik, S/o- Goura Chandra Pattnaik, having Plot no.444 only and Plot no.231 has not been recorded in the said Khata no.41. Hence, the declaration made in the affidavit is false.”

The Respondent, in his cross-examination, has stated as follows:-

"In Ext.EU, certified copy of the register Hibanama, though under the schedule of property, it is mentioned that Khata No.41, Plot No.231 is of village Sutahat, but in Col.No.7(B)(ii) (Sl.No.2) of my spouse under the heading of 'non-agricultural land', I have mentioned the location of Khata and Plot to be of mouza- Oriya Bazar Unit-11. Since my father in-law's house situates in Oriya Bazar and this property under Ext.EU was gifted by my father in-law in favour of my spouse, inadvertently, I have mentioned as 'mouza- Oriya Bazar' in col. no.7(B)(ii) (Sl.No.2)

"It is a fact that my spouse by way of Hibanama from her father got the property of mouza Sutahat, Khata No.41, plot no.231, area Ac.0.023 dec. on 19.07.1983 which I have mentioned in my affidavit in Form 26 (Ext.43) in col. no.7(B)(ii) under the heading of non-agricultural land, but while mentioning the cost of the land (in case of purchase at the time of purchase) though I have mentioned the cost of the land (in case of purchase at the time of purchase) to be Rs.10,000/-, the said land was in fact not purchased by me, but as I have already stated, it was gifted to my spouse by her father on 19.07.1983 vide Ext.EU. The value of the property gifted to my spouse as per Ext.EU was shown to be Rs.10,000/-."

The Respondent in his affidavit in Form 26 (Ext.43) at page 16 sl no.1 has declared that his spouse is the owner of the property situated in Metro Plaza-1, Dist: Cuttack, Mouza Unit No.11, Khata No.126 & 155, Plot Nos.1278, 1280 and 1278/1460 and 1280/1461 (Shop No. Gd. Floor 13, 14, 15, 1st Floor 13, 14, 15, & 16 and 13A, 14A and 15A).

The Election Petitioner, in his evidence on affidavit, has stated as follows:-

"Similarly, declaration made in column 7(B)(iii), in the spouse column, regarding commercial building known as Metro Plaza-1, Dist: Cuttack, Mouza: Unit no.11, Khata no.126, 155, Plot nos.1278, 1280 and 1278/1460 and 1280/1461 is also not correct and false declaration. I have filed the certified copy of the ROR of said Khata no.126 marked as Ext.13. Ext.13 discloses that Khata no.126, Plot no.1278, 1280 has been recorded in the name of Iswar Das Agarwal, S/o- Tarachand Agarwal, Maladevi Agarwal, W/o- Iswar Das Agarwal and not in the name of spouse of the Respondent. Further, the Respondent has declared that his spouse is the owner of Khata no.155, but there is no such Khata available in the office of the Tahasildar, Cuttack. Hence, the declaration made in the affidavit filed in Form 26 is incorrect and false."

The Respondent, during cross-examination, has stated as follows:-

"98. It is a fact that while mentioning the shop nos. under the heading of 'commercial building' in col. no.7(B)(iii) of my affidavit in Form 26 (Ext.43), I have shown shop nos.13A, 14A and 15A to be in the first floor though Ext.EX indicates that those three shop rooms i.e. 13A, 14A and 15A are located in the basement floor. It is a clerical mistake to omit 'basement floor' in that particular column before 13A, 14A and 15A. It is not a fact that I have made false declaration by mentioning the existence of the aforesaid three shop rooms in the first floor."

"I have not mentioned Hal Khata No.180/3, Hal Plot No.1464/1604, 1460/1605 and Khata No.180/4 in my affidavit in Form 26 (Ext.43) under the heading of 'commercial building' in col. no.7(B)(iii) as I did not feel it necessary to mention the same in view of the details already furnished in respect of the land in that particular column. The property under Ext.EX is an apartment. It is not a fact that deliberately I have not filed the R.O.R of Hal (new) Khata No.155 and Hal Khata No.126 before this Court as I have mentioned falsely about such property in my affidavit in Form 26 (Ext.43)."

The Respondent in his affidavit in Form 26 (Ext.43) at page 17 col.7(B)(iv) sl. no.2 has declared that he is the owner of the property situated in Metro Satellite City, Dist: Khordha, Mouza: Rudrapur, Khata No.345, Plot No.414, Flat no.A108, 1st Floor.

The Election Petitioner, in his evidence on affidavit, has stated as follows:-

"That in Para 7(B)(iv)(2), the Respondent has declared about his ownership at Metro Satellite City, Mouza-Rudrapur, Khata no.345, Plot no.414, I have filed the certified copy of the said ROR of Mouza- Rudrapur, Khata no.345 marked as Ext.16. Ext.16 discloses that plot no.414 has not been recorded in the said Khata. Therefore, the information so disclosed in the affidavit filed in Form 26 of the Respondent is false and incorrect."

The Respondent, in his cross-examination, has stated as follows:-

"It is not a fact that under the sale deed Ext.EZ, myself and one Peeyush Dhari Mohanty purchased the property mentioned under the heading of description of the scheduled property. This particular property was developed by the

company and one particular flat in the first floor i.e. Flat No.A108 was allotted in my favour in the Metro Satellite City by the Company and accordingly, I have reflected the same in my affidavit in Form 26 (Ext.43). It is not a fact that I have made false declaration with respect to the property in Metro Satellite City. Ext.EZ is a sale deed dated 31.10.2006 and it was developed by the Company and when I filed nomination in the year 2019 for the election in question, at that point of time, one of the flats i.e. Flat No.A108 in the first floor of 'Metro Satellite City' was allotted to me, which I have reflected in my affidavit in Form 26 (Ext.43) and I did not feel any necessity to mention the other details of the sale deed vide Ext.EZ. I have not filed any documents to show that the Company 'Metro Builders (Orissa) Pvt. Ltd.' was entrusted to develop the property purchased under the sale deed Ext.EZ. It is a fact that I have not filed any documents to show that Flat No.A108 of first floor in Metro Satellite City was allotted in my favour."

"It is a fact that I have mentioned in my evidence on affidavit that after completion of the project, namely, 'Metro Satellite City' over the purchased land at mouza-Rudrapur, I as well as Peeyush Dhari Mohanty sold out the flats/units to our customers whereas I kept one flat i.e. Flat

No.A108, 1st floor for me. I have not purchased Flat No.A108 in the 1st floor of 'Metro Satellite City', but I got the flat in lieu of my land given to the company for development on sharing basis. It is not a fact that that even though the property i.e. Flat No. A108 in the 1st floor of 'Metro Satellite City' was allotted to me by the Company in lieu of my land given to the Company for development on sharing basis, I have made false declaration in my affidavit in Form 26 (Ext.43) that this property was purchased and the date of purchase was 31.07.2017 and that the cost of the property (in case of purchase at the time of purchase) to be Rs.30,69,768/-."

(The witness volunteers)

"A contract was executed by me and Peeyush Dhari Mohanty with the Company namely, Metro Builders (Orissa) Pvt. Ltd. that in lieu of the land, which we provided, the Company has given me Flat No.A108 in the 1st floor of 'Metro Satellite City' and a document was executed by the Company in my favour in that respect in which the Company has reflected the cost of the said flat to be Rs.30,69,768/- and that particular document was executed on 31.07.2017 and accordingly, I have reflected the date of purchase and cost of the property in my affidavit

in Form 26 (Ext.43) in the col.7(B)(iv) sl.no.2 i.e. 'date of purchase in case of self-acquired property' and 'cost of property (in case of purchase at the time of purchase)."

"I cannot remember now whether the document executed by the Company on 31.07.2017 in respect of Flat No.A108 in the 1st floor of 'Metro Satellite City' was registered or not."

Q. Whether such a document executed by the Company on 31.07.2017 was required to be registered or not?

Ans. According to me, it is not necessary.

"Ext.EZ is the sale deed in respect of the property of mouza- Rudrapur, khata no.345, plot no.414, area Ac.3.13 dec. which was purchased by me and Peeyush Dhari Mohanty jointly. It is not a fact that I have told falsehood on 12.09.2023 before this Court on oath at paragraph no.101 of my cross-examination that under the sale deed Ext.EZ, myself and one Peeyush Dhari Mohanty did not purchase the property mentioned under the heading of description of the scheduled property."

"It is a fact that Santilata Prusty and four others executed General Power of Attorney vide Ext.EY in my favour as the Managing Director, Metro Builders (Orissa) Pvt. Ltd. in respect of the

property of mouza: Rudrapur, khata no.345, plot no.414, area Ac.3.13 dec. As the Managing Director, Metro Builders (Orissa) Pvt. Ltd., I executed sale deed vide Ext.EZ in my favour as well as in favour of Peeyush Dhari Mohanty. It is a fact that the registered power of attorney marked as Ext.EY did not reflect that the vendors of the property (original owners of the land) executed such document in my favour in individual capacity, but as the Managing Director, Metro Builders (Orissa) Pvt. Ltd. It is a fact that in the capacity as Managing Director, Metro Builders (Orissa) Pvt. Ltd., I executed sale deed vide Ext.EZ in favour of me and Peeyush Dhari Mohanty. It is a fact that I have omitted to mention in my evidence on affidavit at page 118 (first sub-paragraph) as well as in my examination-in-chief (at page 12) that the registered power of attorney vide Ext.EY was executed in my favour in the capacity of Managing Director, Metro Builders (Orissa) Pvt. Ltd. It is not a fact that I have stated falsehood in my evidence on affidavit (Ext.DW) as well as in my examination-in-chief in that respect. It is a fact that I have omitted to mention in my evidence affidavit at page 118 (second sub-paragraph) as well as in my examination-in-chief (at page 12) that the registered sale deed vide Ext.EZ was executed by me in the capacity of Managing Director, Metro Builders (Orissa) Pvt.

Ltd. It is not a fact that I have stated falsehood in my evidence on affidavit (Ext.DW) as well as in my examination-in-chief in that respect.”

Q. Please look at Ext.48 which reveals that in mouza: Rudrapur, khata No.345, plot no.414 by the date of filing of your nomination paper on 02.04.2019, several transactions have been made in respect of this property and some flats were transferred in favour of different persons by you and whatever the balance landed properties available with you as per the said certificate (Ext.48) as on the date of filing of the nomination paper, you have not correctly reflected the same in your affidavit in Form 26 (Ext.43) at col.7(B)(iv).

Ans. Except Flat No.A108 in the first floor of Metro Satellite City, the rest of the flats of mouza Rudrapur had already been transferred in favour of different customers prior to my filing of nomination paper on 02.04.2019 and therefore, I have mentioned accordingly in my affidavit in Form 26 at col.7(B)(iv). It is not a fact that apart from Flat No.A108, other flats were in my possession and ownership, which I have not reflected correctly in my affidavit in Form 26.

“It is not a fact that I was in occupation/possession of other flats in Metro Satellite City at mouza: Rudrapur, which I have

suppressed in my affidavit in Form 26 and that I have not transferred the rest of the flats except four as mentioned in Ext.48.”

The Election Petitioner, in his election petition, has pleaded that the Respondent had not declared in his affidavit in Form 26 along with his nomination paper about the loans taken by the company in which he himself and spouse were the Directors. According to Mr. Kanungo, the Respondent’s company had taken huge amounts of loans from Odisha Rural Housing Development Corporation Ltd. (hereafter ‘ORHDC’) when the Respondent himself was the Managing Director of M/s. Metro Builders Pvt. Ltd. and the Respondent has suppressed to disclose the said facts in his affidavit in Form 26.

The Election Petitioner, in his evidence on affidavit, has stated as follows:-

“That the Respondent has not declared in his affidavit filed in Form 26 along with his nomination paper about the loans taken by the companies in which he himself and his spouse are the directors. The Respondent’s company has taken huge amounts of loans from Odisha Rural Housing Development Corporation when the Respondent himself was the Managing Director of M/s. Metro Builders Pvt. Ltd. The

Respondent has suppressed to disclose the above facts in the affidavit filed in Form 26. The certified copy of the FIR no.07 dated 30.03.2005 corresponding to T.R. Case No.01/2009 of the Court of Spl. Judge (Vig.), Bhubaneswar marked as Exhibit 29 discloses that loan amount of Rs.1.5 crores was disbursed to the M/s. Metro Builders Pvt. Ltd. by the Odisha Rural Housing Development Corporation. Similarly, Exhibit 30, the certified copy of FIR no.34 dated 06.09.2007 of Bhubaneswar Vigilance P.S. discloses the loan outstanding against the M/s Metro Builders Pvt. Ltd. is Rs.4,25,70,478/-. The Respondent has suppressed about the loans taken by him as Managing Director of M/s Metro Builders Pvt. Ltd. from the Odisha Rural Housing Development Corporation. The Respondent in column 8(ii) is to declare about the loans or dues to any other individuals/entity but the Respondent in the said column has mentioned NIL which is a false declaration."

The Respondent, in his examination-in-chief (Ext.DW), has stated as follows:-

"The further allegation of the Election Petitioner to the effect that I have not declared in my affidavit filed in Form 26 along with my nomination paper about the loans taken by the companies in which I myself and my spouse are

the directors, that my company has taken huge amounts of loans from Odisha Rural Housing Development Corporation when I myself was the Managing Director of M/s. Metro Builders Pvt. Ltd., that I have suppressed to disclose the above facts in the affidavit filed in Form 26, is not correct and legally not sustainable.”

The Respondent, during cross-examination, has stated as follows:-

“My company, namely, M/s. Metro Builders (Orissa Pvt. Ltd.) had taken loans from Odisha Rural Housing Development Corporation. I have not stood as a guarantor in the said loan transaction. It is a fact that I have been convicted in T.R. Case No.1 of 2009 by the Court of Special Judge (Vigilance), Bhubaneswar relating to the aforesaid loan transaction. It is a fact that the learned trial Court has mentioned in para 32 of the judgment dated 29.09.2022 that the loan in question has been sanctioned upon the security of the personal guarantee, indemnity and assurance of the accused Md. Moquim.

Mr. Kanungo, learned counsel for the Election Petitioner submitted that it is evident that the Respondent had not disclosed true and correct details of the movable and

immovable properties/assets held by him and his spouse in the affidavit filed in Form 26 and has also not disclosed about the loan taken by his company from ORHDC though he was the personal guarantor of the said loan and has not declared the purchase price and development/construction cost of immovable properties of his spouse in Part B of the affidavit filed in Form 26 (Ext.43), hence, his election from the Constituency held in the year 2019 is to be declared void.

Mr. Bidyadhar Mishra, learned counsel for the Respondent, on the other hand, submitted that under Paragraph-7(E) of the election petition, the Election Petitioner has taken the following stand:

(a) In column 7(B)(ii), the Respondent has declared about the non-agriculture land in District-Cuttack, Mouza-Patpur, khata no.15-D1, plot nos.114, 116, 112, 113. There is no mouza known as Patpur in district Cuttack so the Khata No. and Plot No. described therein are all false declarations;

(b) The Respondent has declared about the non-agriculture land of his spouse in district Cuttack, mouza-Patpur, khata no.16-D1, plot no.111/1048. There is no mouza known as Patpur in district Cuttack so the Khata No. and

Plot No. described therein are all false declarations deliberately made by the Respondent to mislead the voters;

(c) The Respondent has further declared about the mouza Unit-13, Chandini Chowk, khata no.799, plot nos.220 and 221 but there is no plot no.221 in khata no.799 as per the R.O.R downloaded from the official website i.e. bhulekh;

The Respondent, in his written statement, has dealt with such stand taken under Paragraph-7(E) of the election petition which are as follows:

"The above allegations made by the Election Petitioner in his election petition are completely based on surmises, out and out false, fabricated, concocted and hence stoutly denied."

"It is submitted by the sole Respondent that the above allegations are bereft of material facts, wholly unnecessary, scandalous, frivolous, vexatious and tend to prejudice the fair trial of the case, which are nothing but otherwise an abuse of the process of the Court and as such the pleadings/allegations made under paragraph-7(E) of the election petition are liable to be struck down being hit by Order-VI Rule-16

of the C.P.C. on the grounds as described herein below:

(a) The allegation/pleading as enumerated under **(a)** and **(b)** are bereft of following material facts:-

(i) Under column 7(B)(ii) of the affidavit filed in Form 26, though the Respondent has given the details of land particulars such as area i.e. total measurement in sq. ft., whether inherited property or not, date of purchase, cost of land at the time of purchase and investment made therein by way of development, construction etc., approximate current market value with respect to such land, the same have not been disclosed/pleaded in the election petition except pointing out the typographical error occurs in the name of the mouza typed as "Patpur" in place of "Patapur";

(ii) Though there is absolutely no confusion likely to arise to understand that the mouza "Patpur" and mouza "Patapur" is one and the same mouza in Cuttack district, the same material fact has been suppressed by the Election Petitioner deliberately;

(iii) There is no pleading that on account of mentioning the name of the mouza "Patpur" in

place of "Patapur", as to why and how the result of the election, in so far as it concerns the returned candidate, has been materially affected;

(b) The allegation/pleading as enumerated under **(c)** above is bereft of following material facts:-

(i) Though the Election Petitioner has pleaded that the R.O.R downloaded from the official website i.e. bhulekh in respect of the Khata No.799 of Mouza Unit-13, Chandini Chowk, he has not filed the said downloaded R.O.R. along with the election petition in utter violation of the provisions contained in sub-section (2) of Section 83 of the R.P. Act, 1951 read with Order-VII Rule-14 of C.P.C., as such the allegation with respect to Khata No.799 cannot be entertained and is liable to be struck out;

(ii) Though the Respondent in his affidavit filed in Form 26 has given the details of the land particulars such as area i.e. measurement in sq. ft.; whether inherited property or not; date of purchase; cost of the land at the time of purchase; investment made therein by way of development, construction etc.; approximate current market value, the same have not been disclosed/pleaded in the election petition. In

absence of above material facts in the pleadings, though the same are very much available on record i.e. the affidavit in Form 26, the allegation does not disclose any complete cause of action and as such the same is liable to be struck out;

(iii) Though the Election Petitioner has alleged that there is no plot no.221 in khata no.799 at mouza Unit-13, Chandini Chowk, he has not mentioned/disclosed the correct khata no. under which plot no.221 comes inasmuch as the name of the district under which the above said mouza, khata, plot comes has not been disclosed;

(iv) There absolutely no pleading made by the election petitioner to the effect that on account of such absence of plot no.221 in khata no.799 as alleged, as to why and how the result of the election, in so far as it concerns the returned candidate, has been materially affected.”

Mr. Mishra, learned counsel for the Respondent argued that on account of absence of above material facts in the pleadings of the election petition, the same does not disclose a complete cause of action.

In order to substantiate and establish the allegations made under Paragraph-7(E) of the election petition as well as

above four issues, the Election Petitioner has adduced following documentary evidence:-

Ext.5 i.e. the certified copy of ROR of khata no.799 mouza Unit No.13 Chandini Chowk.

The following documents have been marked as exhibits on behalf of the Respondent:-

Ext.M i.e. the downloaded copy of R.O.R. relating to district Cuttack, mouza Patapur, khata no.16-D1, plot no.111/1048 recorded in the name of Firdousia Bano, wife of the Respondent.

Ext.N i.e. the downloaded copy of R.O.R. relating to district Cuttack, mouza Patapur, khata no.15-D1, plot nos.114, 116, 112, 113 recorded in the name of the Respondent.

Ext.P i.e. the downloaded copy of google map downloaded on 09.02.2023 showing approach road to village Sandhapur and village Bidyadharpur via mouza Patapur from Trisulia square.

Ext.EF i.e. the certified copy of the ROR with respect to 'Dist: Cuttack Mouza: Patpur, khata no.15-D1, plot nos.114, 116, 112, 113' which stands recorded in the name of the Respondent.

Ext.EG i.e.the certified copy of the ROR with respect to 'Dist: Cuttack Mouza: Patpur, khata no.16-D1, plot no.111/1048' which stands recorded in the name of Firdousia Bano, the spouse of the Respondent.

Ext.K i.e. downloaded copy of the R.O.R. relating to khata no.799, mouza Unit No.13, Chandini Chowk, downloaded on 28.06.2022, filed by the Election Petitioner on 29.06.2022.

The Election Petitioner has adduced following oral evidence with respect to averments made in Paragraph-7(E) of the election petition as well as above four issues:-

Evidence on affidavit of P.W.1 (Ext.36):-

"That in column (7)(B)(ii), the Respondent has declared that he is the owner of the non-agriculture land in Dist. Cuttack, Mouza-Patpur, khata no.15-DI, plot nos.114, 116, 112, 113. I state here that at present there is no Mouza known as Patpur in District of Cuttack so also the Khata No. and Plot No. described therein are all false declarations. Further, the area of each plot has not been declared separately in the affidavit filed in Form 26. Hence, the declarations made are all incorrect and false."

"Similarly, the declaration made by the Respondent that his spouse has a non-

agriculture land in Dist.-Cuttack, Mouza: Patpur, khata no.16-D1, plot no.111/1048 are also incorrect and false. There is no Mouza known as Patpur in District of Cuttack, so also the area of the said Plot No. described therein has not been disclosed. Hence, the declarations made in the affidavit are all false and deliberately made by the Respondent to mislead the voters. The Respondent has not filed any document to show that the above Khata No. and Plots belongs to him and his spouse."

"That the Respondent has further declared that he is the owner of the mouza Unit-13, Chandini Chowk, khata no.799, plot no.220 and 221 but plot no.221 has not been recorded in khata no.799 as per the certified copy of the R.O.R filed and marked as Exhibit 5. Further, one Ezad Ali, S/o- Sayed Iran Ali is the recorded owner of the said khata no.799, plot no.220 only. Similarly, the area of plot no.220 and 221 has not been declared or described separately by the Respondent in his affidavit filed in Form 26."

"Similarly, the declaration that the Respondent is the owner of the property situated in District Cuttack, Mouza: Unit no.13, Chandini Chowk, khata no.519, plot no.221/3704 is false. One Seema Nafees, W/o- Mohammad Atiqur Raub is the recorded owner of the said Khata no. and Plot no. I have filed the certified copy of the said

ROR marked as Exhibit 6 which discloses that the Respondent is not the owner of the above said property.”

“This is the certified copy of R.O.R. of khata no.799 of mouza Unit no.13, Chandni Chowk in one sheet which is already marked as Ext.5 (with objection). This is the certified copy of R.O.R. of khata no.519 of mouza Unit no.13, Chandni Chowk in one sheet which is already marked as Ext.6 (with objection).”

Cross-examination of P.W.1:-

“According to me, there is no mouza Patapur in Cuttack district. I am active in politics since 2000 and a member of Treasury Bench from 90-Barabati-Cuttack Constituency since 2009 to 2019. I know village Bidyadharpur comes under Cuttack Municipality in Ward No.3, which is part of 90-Barabati-Cuttack Constituency. In order to approach the said village Bidyadharpur from Cuttack town, one has to cross Odisha Judicial Academy square, Netaji Subash Chandra Bose Setu and Trisulia square. I cannot say whether mouza Patapur falls at a distance of 1.5 kms. away from Trisulia square if one has to go to village Bidyadharpur.”

Q. Whether from Google map shown to you, you are finding mouza Patapur in between Trisulia square and village Bidyadharpur or not?

Ans. Though it is there in the Google map, but I have never gone to mouza Patapur nor aware that there is any such mouza.

“On referring to the affidavit of the Respondent in Form 26 filed in connection with the nomination papers marked as Exts.1 to 4 and Exts.32 to 35, I find that the Respondent has mentioned under the heading of ‘non-agricultural land’ in col. no.7(B)(ii) regarding the details of the land, its location, area, date of purchase, cost of land at the time of purchase, investment made on the land by way of development, construction etc. and approximate current market value of his own so also of his wife Firdousia Bano, but according to me, he has not given the correct details in this particular column. According to me, neither in the name of the Respondent nor in the name of his wife Firdousia Bano, there is any R.O.R. in respect of the lands shown under the heading of ‘non-agricultural land’ in col. no.7(B)(ii) in mouza Patapur in the district of Cuttack.”

“The copy of the R.O.R. which has been downloaded by me on 28.06.2022 at 3.44.28 p.m. relating to mozua Unit no.13, Chandini

Chowk, khata no.799 indicates that there is only one plot i.e. 220 under the said khata number. The downloaded copy of the R.O.R. is marked as Ext.K. There is no plot number 221 in it. The certified copy of the R.O.R. in respect of the aforesaid mozua Unit no.13, Chandini Chowk, khata no.799 which has been marked as Ext.5 was obtained by me on 07.07.2022. The election petition was filed by me on 03.07.2019.”

Q. Neither the certified copy of the R.O.R. marked as Ext.5 nor the downloaded copy of the said R.O.R. marked as Ext.K was available with you on 03.07.2019 when you filed the election petition?

Ans. It is correct that neither the certified copy of the R.O.R. marked as Ext.5 nor the downloaded copy of the said R.O.R. marked as Ext.K was available with me on 03.07.2019 when I filed the election petition.

“I have not verified the encumbrance certificate relating to the R.O.R. in khata no.799 under mozua Unit no.13, Chandini Chowk (Ext.5 and Ext.K) before filing of the evidence affidavit.”

“This is the downloaded copy of the R.O.R. of khata no.519, plot no.221/3704, mouza Unit no.13, Chandini Chowk filed by me, marked as

Ext.L, which indicates that it was downloaded on 28.06.2022 at 3.45.26 p.m.”

“I have not verified the encumbrance certificate relating to the R.O.R. in khata no.519, plot no.221/3704, mouza Unit no.13, Chandini Chowk (Ext.6 and Ext.L) before filing of the evidence affidavit.”

“The downloaded copy of record of right which is shown to me today in Court relates to district Cuttack, Mouza: Patapur, khata no.16-D1, plot no.111/1048 recorded in the name of Firdousia Bano, wife of the Respondent and it finds place in the column no.7(B)(i) under the heading of “non-agricultural land” in the affidavit filed by the Respondent in Form 26 under Exts.1 to 4 and Exts.32 to 35. The downloaded copy of R.O.R. of khata no.16-D1 is marked as Ext.M (with objection). The total area of the said land though mentioned in Ext.M as Ac.0.7300 decimals but the Respondent has shown in his affidavit in column no.7(B)(ii) as Ac.0.730 decimals.”

“The downloaded copy of record of right which is shown to me today in Court relates to district Cuttack, Mouza: Patapur, khata no.15-D1, plot nos.114, 116, 112, 113 to be situated in mouza Patpur recorded in the name of the Respondent and it finds place in the column no.7(B)(ii) under

the heading of "non-agricultural land" in the affidavit filed by the Respondent in Form 26 under Exts.1 to 4 and Exts.32 to 35. The downloaded copy of R.O.R. of khata no.15-D1 is marked as Ext.N (with objection). The total area of the said land though mentioned in Ext.N as Ac.2.1800 decimals but the Respondent has shown in his affidavit in column no.7(B)(ii) as Ac.2.180 decimals."

Mr. Mishra, learned counsel argued that the Respondent was never the Managing Director and/or Director of M/s. Metro Builders Pvt. Ltd. and there was no connection and/or relation of the Respondent with M/s. Metro Builders Pvt. Ltd. Such a submission cannot be accepted inasmuch as the Respondent has himself admitted that in the capacity as Managing Director, Metro Builders (Orissa) Pvt. Ltd., he executed sale deed vide Ext.EZ in his favour so also in favour Peeyush Dhari Mohanty.

Mr. Mishra, learned counsel argued that as per the format of the Form 26 affidavit under column 7(B), every nominated candidate has to furnish "Details of Immovable assets". Under column 7(B)(iv) as per the format of Form 26 affidavit, the candidate has to furnish information about "Residential Buildings (including apartment) Locations(s), Survey

Number(s)". According to Mr. Mishra, the Respondent has furnished required information in column 7(B)(iv) such as location, plot nos., name of the apartment i.e. "City Shelter", flat nos. owned by him in City Shelter apartment on the ground floor, 1st floor, 2nd floor and 3rd floor, area i.e. total measurement in sq.ft., whether inherited property or not, date of purchase, cost of property at the time of purchase, investment on the land by way of development, construction, approximate current market value with respect to his immovable property situated in the apartment "City Shelter" and these material facts have not been disclosed by the Election Petitioner in his pleadings. He further argued that a bare reference to the information furnished by the respondent with respect to the apartment "City Shelter" situated at Cuttack Town, Unit No. 15 along with its flat nos. and floor nos. owned by the Respondent and by his spouse will make it abundantly clear that the required information i.e. "Residential buildings (including apartment) location; survey number(s)" have been furnished and there is no concealment of the required information. There is no pleading in the election petition as to for which period, the Respondent was the Managing Director of M/s Metro Builders Pvt. Ltd, when the loan was taken by M/s Metro Builders Pvt. Ltd. from Odisha Rural Housing Development

Corporation, what is the loan account number(s) sanctioning such huge amounts of loans, what was the amount of loan outstanding as on the date on M/s Metro Builders Pvt. Ltd., whether the Respondent had any personal liability/accountability with respect to such loans, whether M/s. Metro Builders Pvt. Ltd. is a separate entity in the eyes of law or not, whether at present the Respondent has any share and position in M/s. Metro Builders Pvt. Ltd. or not, whether loans taken by M/s Metro Builders Pvt. Ltd. have been repaid or not.

Adverting to the contentions raised by the learned counsel for the parties and after minutely going through the oral as well as documentary evidence on record, I find that Respondent has suppressed to disclose the correct khata number of plot no.221 and falsely disclosed that plot no.221 has been recorded in khata no.799 in his affidavit in Form 26 (Ext.43).

Similarly, in column 7(B) of the affidavit in Form 26, every candidate is required to furnish information about 'Details of immovable assets' of his own, his spouse, his HUF and his dependents. Under col.7(B)(iv) of the affidavit in Form 26, every candidate is required to furnish information in a tabular form about 'Residential Buildings (including apartment), its locations(s) and survey number(s), area (total measurement in

sq. ft.), built-up area (total measurement in sq. ft.), whether inherited property (Yes or No), date of purchase in case of self-acquired property, cost of property (in case of purchase at the time of purchase), any investment on the land by way of development, construction etc. and approximate current market value' of his own, his spouse, his HUF and his dependents. While mentioning the property in col.7(B)(iv) under the heading of 'Residential buildings' (including apartment), the Respondent has mentioned the flat number to be 'F/5' under 'City Shelter' so far as his column is concerned and in the column of his spouse, the said flat number has been mentioned to be '05', on the other hand, in the sale deed vide Ext.EM/2 under schedule 'B', the flat number has been reflected to be 'Flat No.05/E' situated in the ground floor of the multi-storied building of the complex in the name and style of 'City Shelter'. Thus, it is a confusing and misleading statement given by the Respondent in the affidavit in Form 26.

In column (11) of Part B of the affidavit, the Respondent is required to declare the abstract of the details given in (1) to (10) of Part A and in column (8)(i), he is to declare the purchase price of self-acquired immovable properties of himself and his spouse. The Respondent while declaring the

purchase price of self-acquired immovable property of his spouse has declared "NOT APPLICABLE". He has not declared the purchase price of the self-acquired properties by his spouse. He has also not declared the development/construction cost of immovable property after purchase by his spouse. The Respondent has also not declared in Part B column (8)(iii) about the approximate current price and the total value of self-acquired assets by his spouse. The Respondent has also admitted the same in his examination-in-chief.

The statement of the Respondent that mentioning of 'Not Applicable' inadvertently under the name of my spouse against the column nos.(8)(B)(I), (8)(B)(II) and (8)(B)(III) of Part-B of his affidavit in Form 26, does not create any serious confusion in the minds of the electorate of the Constituency and the same cannot be said to be suppression of information, is not acceptable.

In Para 7(B)(ii) sl. no.2 of the affidavit in Form 26 (Ext.43), though the Respondent has declared that his spouse is the owner of non-agricultural land in the District of Cuttack, Mouza- Oriya Bazar, Unit no.11, Khata no.41, Plot no.231, but the certified copy of the R.O.R. of Mouza- Cuttack Town, Unit no.11, Oriya Bazar, Khata no.41 marked as Ext.12 discloses that

the said Khata has been recorded in the name of one Jayanta Kumar Pattnaik, s/o- Goura Chandra Pattnaik, having Plot no.444 only and Plot no.231 has not been recorded in the said Khata no.41.

Declaration has been made in column 7(B)(iii), in the spouse column, regarding commercial building known as Metro Plaza-1, Dist: Cuttack, Mouza: Unit no.11, Khata no.126, 155, Plot nos.1278, 1280 and 1278/1460 and 1280/1461 whereas the certified copy of the R.O.R. of said Khata no.126 marked as Ext.13 discloses that Khata no.126, Plot no.1278, 1280 has been recorded in the name of Iswar Das Agarwal, s/o- Tarachand Agarwal, Maladevi Agarwal, w/o- Iswar Das Agarwal and not in the name of spouse of the Respondent.

The statement of the Respondent that he did not feel it necessary to mention Hal Khata No.180/3, Hal Plot No.1464/1604, 1460/1605 and Khata No.180/4 in his affidavit in Form 26 (Ext.43) under the heading of 'commercial building' in col. no.7(B)(iii) is not at all acceptable.

Though the Respondent in Para 7(B)(iv)(2) of his affidavit in Form 26 has declared about his ownership at Metro Satellite City, Mouza-Rudrapur, Khata no.345, Plot no.414, but the certified copy of R.O.R. of Mouza- Rudrapur, Khata no.345

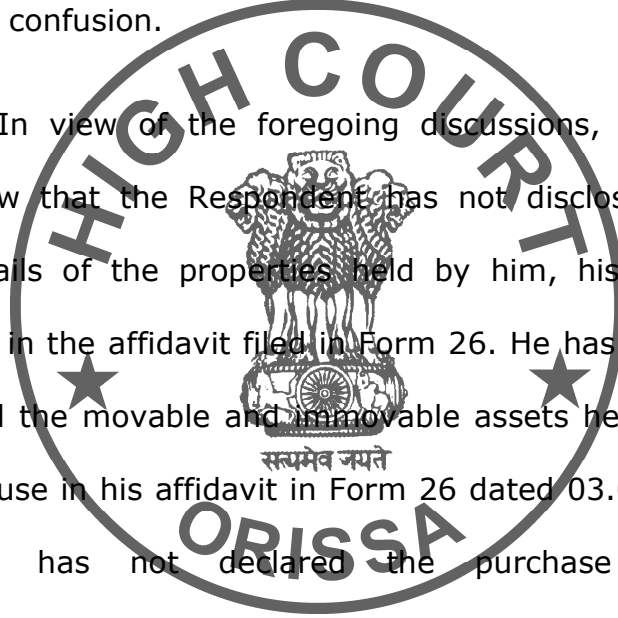
marked as Ext.16 discloses that Plot no.414 has not been recorded in the said Khata.

Even though according to the Respondent, the property i.e. Flat No.A108 in the 1st floor of 'Metro Satellite City' was allotted to him by the Company in lieu of his land given to the Company for development on sharing basis, in his affidavit in Form 26 (Ext.43), the Respondent has mentioned that this property was purchased and the date of purchase was 31.07.2017 and that the cost of the property at the time of purchase to be Rs.30,69,768/-, which is a false declaration.

The Respondent admits that his company, namely, M/s. Metro Builders (Orissa) Pvt. Ltd. had taken loans from ORHDC. It is the case of the Election Petitioner that the Respondent's company had taken huge amount of loans from ORHDC when the Respondent himself was the Managing Director of M/s. Metro Builders (Orissa) Pvt. Ltd. The Respondent has suppressed to disclose the above facts in the affidavit filed in Form 26. The finding of the learned trial Court in the judgment dated 29.09.2022, in which the Respondent was found guilty, is that the loan in question has been sanctioned upon the security of the personal guarantee, indemnity and assurance of the Respondent, of course the same

recorded in the name of the Respondent and it finds place in the column no.7(B)(ii) under the heading of "non-agricultural land" in the affidavit filed by the Respondent in Form 26. Therefore, on this aspect, the mere typographical error occurred in the name of the mouza typed as 'Patpur' in place of 'Patapur' cannot be a ground to hold that either the Respondent has suppressed anything in his affidavit or mentioned anything falsely or it has created any confusion.

In view of the foregoing discussions, I am of the humble view that the Respondent has not disclosed true and correct details of the properties held by him, his spouse and dependents in the affidavit filed in Form 26. He has not correctly disclosed all the movable and immovable assets held by himself and his spouse in his affidavit in Form 26 dated 03.04.2019. The Respondent has not declared the purchase price and development/construction cost of immovable properties of his spouse in the affidavit filed in Form 26. Of course, mentioning the name of mouza as 'Patpur' instead of 'Patapur' in Cuttack district in the affidavit filed by the Respondent in Form 26, in my humble opinion does not create any confusion at all. Thus, the issue nos.28, 30 and 32 are answered in favour of the Election Petitioner and against the Respondent. Issue no.29 is answered



in favour of the Respondent and against the Election Petitioner. In view of the pendency of Criminal Appeal filed by the Respondent against his conviction before this Court which relates to loans taken by his company from OHRDC, the issue no.31 is left unanswered.

14. **Issue Nos.18, 33, 34, 35, 36:-**

As issue nos.18, 33, 34, 35 and 36 are interlinked with each other, the same are being discussed and answered together. The issues are extracted herein below for ready reference:-

18. Whether the Respondent has filed the affidavit in the prescribed Form 26 as required under section 33A of the R.P. Act, 1951 read with Rule 4A of the Conduct of Election Rules, 1961?

33. Whether the result of the election has been materially affected insofar as it concerns the returned candidate/sole Respondent on account of the allegations made in the Election Petition or not?

34. Whether the Returning Officer has rightly and lawfully accepted the nomination of the sole Respondent or not?

35. Whether the sole Respondent has been declared duly elected as MLA from 90-Barabati Cuttack Assembly Constituency by securing lawful valid votes or not?

36. Whether the election of the Respondent from the 90-Barabati Cuttack Assembly Constituency is to be declared as void?

In view of my findings in respect of issue nos.1 to 3, 4 to 14, 17 and 21, 22 to 27 and 28, 30 and 32 in favour of the Election Petitioner, I hold the election petition to be maintainable in the eyes of law; the Election Petitioner has disclosed sufficient cause of action to file the election petition; the election petition is not liable to be dismissed under section 86(1) of the R.P. Act, 1951; the nomination papers filed by the Respondent were not in the prescribed Form 2B; the Returning Officer has illegally and improperly accepted the nomination papers of the Respondent violating the mandate of section 33 of the R.P. Act, 1951 read with Rule 4 of the 1961 Rules and the instructions issued by the Election Commission of India in exercise of power under Article 324 of the Constitution of India; the striking/deletion of PART-II of the nomination in Form 2B by the Respondent in pursuance to the instruction given in the prescribed nomination Form 2B renders his nomination liable for rejection; the Respondent has

not furnished all the required information in PART-III and PART-III A of nomination Form 2B; the defects as pointed out by the Election Petitioner regarding deletion of PART-II of nomination Form 2B as well as with respect to PART-III and PART-III A of nomination Form 2B are substantial defects; PART-III of Form 2B of the nomination papers filed by the Respondent was not in the prescribed Form; the column nos.(3) to (9) of PART-III A were not in the prescribed Form 2B; the nomination filed by the Respondent was not rightly accepted by the Returning Officer as prescribed under section 36(4) of the R.P. Act, 1951; the Returning Officer should have rejected the nomination of Respondent in exercise of power under section 36 of the R.P. Act, 1951 at the time of scrutiny of the nomination papers; the Respondent has not made proper and full declaration about the thirteen criminal cases pending against him in the affidavit filed in Form 26 and on account of the defects as pointed out by the Election Petitioner, the result of the election in so far as it concerns the returned candidate/Respondent has been materially affected and it cannot be said that the Respondent was duly elected. Accordingly, issue nos.18, 33, 34, 35 and 36 are also answered in favour of the Election Petitioner and against the Respondent.

15. **Issue nos.37 and 38:-**

As issue nos.37 and 38 are interlinked with each other, the same are being answered together. The issues are extracted herein below for ready reference:-

37. To what relief the Election Petitioner is entitled to?

38. Whether the Election Petitioner has made out a case and is entitled for any reliefs as sought for in his election petition or not?

In view of my findings in the previous paragraphs, ELPET No.06 of 2019 is allowed and it is declared that the election of the Respondent as M.L.A. from the 90-Barabati Cuttack Assembly Constituency held in April 2019 is void and the same is hereby set aside. Resultantly, in view of section 151A of R.P. Act, 1951, a casual vacancy to the said constituency has occurred.

Before parting, I deem it proper to place on record my deepest sense of appreciation for the able assistance rendered by Mr. Milan Kanungo, learned Senior Advocate being ably assisted by Mr. Gopal Agarwal, learned counsel and Mr. Bidyadhar Mishra, learned Senior Advocate being ably assisted by Mr. Tarini Kanta Biswal, all of them whole heartedly devoted their time and energy in the preparation of the case. The

proceeding got delayed on account of COVID-19 pandemic and then for the disposal of interim application filed by the Respondent for striking out the pleadings in some paragraphs of the election petition, with a further prayer to reject the election petition at the threshold, which was dismissed by me as per order dated 20.06.2022 which was later confirmed by the Hon'ble Supreme Court vide order dated 29.07.2022. The issues were framed on 14.10.2022 and the learned counsel fully cooperated for early disposal of the case. I express my gratefulness and indebtedness to the learned counsel from the bottom of my heart.

Pronounced in the open Court on this 4th Day of March, 2024.

Place: Cuttack
Date: 04.03.2024

.....
S. K. Sahoo, J.

List of witnesses examined on behalf of the Election Petitioner

- P.W.1 Debashish Samantaray
P.W.2 Dipankar Acharya
P.W.3 Sukanta Kumar Pradhan

List of witnesses examined on behalf of the Respondent

- R.W.1 Mohammed Moquim
- R.W.2 Santosh Kumar Lenka
- R.W.3 Prashanta Kumar Mohanty
- R.W.4 Sourjya Prakash Mohapatra
- R.W.5 Sofia Firdous

List of Exhibits marked on behalf of the Election Petitioner

- Ext.1 Downloaded copy of nomination paper No.05/LA/2019 dt.02.04.2019 along with the affidavit in Form No.26 dated 03.04.2019, downloaded on 28.06.2022 at 5.11 p.m.
- Ext.2 Downloaded copy of nomination paper No.02/LA/2019 dt.02.04.2019 along with the affidavit in Form No.26 dated 03.04.2019, downloaded on 28.06.2022 at 5.32 p.m.
- Ext.3 Downloaded copy of nomination paper No.03/LA/2019 dt.02.04.2019 along with the affidavit in Form No.26 dated 03.04.2019, downloaded on 28.06.2022 at 5.25 p.m.
- Ext.4 Downloaded copy of nomination paper No.04/LA/2019 dt.02.04.2019 along with the affidavit in Form No.26 dated 03.04.2019, downloaded on 28.06.2022 at 5.19 p.m.
- Ext.5 Certified copy of R.O.R. of Khata No.799 Mouza Unit No.13 Chandni Chowk

- Ext.6 Certified copy of R.O.R. of Khata No.519 Mouza Unit No.13 Chandni Chowk
- Ext.7 Certified copy of R.O.R. of Khata No.04-79 Mouza Cuttack Town Unit No.15 Choudhary Bazar
- Ext.8 Certified copy of R.O.R. of Khata No.04-80 Mouza Cuttack Town Unit No.15 Choudhary Bazar
- Ext.9 Certified copy of R.O.R. of Khata No.992 Mouza Cuttack Town Unit No.15 Choudhary Bazar
- Ext.10 Certified copy of R.O.R. of Khata No.03 Mouza Cuttack Town Unit No.15 Choudhary Bazar
- Ext.11 Certified copy of R.O.R. of Khata No.01 Mouza Cuttack Town Unit No.15 Choudhary Bazar
- Ext.12 Certified copy of R.O.R. of Khata No.41 Mouza Cuttack Town Unit No.11 Oriya Bazar
- Ext.13 Certified copy of R.O.R. of Khata No.126 Mouza Cuttack Town Unit No.11 Oriya Bazar
- Ext.14 Certified copy of R.O.R. of Khata No.179/193 Mouza Cuttack Town Unit No.12 Sutahat
- Ext.15 Certified copy of R.O.R. of Khata No.179/232 Mouza Cuttack Town Unit No.12 Sutahat
- Ext.16 Certified copy of R.O.R. of Khata No.345 of Mouza Rudrapur, District- Khurda
- Ext.17 Certified copy of F.I.R. No.149 dt.15.09.2018 of Purighat P.S., Cuttack corresponding to G.R. Case No.1722/2018 and the order sheet of G.R. Case No.1722/2018 pending in the Court of S.D.J.M.(S), Cuttack
- Ext.18 Certified copy of F.I.R. No.150 dt.11.09.2018 of Purighat P.S., Cuttack corresponding to G.R. Case No.1723/2018 along with the final form of G.R. Case

- No.1723/2018 pending in the Court of S.D.J.M.(S),
Cuttack
- Ext.19 Certified copy of F.I.R. No.75 dt.13.08.2012 of
Markat Nagar P.S., Cuttack corresponding to G.R.
Case No.1137/2012 and the order sheet of G.R. Case
No.1137/2012 pending in the Court of S.D.J.M.(S),
Cuttack
- Ext.20 Certified copy of F.I.R. No.69 dt.17.07.2012 of
Markat Nagar P.S., Cuttack corresponding to G.R.
Case No.1020/2012 and the order sheet of G.R. Case
No.1020/2012 pending in the Court of S.D.J.M.(S),
Cuttack
- Ext.21 Certified copy of F.I.R. No.113/2011 dt.22.09.2011
of Purighat P.S., Cuttack corresponding to G.R. Case
No.1168/2011 along with the final form of G.R. Case
No.1168/2011 of the Court of S.D.J.M.(S), Cuttack
- Ext.22 Certified copy of F.I.R. No.231/2010 dt.27.12.2010
of Madhupatna P.S., Cuttack corresponding to G.R.
Case No.1568/2010 and the order sheet of G.R. Case
No.1568/2010 pending in the Court of S.D.J.M.(S),
Cuttack
- Ext.23 Certified copy of F.I.R. and the order sheet of VGR
No.85/2012 pending before Special Judge, Vigilance,
Cuttack
- Ext.24 Certified copy of F.I.R. and the order sheet of VGR
No.83/2012 pending before Special Judge, Vigilance,
Cuttack
- Ext.25 Certified copy of F.I.R. and the order sheet of VGR
No.84/2012 pending before Special Judge, Vigilance,
Cuttack

- Ext.26 Certified copy of F.I.R. and entire order sheet of VGR No.34/2007 corresponding to T.R. No.16/2010 pending before Special Judge, Vigilance, Cuttack
- Ext.27 Certified copy of F.I.R. and entire order sheet of G.R. Case No.680/2012 (Balianta P.S. Case No.136 dated 24.09.2012) pending in the Court of J.M.F.C.(O), Bhubaneswar
- Ext.28 Certified copy of F.I.R. and entire order sheet of F.I.R./V.G.R. Case No.15 of 2011 pending in the Court of Special Judge (Vig.), Bhubaneswar
- Ext.29 Certified copy of F.I.R. and entire order sheet of F.I.R./V.G.R. Case No.07 of 2005 corresponding to T.R. Case No.01 of 2009 pending in the Court of Special Judge (Vig.), Bhubaneswar
- Ext.30 Certified copy of F.I.R. and entire order sheet of F.I.R./V.G.R. Case No.34 of 2007 corresponding to T.R. Case No.41 of 2013 pending in the Court of Special Judge (Vig.), Bhubaneswar and charge sheet no.08 dated 03.04.2013
- Ext.31 Certified copy of R.O.R. of Khata No.155-D1, Mouza-Cuttack Town, Unit No.11, Oriya Bazar
- Ext.32 Downloaded copy of the candidate detail along with the Nomination paper no.02 dated 02.04.2019 filed in Form 2B and the Affidavit in Form 26 of the Respondent along with the Certificate under section 65B of the Indian Evidence Act
- Ext.33 Downloaded copy of the candidate detail along with the Nomination paper no.03 dated 02.04.2019 filed in Form 2B and the Affidavit in Form 26 of the

- Respondent along with the Certificate under section 65B of the Indian Evidence Act
- Ext.34 Downloaded copy of the candidate detail along with the Nomination paper no.04 dated 02.04.2019 filed in Form 2B and the Affidavit in Form 26 of the Respondent along with the Certificate under section 65B of the Indian Evidence Act
- Ext.35 Downloaded copy of the candidate detail along with the Nomination paper no.05 dated 02.04.2019 filed in Form 2B and the Affidavit in Form 26 of the Respondent along with the Certificate under section 65B of the Indian Evidence Act
- Ext.32/1 to 32/3 Signatures of P.W.2 on Ext.32
- Ext.32/4 Certificate given by P.W.2 under section 65-B of the Indian Evidence Act on Ext.32
- Ext.32/5 The relevant document on Ext.32 showing the date of uploading of the affidavit
- Ext.32/6 Relevant portion showing the date of uploading of the affidavit in Ext.32
- Ext.33/1 to 33/3 Signatures of P.W.2 on Ext.33
- Ext.33/4 Certificate given by P.W.2 under section 65-B of the Indian Evidence Act on Ext.33
- Ext.33/5 The relevant document in Ext.33 showing the date of uploading of the affidavit
- Ext.33/6 Relevant portion showing the date of uploading of the affidavit in Ext.33
- Ext.34/1 Signatures of P.W.2 on Ext.34

to 34/3

Ext.34/4 Certificate given by P.W.2 under section 65-B of the Indian Evidence Act on Ext.34

Ext.34/5 The relevant document in Ext.34 showing the date of uploading of the affidavit

Ext.34/6 Relevant portion showing the date of uploading of the affidavit in Ext.34

Ext.35/1 Signatures of P.W.2 on Ext.35
to 35/3

Ext.35/4 Certificate given by P.W.2 under section 65-B of the Indian Evidence Act on Ext.35

Ext.35/5 The relevant document in Ext.35 showing the date of uploading of the affidavit

Ext.35/6 Relevant portion showing the date of uploading of the affidavit in Ext.35

Ext.36 Evidence affidavit of the Election Petitioner

Ext.36/1 Signatures of P.W.1 on Ext.36
To Ext.36/26

Ext.37 Affidavit evidence of Mr. Dipankar Acharya (P.W.2)

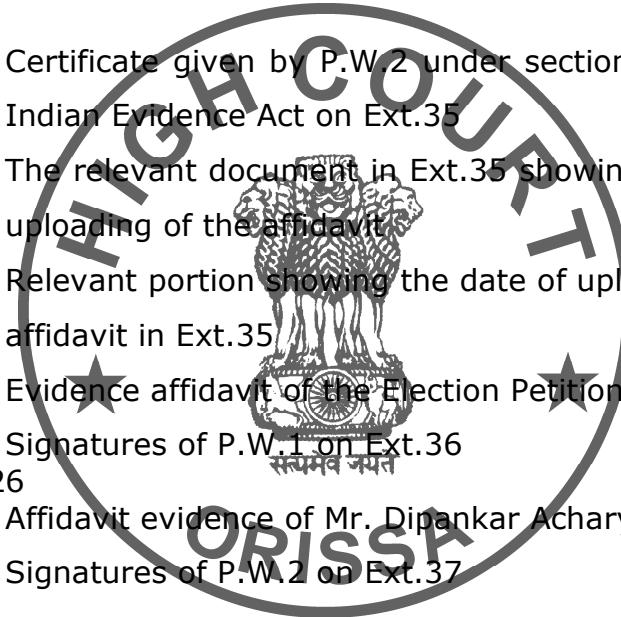
Ext.37/1 Signatures of P.W.2 on Ext.37
to 37/5

Ext.38 The guidelines by the way of handbook for the Returning Officer issued by the Election Commission of India

Ext.38/1 Chapter-5 under the heading of 'Nomination' of the hand book from page nos.69 to 97

Ext.38/2 Clause 5.5 at page 70 of Ext.38

Ext.38/3 Form 2B in Annexure-11 of Ext.38 at page 357 prescribed by the Election Commission of India



- Ext.39 The original nomination paper bearing No.02/LA/2019 dated 02.04.2019 filed by the Respondent in Form 2B
- Ext.40 The original nomination paper bearing No.03/LA/2019 dated 02.04.2019 filed by the Respondent in Form 2B
- Ext.41 The original nomination paper bearing No.04/LA/2019 dated 02.04.2019 filed by the Respondent in Form 2B
- Ext.42 The original nomination paper bearing No.05/LA/2019 dated 02.04.2019 filed by the Respondent in Form 2B
- Ext.38/4 Annexure-12 at pages 363 to 378 of Ext.38
- Ext.38/5 Clause 5.20.3 of Chapter-5 'Nomination' of Handbook of Returning Officer
- Ext.43 Affidavit dated 03.04.2019 filed by the Respondent in Form 26 (earlier marked as Y/1)
- Ext.44 Affidavit dated 03.04.2019 filed by the Respondent in Form 26 (earlier marked as Y/4)
- Ext.45 Affidavit dated 03.04.2019 filed by the Respondent in Form 26 (earlier marked as Y/7)
- Ext.46 Affidavit dated 03.04.2019 filed by the Respondent in Form 26 (earlier marked as Y/10)
- Ext.38/6 Paragraph 5.16.1 of Chapter-5 of Ext.38
- Ext.39/1 Plain paper affidavit dated 02.04.2019 filed by the Respondent along with Ext.39
- Ext.39/2 Checklist dated 02.04.2019 available along with Ext.39
- Ext.39/3 Xerox copy of the checklist dated 02.04.2019 available along with Ext.39

- Ext.39/4 The portion 'date, time and place', which is available below the 'signature of candidate' in Ext.39/2
- Ext.40/1 The plain paper affidavit dated 02.04.2019 of the Respondent filed along with Ext.40
- Ext.41/1 The plain paper affidavit dated 02.04.2019 of the Respondent filed along with Ext.41
- Ext.41/2 Checklist dated 02.04.2019 available along with Ext.41
- Ext.42/1 The plain paper affidavit dated 02.04.2019 of the Respondent filed along with Ext.42
- Ext.42/2 Checklist dated 02.04.2019 available along with Ext.42
- Ext.32/7 Downloaded and printed copy of Ext.32/5
- Ext.32/8 Relevant portion where it is mentioned 'Affidavit Uploaded: 2nd April 2019'
- Ext.33/7 Downloaded and printed copy of Ext.33/5
- Ext.33/8 Relevant portion where it is mentioned 'Affidavit Uploaded: 2nd April 2019'
- Ext.34/7 Downloaded and printed copy of Ext.34/5
- Ext.34/8 Relevant portion where it is mentioned 'Affidavit Uploaded: 2nd April 2019'
- Ext.35/7 Downloaded and printed copy of Ext.35/5
- Ext.35/8 Relevant portion where it is mentioned 'Affidavit Uploaded: 2nd April 2019'
- Ext.39/5 Downloaded and printed copy of nomination paper Ext.39
- Ext.40/3 Date and time and place which are appearing below the signature of candidate in Ext.40/2
- Ext.40/4 Downloaded and printed copy of nomination paper Ext.40

- Ext.41/3 The portion 'date and time and place' are appearing below the signature of candidate in Ext.41/2
- Ext.41/4 Downloaded and printed copy of nomination paper Ext.41
- Ext.42/3 The portion 'date and time and place' are appearing below the signature of candidate in Ext.42/2
- Ext.42/4 Downloaded and printed copy of nomination paper Ext.42
- Ext.43/1 Downloaded and printed copy of the affidavit Ext.43
- Ext.44/1 Downloaded and printed copy of the affidavit Ext.44
- Ext.45/1 Downloaded and printed copy of nomination paper Ext.45
- Ext.46/1 Downloaded and printed copy of the affidavit Ext.46
- Ext.47 The checklist dated 04.04.2019
- Ext.47/1 The relevant portion appearing below 'the signature of candidate' in Ext.47
- Ext.48 Certificate of encumbrances of mouza Rudrapur, khata no.345, plot no.414
- Ext.49 Certified copy of the judgment dated 29.09.2022 passed in T.R. Case No.1 of 2009 by the learned Special Judge (Vigilance), Bhubaneswar

List of Exhibits marked on behalf of the Respondent

- Ext.A The intimation given to the Respondent Mohammed Moquim in Format C-3 dated 02.04.2019 produced by the District Election Officer, Cuttack dated 21.10.2022.
- Ext.B 'Matrubhasa' dated 17.04.2019 produced by the District Election Officer, Cuttack dated 21.10.2022.
- Ext.B/1 The relevant declaration of Ext.B at page 8

- Ext.C 'Matrubhasa' dated 18.04.2019 produced by the District Election Officer, Cuttack dated 21.10.2022.
- Ext.C/1 The relevant declaration of Ext.C at page 3
- Ext.D 'The Prajatantra' dated 17.04.2019 produced by the District Election Officer, Cuttack dated 21.10.2022.
- Ext.D/1 The relevant declaration of Ext.D at page 8
- Ext.E Nomination paper of the Election Petitioner vide Sl. No.06/LA/2019 dated 02.04.2019 produced by the District Election Officer, Cuttack dated 21.10.2022.
- Ext.E/1 The affidavit in Form 26 dated 02.04.2019
- Ext.F Nomination paper of the Election Petitioner vide Sl. No.07/LA/2019 dated 02.04.2019 produced by the District Election Officer, Cuttack dated 21.10.2022.
- Ext.F/1 The affidavit in Form 26 dated 02.04.2019
- Ext.G Nomination paper of the Election Petitioner vide Sl. No.08/LA/2019 dated 02.04.2019 produced by the District Election Officer, Cuttack dated 21.10.2022.
- Ext.G/1 The affidavit in Form 26 dated 02.04.2019
- Ext.H Nomination paper of the Election Petitioner vide Sl. No.09/LA/2019 dated 02.04.2019 produced by the District Election Officer, Cuttack dated 21.10.2022.
- Ext.H/1 The affidavit in Form 26 dated 02.04.2019
- Ext.J The affidavit in Form 26 of the Election Petitioner dated 24.03.2014
- Ext.K Downloaded copy of the R.O.R. relating to Khata No.799, mouza Unit No.13- Chandini Chowk filed by the Election Petitioner on 29.06.2022.
- Ext.L Downloaded copy of the R.O.R. of Khata No.519, Plot No.221/3704, mouza Unit No.13, Chandini Chowk filed by the Election Petitioner on 29.06.2022.

- Ext.M Downloaded copy of R.O.R. relating to district Cuttack, mouza Patapur, Khata No.16-D1, plot no.111/1048 recorded in the name of Firdousia Bano, wife of the Respondent
- Ext.N Downloaded copy of R.O.R. relating to district Cuttack, mouza Patapur, Khata No.15-D1, Plot Nos.114, 116, 112, 113 recorded in the name of the Respondent
- Ext.P Downloaded copy of google map downloaded on 09.02.2023 showing the approached road to village Sandhapur and village Bidyadharpur via mouza Patapur from Trisulia square
- Ext.Q Downloaded copy of R.O.R. pertaining to Khata No.04-79 of Mouza- Cuttack Sahar, Unit No.15, Choudhury Bazar
- Ext.R Downloaded copy of the R.O.R. pertaining to Khata No.04-80 of Mouza- Cuttack Sahar, Unit No.15, Choudhury Bazar
- Ext.S Downloaded copy of the R.O.R. pertaining to Khata No.992 of Mouza- Cuttack Sahar, Unit No.15, Choudhury Bazar
- Ext.E/(1) The certificate of oath of the Election Petitioner
- Ext.T The certificate for receipt of oath issued by the Returning Officer to the Respondent relating to his taking of oath on 02.04.2019
- Ext.U The checklist of documents in connection with filing of nomination with respect to the nomination of the Election Petitioner vide Sl. No.06/LA/2019 (Ext.E)

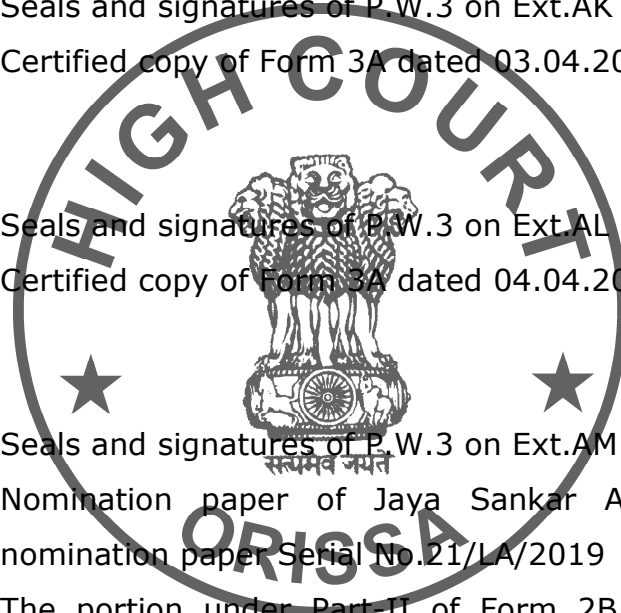
- Ext.V The checklist of documents in connection with filing of nomination with respect to the nomination of the Election Petitioner vide Sl. No.07/LA/2019 (Ext.F)
- Ext.G/2 The checklist of documents in connection with filing of nomination with respect to the nomination of the Election Petitioner vide Sl. No.08/LA/2019 (Ext.G)
- Ext.H/2 The checklist of documents in connection with filing of nomination with respect to the nomination of the Election Petitioner vide Sl. No.09/LA/2019 (Ext.H)
- Ext.W Copy of I.A. No.24 of 2020 filed by the Election Petitioner under Rule 10 of Chapter XXXIII of the Rules to regulate proceedings under R.P. Act and Rule 27(a) of Chapter VI of the Orissa High Court Rules
- Ext.W/1 First page of the first document appended to Ext.W is the 'candidate details' of the Website of the Election Commission of India is downloaded by me on 27.01.2020, which contains the heading 'Candidate details' having photograph of the Respondent
- Ext.W/2 The third page of the first document which is the downloaded copy of the first page of the affidavit in Form 26 dated 03.04.2019 filed by the Respondent
- Ext.W/3 First page of the first document appended to Ext.W is the 'candidate details' of the Website of the Election Commission of India is downloaded by me on 27.01.2020, which contains the heading 'Candidate details' having photograph of the Respondent
- Ext.W/4 The third page of the second document which is the downloaded copy of the first page of the affidavit in Form 26 dated 03.04.2019 filed by the Respondent

- Ext.W/5 First page of the first document appended to Ext.W is the 'candidate details' of the Website of the Election Commission of India is downloaded by me on 27.01.2020, which contains the heading 'Candidate details' having photograph of the Respondent
- Ext.W/6 The third page of the third document which is the downloaded copy of the first page of the affidavit in Form 26 dated 03.04.2019 filed by the Respondent
- Ext.W/7 First page of the first document appended to Ext.W is the 'candidate details' of the Website of the Election Commission of India is downloaded by me on 27.01.2020, which contains the heading 'Candidate details' having photograph of the Respondent
- Ext.W/8 The third page of the fourth document which is the downloaded copy of the first page of the affidavit in Form 26 dated 03.04.2019 filed by the Respondent
- Ext.Z I.A. No.23/2022 filed on behalf of the Election Petitioner
- Ext.W/9 The disclaimer certificate in Ext.W/1
- Ext.W/10 The disclaimer certificate in Ext.W/3
- Ext.W/11 The disclaimer certificate in Ext.W/5
- Ext.W/12 The disclaimer certificate in Ext.W/7
- Ext.E/2 Nomination paper of the Election Petitioner in Form 2B under Ext.E
- Ext.F/2 Nomination paper of the Election Petitioner in Form 2B under Ext.F
- Ext.G/3 Nomination paper of the Election Petitioner in Form 2B under Ext.G
- Ext.H/3 Nomination paper of the Election Petitioner in Form 2B under Ext.H

- Ext.AA Form 4 i.e. list of validly nominated candidates in the election in question prepared and published by the Returning Officer
- Ext.AB The copy of the election petition served through process of Court by special messenger upon the Respondent along with Court summon and copy of the deposit challan
- Ext.AB/1 The Court common appended to Ext.AB
- Ext.AB/2 The copy of deposit challan appended to Ext.AB
- Ext.AC The copy of the election petition sent by speed post to the Respondent along with Court summon and copy of the deposit challan
- Ext.AC/1 The Court summon appended to Ext.AC
- Ext.AC/2 The copy of deposit challan appended to Ext.AC
- Ext.AD The original election petition available in the Court record
- Ext.AD/1 The original challan appended to the original election petition in Court record
- Ext.Y The document submitted on behalf of the Returning Officer of 90-Barabati Cuttack Assembly Constituency by the District Election Officer in Form 2B i.e. the nomination paper of the Respondent bearing No.02/LA/2019 dated 02.04.2019
- Ext.Y/1 The affidavit of the Respondent in Form 26 dated 03.04.2019 along with the nomination paper of the Respondent bearing No.02/LA/2019 dated 02.04.2019
- Ext.Y/2 The affidavit of the Respondent dated 02.04.2019
- Ext.Y/3 The document submitted on behalf of the Returning Officer of 90-Barabati Cuttack Assembly Constituency

- by the District Election Officer in Form 2B i.e. the nomination paper of the Respondent bearing No.03/LA/2019 dated 02.04.2019
- Ext.Y/4 The affidavit of the Respondent in Form 26 dated 03.04.2019
- Ext.Y/5 The affidavit of the Respondent dated 02.04.2019
- Ext.Y/6 The document submitted on behalf of the Returning Officer of 90-Barabati Cuttack Assembly Constituency by the District Election Officer in Form 2B i.e. the nomination paper of the Respondent bearing No.04/LA/2019 dated 02.04.2019
- Ext.Y/7 The affidavit of the Respondent in Form 26 dated 03.04.2019
- Ext.Y/8 The affidavit of the Respondent dated 02.04.2019
- Ext.Y/9 The document submitted on behalf of the Returning Officer of 90-Barabati Cuttack Assembly Constituency by the District Election Officer in Form 2B i.e. the nomination paper of the Respondent bearing No.05/LA/2019 dated 02.04.2019
- Ext.Y/10 The affidavit of the Respondent in Form 26 dated 03.04.2019
- Ext.Y/11 The affidavit of the Respondent dated 02.04.2019
- Ext.AE Notification dated 28.03.2019 of the Chief Electoral Officer and Ex-officio Principal Secretary to Government, Home (Elections) Department published in Extraordinary Odisha Gazette in Form 1
- Ext.AF Public Notice dated 28.03.2019 inviting nominations from the candidates for 90-Barabati Cuttack Assembly Constituency
- Ext.AF/1 Seal and signature of P.W.3 on Ext.AF

- Ext.AG Certified copy of Form 3A dated 28.03.2019
- Ext.AG/1 Seal and signature of P.W.3 on Ext.AG
- Ext.AH Certified copy of Form 3A dated 29.03.2019
- Ext.AH/1 Seal and signature of P.W.3 on Ext.AH
- Ext.AJ Certified copy of Form 3A dated 30.03.2019
- Ext.AJ/1 Seal and signature of P.W.3
- Ext.AK Certified copy of Form 3A dated 02.04.2019
- Ext.AK/1
- to
- Ext.AK/4 Seals and signatures of P.W.3 on Ext.AK
- Ext.AL Certified copy of Form 3A dated 03.04.2019
- Ext.AL/1
- To
- Ext.AL/6 Seals and signatures of P.W.3 on Ext.AL
- Ext.AM Certified copy of Form 3A dated 04.04.2019
- Ext.AM/1
- To
- Ext.AM/7 Seals and signatures of P.W.3 on Ext.AM
- Ext.AN Nomination paper of Jaya Sankar Acharya vide nomination paper Serial No.21/LA/2019
- Ext.AN/1 The portion under Part-II of Form 2B where Jaya Sankar Acharya has been proposed by three electors
- Ext.AN/2 The portion of Part-V of Form 2B in which the nomination paper of Jaya Sankar Acharya vide Serial No.21/LA/2019 has been rejected
- Ext.AP Nomination paper of Jaya Sankar Acharya vide Serial No.22/LA/2019
- Ext.AP/1 The portion under Part-II of Form 2B where Jaya Sankar Acharya has not been proposed by any elector



- Ext.AP/2 The portion under Part-V of Form 2B in which the nomination paper of Jaya Sankar Acharya vide Serial No.22/LA/2019 has been rejected
- Ext.AQ Nomination paper of Jaya Sankar Acharya vide Serial No.23/LA/2019
- Ext.AQ/1 The portion under Part-II of Form 2B where Jaya Sankar Acharya has not been proposed by any elector
- Ext.AQ/2 The portion under Part-V of Form 2B in which the nomination paper of Jaya Sankar Acharya vide Serial No.23/LA/2019 has been rejected
- Ext.AR Nomination paper of Jaya Sankar Acharya vide Serial No.27/LA/2019
- Ext.AR/1 The portion under Part-II of Form 2B where Jaya Sankar Acharya has been proposed by ten electors
- Ext.AR/2 The portion under Part-V of Form 2B where the nomination paper of Jaya Sankar Acharya vide Serial No.27/LA/2019 has been accepted
- Ext.AS Nomination papers of Mr. Sriram Pandey vide nomination Serial No.24/LA/2019
- Ext.AS/1 The portion under Part-II of Form 2B where Mr. Sriram Pandey has been proposed by ten electors
- Ext.AS/2 The portion under Part-V of Form 2B in which the nomination paper of Mr. Sriram Pandey has been accepted as valid
- Ext.AS/3 Form 5 in which Mr. Sriram Pandey withdraw his nomination on 08.04.2019
- Ext.AT The nomination paper of Mr. Sriram Pandey vide Sl. No.25/LA/2019

- Ext.AT/1 The portion under Part-II of Form 2B where Mr. Sriram Pandey has been proposed by ten proposers
- Ext.AT/2 The portion under Part-V in which the nomination paper of Mr. Sriram Pandey has been accepted as valid
- Ext.AU The nomination paper of Mr. Deepak Kumar Mahanta vide Sl. No.26/LA/2019
- Ext.AU/1 The portion under Part-II of Form 2B where Mr. Deepak Kumar Mahanta has been proposed by four proposers
- Ext.AU/2 The portion under Part-V of Form 2B in which the nomination paper of Mr. Deepak Kumar Mahanta has been rejected
- Ext.AV Certified copy of Form 7A i.e. "list of contesting candidates" prepared by P.W.3 on 08.04.2019
- Ext.AV/1 Signature of P.W.3 in Form 7A
- Ext.AV/2 Signature of P.W.3 in Form 7A
- Ext.AV/3 Signature of P.W.3 in Form 7A
- Ext.AW Decision of the Returning Officer accepting the nomination paper of the Respondent in Part-V of Form 2B vide nomination Sl.No.02/LA/2019
- Ext.AW/1 Endorsement, seal, signature and date of P.W.3 on Ext.AW
- Ext.AX Original money receipt of Rs.10,000/- dated 29.03.2019 granted in favour of the Respondent Mohammed Moquim showing deposit by the Respondent for 90-Barabati-Cuttack Assembly Constituency.
- Ext.AY Photo copy of title page of Bank pass book of Federal Bank Ltd. bearing A/c. No.13770100085359 standing

in the name of Respondent Mohammed Moquim and Sk. Intekhab Alam.

- Ext.AZ Photo-copy of final voter list for the year 2019 of 90-Barabati-Cuttack Assembly Constituency (Part-70) showing the name and photograph of the Respondent at Sl.No.1112
- Ext.AZ/1 Relevant portion i.e. Sl. No.1112 in Ext.AZ
- Ext.BA Original Form 'B' issued by the President, Pradesh Congress Committee, Odisha to P.W.3 intimating the name of the Respondent as approved candidate of the Indian National Congress for 90-Barabati-Cuttack Assembly Constituency
- Ext.BB Original Form 'A' issued by Mukul Wasnik, General Secretary, Indian National Congress addressed to the Chief Electoral Officer, Odisha and P.W.3
- Ext.BC Photocopy of voter/identify card of the Respondent
- Ext.BD Photocopy of the PAN card of the Respondent
- Ext.BE Photocopy of the Aadhar card of the Respondent
- Ext.BF Photocopy of the provisional educational certificate of B.E. (Electrical) of the Respondent issued by Utkal University
- Ext.BG Photocopy of the mark sheet of B.E. (Electrical) of the Respondent issued by Utkal University
- Ext.BH Photocopy of the certificate of High School Certificate Examination issued by the Board of Secondary Education, Odisha of the Respondent
- Ext.BJ Original 'form of oath or affirmation' of the Respondent taken on 02.04.2019 at 11.28 a.m.
- Ext.BJ/1 The signature of the Respondent on Ext.BJ
- Ext.BJ/2 The seal and signature of P.W.3 on Ext.BJ

- Ext.T/1 Seal and signature of P.W.3 on Ext.T
- Ext.BK The original declaration dated 02.04.2019 made by the Respondent while submitting his photograph
- Ext.BK/1 The portion containing the signature, address, telephone number and date of the Respondent on Ext.BK
- Ext.BL The duplicate copy of the checklist dated 02.04.2019 handed over to the Respondent, which was received by him on 02.04.2019 at 11.45 a.m.
- Ext.BL/1 The portion containing the signature, date and seal of P.W.3 on Ext.BL
- Ext.BL/2 The portion containing the signature, date, time and place of the Respondent on Ext.BL
- Ext.BM Part VI of Form 2B i.e. the 'receipt of nomination and the notice of scrutiny' granted by P.W.3 on 02.04.2019 in favour of the Respondent with respect to nomination paper Sl.No.02/LA/19
- Ext.BM/1 The portion containing the signature, date and seal of P.W.3 appearing on Ext.BM
- Ext.BN Part VI similar to Ext.BM handed over to the Respondent on 02.04.2019 by P.W.3
- Ext.BN/1 The portion containing the signature, date and seal of P.W.3 appearing on Ext.BN
- Ext.BP Duplicate 'checklist of documents in connection with filing of nominations' dated 04.04.2019 granted by P.W.3 to the Respondent with respect to nomination papers Sl.Nos.02, 03, 04, 05/LA/2019/RO.
- Ext.BP/1 The signature of the Respondent in Ext.BP

- Ext.BQ Copy of letter of the Respondent dated 03.04.2019 enclosing therein the revised affidavit dated 03.04.2019
- Ext.BQ/1 The portion containing the signature of the Respondent on Ext.BQ
- Ext.BR Part-V of Form 2B in the 2nd set of nomination papers of the Respondent bearing Sl. No.03/LA/2019 i.e. the decision of the returning officer (P.W.3) accepting the nomination paper of the Respondent.
- Ext.BR/1 The signature, date and seal along with the endorsement of P.W.3 on Ext.BR.
- Ext.BS The photocopy of money receipt for Rs.10,000/- which is received in cash granted in favour of the Respondent Mohammed Moquim which is dated 29.03.2019 showing that it was issued from Book No.88 of 2019 bearing sl. no.0079343 towards security deposit by the Respondent for 90-Barabati Cuttack Assembly Constituency.
- Ext.BT The photocopy of title page of Bank pass book of Federal Bank Ltd. bearing A/C. No.13770100085359 standing in the name of Respondent Mohammed Moquim and Sk. Intekhab Alam.
- Ext.BU The photocopy of final voter list for the year 2019 of 90-Barabati-Cuttack Assembly Constituency (Part-70) wherein at sl.no.1112, the name and photograph of the Respondent appears.
- Ext.BU/1 Relevant portion i.e. sl.no.1112 on Ext.BU
- Ext.BV The Photocopy of Form 'A', which is the 'communication with regard to the authorized persons to intimate name of candidates set up by

recognized National party' dated 18.03.2019 of Indian National Congress

- Ext.BW The photocopy of Form 'B', which is the 'notice as to the name of the candidate set up by the political party' of the Indian National Congress for 90-Barabati-Cuttack Assembly Constituency
- Ext.BX The photocopy of voter identity card of the Respondent
- Ext.BY The photocopy of the PAN card of the Respondent bearing PAN No.ACZPM7427Q
- Ext.BZ The photocopy of the Aadhar card of the Respondent bearing No.455117173167
- Ext.CA The photocopy of the provisional educational certificate of the Respondent issued by Utkal University showing that the Respondent has passed B.E. (Electrical)
- Ext.CB The photocopy of the mark-sheet of B.E. (Electrical) issued by Utkal University issued in favour of the Respondent.
- Ext.CC The photocopy of the certificate of High School Certificate Examination issued by the Board of Secondary Education, Odisha showing that the date of birth of the Respondent is 3rd July 1965
- Ext.CD The duplicate of the checklist handed over to the Respondent with respect to his 2nd set of nomination papers bearing sl.no.03/LA/2019.
- Ext.CD/1 The portion containing signature, date and seal of P.W.3 on Ext.CD
- Ext.CD/2 Portion containing the signature of the Respondent on Ext.CD

- Ext.CE Part-VI of Form 2B i.e 'Receipt for nomination paper and notice of scrutiny' granted by P.W.3 on 02.04.2019 in favour of the Respondent with respect to his nomination sl. no.03/LA/2019.
- Ext.CE/1 Signature, date and seal of P.W.3 on Ext.CE
- Ext.CF Original authorization of the Respondent authorizing his daughter Ms. Sofia Firdous to attend the scrutiny of nominations on his behalf on 05.04.2019 at 11.00 a.m.
- Ext.CG Part-V of Form 2B in the 3rd set of nomination papers of the Respondent bearing sl. no.04/LA/2019 i.e. the decision of the returning officer (P.W.3) accepting the nomination paper of the Respondent.
- Ext.CG/1 The signature, date and seal along with the endorsement of P.W.3 on Ext.CG.
- Ext.CH The photocopy of money receipt for Rs.10,000/- which is received in cash granted in favour of the Respondent Mohammed Moquim which is dated 29.03.2019 showing that it was issued from Book No.88 of 2019 bearing sl. no.0079343 towards security deposit by the Respondent for 90-Barabati Cuttack Assembly Constituency.
- Ext.CJ The photocopy of title page of Bank pass book of Federal Bank Ltd. bearing A/c. No.13770100085359 standing in the name of Respondent Mohammed Moquim and Sk. Intekhab Alam.
- Ext.CK The photocopy of final voter list for the year 2019 of 90-Barabati-Cuttack Assembly Constituency (Part-70) wherein at sl.no.1112, the name and photograph of the Respondent appears.

- Ext.CK/1 Relevant portion i.e. sl.no.1112 on Ext.CK.
- Ext.CL The photocopy of Form 'A', which is the 'communication with regard to the authorized persons to intimate name of candidates set up by recognized National party' dated 18.03.2019 of Indian National Congress
- Ext.CM The photocopy of Form 'B', which is the 'notice as to the name of the candidate set up by the political party' of the Indian National Congress for 90-Barabati-Cuttack Assembly Constituency
- Ext.CN The photocopy of voter identity card of the Respondent
- Ext.CP The photo-copy of the PAN card of the Respondent bearing PAN No.ACZPM7427Q
- Ext.CQ The photocopy of the Aadhar card of the Respondent bearing No.455117173167
- Ext.CR The ★ photocopy of the ★ provisional educational certificate of the Respondent issued by Utkal University showing that the Respondent has passed B.E. (Electrical)
- Ext.CS The photocopy of the mark-sheet of B.E. (Electrical) issued by Utkal University issued in favour of the Respondent.
- Ext.CT The photocopy of the certificate of High School Certificate Examination issued by the Board of Secondary Education, Odisha showing that the date of birth of the Respondent is 3rd July 1965
- Ext.CU The duplicate of the checklist handed over to the Respondent with respect to his 3rd set of nomination papers bearing sl.no.04/LA/2019.

- Ext.CU/1 The portion containing signature, date and seal of P.W.3 on Ext.CU.
- Ext.CU/2 Portion containing the signature of the Respondent with date, time and place on Ext.CU.
- Ext.CV Part-VI of Form 2B i.e 'Receipt for nomination paper and notice of scrutiny' granted by P.W.3 on 02.04.2019 in favour of the Respondent with respect to his nomination sl. no.04/LA/2019.
- Ext.CV/1 Signature, date and seal of P.W.3 on Ext.CV
- Ext.CW Part-VI of Form 2B i.e 'Receipt for nomination paper and notice of scrutiny' granted by P.W.3 on 02.04.2019 handed over to the Respondent with respect to his nomination sl. no.04/LA/2019.
- Ext.CW/1 The portion containing the signature, date and seal of P.W.3 on Ext.CW
- Ext.CX Part-V of Form 2B in the 4th set of nomination papers of the Respondent bearing sl. no.05/LA/2019 i.e. the decision of the returning officer (P.W.3) accepting the nomination paper of the Respondent.
- Ext.CX/1 The signature, date and seal along with the endorsement of P.W.3 on Ext.CX.
- Ext.CY Part-VI of Form 2B i.e 'Receipt for nomination paper and notice of scrutiny' granted by P.W.3 on 02.04.2019 in favour of the Respondent with respect to his nomination sl. no.05/LA/2019.
- Ext.CY/1 The signature, date and seal along with the endorsement of P.W.3 on Ext.CY.
- Ext.CZ The photocopy of money receipt for Rs.10,000/- which is received in cash granted in favour of the Respondent Mohammed Moquim which is dated

29.03.2019 showing that it was issued from Book No.88 of 2019 bearing sl. no.0079343 towards security deposit by the Respondent for 90-Barabati Cuttack Assembly Constituency.

- Ext.DA The photocopy of title page of Bank pass book of Federal Bank Ltd. bearing A/c. No.13770100085359 standing in the name of Respondent Mohammed Moquim and Sk. Intekhab Alam.
- Ext.DB The photocopy of final voter list for the year 2019 of 90-Barabati-Cuttack Assembly Constituency (Part-70) wherein at Sl.No.1112, the name and photograph of the Respondent appears.
- Ext.DB/1 Relevant portion i.e. Sl.no.1112 on Ext.CK.
- Ext.DC The photocopy of Form 'A', which is the 'communication with regard to the authorized persons to intimate name of candidates set up by recognized National party' dated 18.03.2019 of Indian National Congress.
- Ext.DD The Photocopy of Form 'B', which is the 'notice as to the name of the candidate set up by the political party' of the Indian National Congress for 90-Barabati-Cuttack Assembly Constituency
- Ext.DE The photocopy of voter identity card of the Respondent
- Ext.DF The photocopy of the PAN card of the Respondent bearing PAN No.ACZPM7427Q
- Ext.DG The photocopy of the Aadhar card of the Respondent bearing No.455117173167
- Ext.DH The photocopy of the provisional educational certificate of the Respondent issued by Utkal

University showing that the Respondent has passed B.E. (Electrical)

- Ext.DJ The photo-copy of the mark-sheet of B.E. (Electrical) issued by Utkal University issued in favour of the Respondent.
- Ext.DK The photo-copy of the certificate of High School Certificate Examination issued by the Board of Secondary Education, Odisha showing that the date of birth of the Respondent is 3rd July 1965
- Ext.DL The duplicate of the checklist handed over to the Respondent with respect to his 4th set of nomination papers bearing Sl.No.05/LA/2019.
- Ext.DL/1 The portion containing signature, date and seal of P.W.3 on Ext.DL
- Ext.DL/2 Portion containing the signature of the Respondent with date, time and place on Ext.DL.
- Ext.DM Carbon copy of Part VI of Form 2B i.e. 'the receipt for nomination paper and notice of scrutiny' with respect to nomination Sl.No.05/LA/19 of the Respondent
- Ext.DM/1 Portion containing the signature, date and seal of P.W.3 on Ext.DM
- Ext.DN Part-VI of Form 2B i.e. 'Receipt for nomination paper and notice of scrutiny' granted by P.W.3 on 02.04.2019 handed over to the Respondent with respect to his nomination sl. no.05/LA/2019.
- Ext.DN/1 Portion containing the signature, date and seal of the P.W.3 on Ext.DN
- Ext.E/3 Decision of P.W.3 dated 05/04/2019 in Part-V of Form 2B accepting the nomination papers of the Election Petitioner bearing Sl.No.06/LA/2019

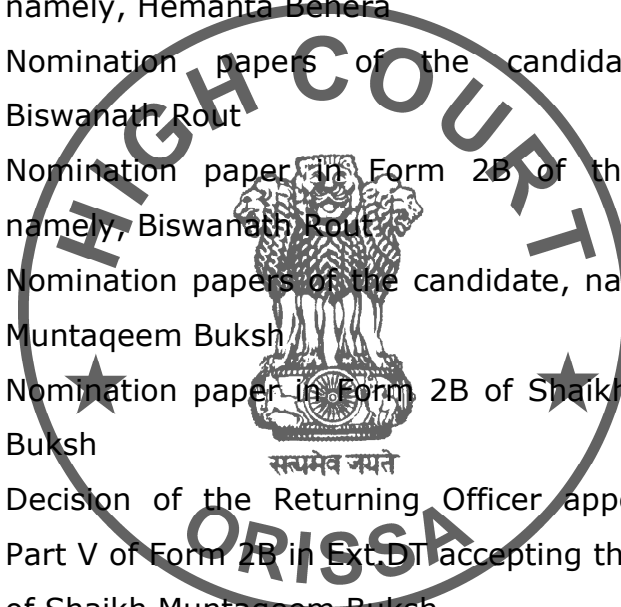
- Ext.E/4 Photocopy of final voter list for the year 2019 of 90-Barabati-Cuttack Assembly Constituency (Part No.180)
- Ext.E/5 Photocopy of final voter list for the year 2019 of 90-Barabati-Cuttack Assembly Constituency (Part No.107)
- Ext.E/6 Original Form 'A' dated 30.03.2019 issued by the President, Biju Janata Dal, Odisha to P.W.3
- Ext.E/7 Original Form 'B' issued by the President, Biju Janata Dal, Odisha to P.W.3
- Ext.E/8 Original money receipt for Rs.10,000/- granted in favour of the Election Petitioner dated 30.03.2019
- Ext.E/9 Photocopy of title page of Bank pass book of State Bank of India bearing A/c No.38362395438 standing in the name of the Election Petitioner
- Ext.E/10 Letter dated 7th March 2006 issued by Manoj Das Gupta, Registrar, Sri Aurobindo International Centre of Education, Pondicherry
- Ext.E/11 Photocopies of Income Tax returns of the Election series Petitioner for the Assessment Years 2018-19, 2017-18, 2016-17, 2015-16 and 2014-15
- Ext.E/12 Photocopy of the PAN card of the Election Petitioner
- Ext.E/13 Photocopy of voter identity card of the Election Petitioner
- Ext.E/14 Original declaration dated 02.04.2019 made by the Election Petitioner while submitting his photograph
- Ext.F/3 Decision of P.W.3 dated 05/04/2019 in Part-V of Form 2B accepting the nomination papers of the Election Petitioner bearing Sl. No.07/LA/2019.

- Ext.F/4 Photocopy of final voter list for the year 2019 of 90-Barabati-Cuttack Assembly Constituency (Part No.180)
- Ext.F/5 Photocopy of final voter list for the year 2019 of 90-Barabati-Cuttack Assembly Constituency (Part No.126)
- Ext.F/6 Photocopy of Form 'A' dated 30.03.2019 issued by the President, Biju Janata Dal, Odisha to P.W.3.
- Ext.F/7 Photocopy of Form 'B' issued by the President, Biju Janata Dal, Odisha to P.W.3
- Ext.F/8 Photocopy of money receipt for Rs.10,000/- granted in favour of the Election Petitioner dated 30.03.2019
- Ext.F/9 Photocopy of title page of Bank pass book of State Bank of India bearing A/c No.38362395438 standing in the name of the Election Petitioner
- Ext.F/10 Letter dated 7th March 2006 issued by Manoj Das Gupta, Registrar, Sri Aurobindo International Centre of Education, Pondicherry
- Ext.F/11 Photocopies of Income Tax returns of the Election series Petitioner for the Assessment Years 2018-19, 2017-18, 2016-17, 2015-16 and 2014-15
- Ext.F/12 Photocopy of the PAN card of the Election Petitioner
- Ext.F/13 Photocopy of voter identity card of the Election Petitioner
- Ext.G/4 Decision of P.W.3 dated 05/04/2019 in Part-V of Form 2B accepting the nomination papers of the Election Petitioner bearing Sl.No.08/LA/2019.
- Ext.G/5 Photocopy of final voter list for the year 2019 of 90-Barabati-Cuttack Assembly Constituency (Part No.180)

- Ext.G/6 Photocopy of final voter list for the year 2019 of 90-Barabati-Cuttack Assembly Constituency (Part No.107)
- Ext.G/7 Photocopy of Form 'A' the intimation dated 30.03.2019 issued by the President, Biju Janata Dal, Odisha to P.W.3
- Ext.G/8 Photocopy of Form 'B' issued by the President, Biju Janata Dal, Odisha to P.W.3
- Ext.G/9 Photocopy of money receipt for Rs.10,000/- granted in favour of the Election Petitioner dated 30.03.2019
- Ext.G/10 Form of oath or affirmation of the Election Petitioner without subscribing oath.
- Ext.G/11 Photocopy of title page of Bank pass book of State Bank of India bearing A/c. No. 38362395438 standing in the name of the Election Petitioner
- Ext.G/12 Letter dated 7th March 2006 issued by Manoj Das Gupta, Registrar, Sri Aurobindo International Centre of Education, Pondicherry
- Ext.G/13 Photocopies of Income Tax returns of the Election series Petitioner for the Assessment Years 2018-19, 2017-18, 2016-17, 2015-16 and 2014-15
- Ext.G/14 Photocopy of the PAN card of the Election Petitioner
- Ext.G/15 Photocopy of voter identity card of the Election Petitioner
- Ext.H/4 Decision of P.W.3 dated 05/04/2019 in Part-V of Form 2B accepting the nomination papers of the Election Petitioner bearing Sl.No.09/LA/2019.
- Ext.H/5 Photocopy of final voter list for the year 2019 of 90-Barabati-Cuttack Assembly Constituency (Part No.180).

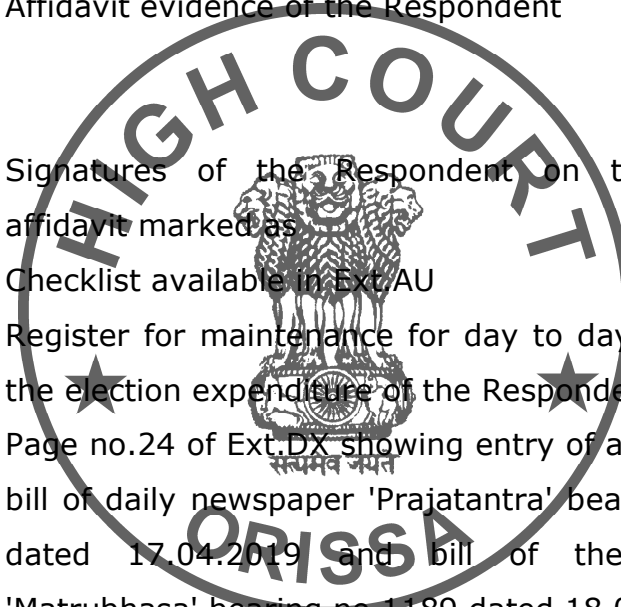
- Ext.H/6 Photocopy of final voter list for the year 2019 of 90-Barabati-Cuttack Assembly Constituency (Part No.44)
- Ext.H/7 Photocopy of Form 'A' the intimation dated 30.03.2019 issued by the President, Biju Janata Dal, Odisha to P.W.3
- Ext.H/8 Photocopy of Form 'B' issued by the President, Biju Janata Dal, Odisha to P.W.3
- Ext.H/9 Photocopy of money receipt for Rs.10,000/- granted in favour of the Election Petitioner dated 30.03.2019
- Ext.H/10 Photocopy of title page of Bank pass book of State Bank of India bearing A/c. No.38362395438 standing in the name of the Election Petitioner
- Ext.H/11 Letter dated 7th March 2006 issued by Manoj Das Gupta, Registrar, Sri Aurobindo International Centre of Education, Pondicherry
- Ext.H/12 Photocopies of Income Tax returns of the Election series Petitioner for the Assessment Years 2018-19, 2017-18, 2016-17, 2015-16 and 2014-15
- Ext.H/13 Photocopy of the PAN card of the Election Petitioner
- Ext.H/14 Photocopy of voter identity card of the Election Petitioner
- Ext.DP Nomination paper of the candidate, namely, Priyadarshan Pavel
- Ext.DP/1 Affidavit in Form 26 dated 29.03.2019 of Priyadarshan Pavel
- Ext.DP/2 Checklist dated 29.03.2019
- Ext.DP/3 Revised affidavit dated 30.03.2019 of Priyadarshan Pavel
- Ext.DP/4 Checklist dated 04.04.2019 showing receipt of the revised affidavit of Priyadarshan Pavel

- Ext.DP/5 Decision of the Returning Officer in part V of Form 2B accepting the nomination of Priyadarshan Pavel
- Ext.DQ Nomination papers of the candidate, namely, Seetal Kinnar
- Ext.DQ/1 Nomination paper in Form 2B of the candidate, namely, Seetal Kinnar
- Ext.DR Nomination papers of the candidate, namely, Hemanta Behera
- Ext.DR/1 Nomination paper in Form 2B of the candidate, namely, Hemanta Behera
- Ext.DS Nomination papers of the candidate, namely, Biswanath Rout
- Ext.DS/1 Nomination paper in Form 2B of the candidate, namely, Biswanath Rout
- Ext.DT Nomination papers of the candidate, namely, Shaikh Muntaqem Buksh
- Ext.DT/1 Nomination paper in Form 2B of Shaikh Muntaqem Buksh
- Ext.DT/2 Decision of the Returning Officer appearing under Part V of Form 2B in Ext.DT accepting the nomination of Shaikh Muntaqem Buksh
- Ext.AR/(i) Nomination paper in Form 2B of the candidate, namely, Jaya Sankar Acharya available in Ext.AR
- Ext.AS/(i) Nomination paper in Form 2B of Sriram Pandey available in Ext.AS
- Ext.AT/(i) Nomination papers in Form 2B of Sriram Pandey in Form 2B available in Ext.AT
- Ext.DU Downloaded and printed copy of the cover page of the Election Commission of India along with the



nomination in Form 2B and affidavit in Form 26 of the candidate Priyadarshan Pavel

- Ext.DU/1 The cover pages of Ext.DU
- Ext.DU/2 The portion showing the affidavit uploaded on 29th March 2019 in Ext.DU
- Ext.DU/3 The nomination Form 2B in Ext.DU
- Ext.DU/4 The revised affidavit in Form 26 dated 30.03.2019 appearing under Ext.DU
- Ext.DV The final result sheet in Form 20
- Ext.DW Affidavit evidence of the Respondent
- Ext.DW/1
to
- DW/128 Signatures of the Respondent on the evidence affidavit marked as
- Ext.AU/3 Checklist available in Ext/AU
- Ext.DX Register for maintenance for day to day accounts of the election expenditure of the Respondent.
- Ext.DX/1 Page no.24 of Ext.DX showing entry of advertisement bill of daily newspaper 'Prajatantra' bearing No.2930 dated 17.04.2019 and bill of the newspaper 'Matrubhasa' bearing no.1189 dated 18.04.2019
- Ext.DX/2 Page no.26 of Ext.DX showing entry of advertisement bill of daily newspaper 'Matrubhasa' bearing no.1189 dated 18.04.2019.
- Ext.DX/3 Page no.32 of Ext.DX showing entry of the advertisement bill of MBC TV bearing bill No.MHV/039/2019-20 dated 23.04.2019
- Ext.DY Voucher no.173 i.e. the bill of the news paper The Prajatantra' amounting to Rs.34,951/-



- Ext.DY/1 Voucher no.174 i.e. the bill of the news paper 'Matrubhasa' amounting to Rs.16,544/-.
- Ext.DY/2 Voucher no.219 i.e. the tax invoice of the channel MBC TV bearing invoice no.MHV/039/2019-20 dated 23.04.2019 amounting to Rs.10,620/-
- Ext.DY/3 Voucher no.220 i.e. the telecast certificate issued by MBC TV towards declaration of criminal cases pending against the Respondent on 19.04.2019, 20.04.2019 and 21.04.2019 on TV channel
- Ext.DY/4 Voucher no.221 i.e. part of the telecast certificate issued by MBC TV towards declaration of criminal cases pending against the Respondent on 19.04.2019, 20.04.2019 and 21.04.2019
- Ext.DZ Original Form 21E 'return of election' under Rule 64 published on 24.05.2019 by the Returning Officer declaring the Respondent as elected to fill the seat to the Odisha Legislative Assembly from 90-Barabati Cuttack Assembly Constituency.
- Ext.EA Form 8 'appointment of election agent' in which the Respondent appointed Mr. Shakil Khan as his election agent
- Ext.EB Form 8 'appointment of election agent' in which the Respondent appointed Shaikh Intekhab Alam as his additional election agent
- Ext.EC Certified copy of the intimation given by the Special Judge, Vigilance, Cuttack dated 14.02.2023 regarding transmission of the case records of VGR No.18 of 1991 to the Court of Sonali Zavita, BBSR vide DB No.380 dt.24.04.2019 of the Court of ACJM, Cuttack.

- Ext.ED First Original Bank Passbook of Federal Bank Ltd., Bajrakabati Road Branch, Cuttack bearing Savings Account No.13770100031593
- Ext.ED/1 Second Original Bank Passbook of Federal Bank Ltd., Bajrakabati Road Branch, Cuttack bearing Savings Account No.13770100031593
- Ext.EE First Original Bank Passbook of State Bank of India, Main Branch, Collectorate Compond, Chandinichowk, Cuttack bearing Savings Account No.10861745745
- Ext.EE/1 Second Original Bank Passbook of State Bank of India, Main Branch, Collectorate Compond, Chandinichowk, Cuttack bearing Savings Account No.10861745745
- Ext.EF Certified copy of the ROR with respect to 'Dist: Cuttack Mouza: Patpur, Khata No.15-D1 Plot No.114, 116, 112, 113' which stands recorded in name of the Respondent
- Ext.EG Certified copy of the ROR with respect to 'Dist: Cuttack Mouza: Patpur Khata No.16-D1 Plot No.111/1048' which stands recorded in the name of Firdousia Bano, the spouse of the Respondent
- Ext.EH Certified copy of the registered sale deed bearing No.3458 dated 11.04.2011 with respect to Plot No.220 under Khata No.799 for an area of Ac.0.013 dec out of its total area Ac.0.130 dec and Ac.0.004 dec from Plot No.221 under Khata No.48 out of its total area Ac.0.014 dec, total area purchased Ac.0.017 dec. of Unit-13, Chandinichowk, Cuttack purchased from one Sayed Ijad Ali on 11.04,2011 for a consideration of Rs.6,00,000/- by the Respondent

- Ext.EJ Certified copy of the registered sale deed No.794/1998 executed by Benudhar Sahoo, Nibarana Sahoo, S/o- Ramachandra Sahoo in favour of Sri Purna Chandra Dutta
- Ext.EK Certified copy of the registered sale deed No.795/1998 executed, by Benudhar Sahoo, Nibarana Sahoo, S/o- Ramachandra Sahoo in favour of Smt. Basanti Mallick
- Ext.EL Certified copy of the registered power of attorney bearing No.503/1999 executed by Sri Purna Chandra Dutta and Smt. Basanti Mallick in favour of M/s City Trade Arcade Pvt. Ltd. represented through the Respondent as its Managing Director
- Ext.EM Certified copy of registered sale deed bearing No.6038 dated 19.06.2007
- Ext.EM/1 Certified copy of registered sale deed bearing No.5104 dated 19.06.2007
- Ext.EM/2 Certified copy of registered sale deed bearing No.6039 dated 19.06.2007
- Ext.EM/3 Certified copy of registered sale deed bearing No.6041 dated 19.06.2007
- Ext.EM/4 Certified copy of registered sale deed bearing No.5102 dated 19.06.2007
- Ext.EM/5 Certified copy of registered sale deed bearing No.5110 dated 19.06.2007
- Ext.EM/6 Certified copy of registered sale deed bearing No.3427 dated 19.06.2007
- Ext.EM/7 Certified copy of registered sale deed bearing No.5111 dated 19.06.2007

- Ext.EM/8 Certified copy of registered sale deed bearing No.6040 dated 19.06.2007
- Ext.EM/9 Certified copy of registered sale deed bearing No.5103 dated 19.06.2007
- Ext.EM/10 Certified copy of registered sale deed bearing No.3426 dated 19.06.2007
- Ext.EM/11 Certified copy of registered sale deed bearing No.5101 dated 19.06.2007
- Ext.EN Certified copy of the registered sale deed No.170/2007 executed by the Respondent on 10/01/2007 on behalf of M/s City Trade Arcade Pvt. Ltd., Sri Purna Chandra Dutta and Smt. Basanti Mallick in favour of Sk. Safiur Rahman
- Ext.EP Certified copy of the registered sale deed No.1663/2012 executed by Sk. Safiur Rahman on 12/03/2012 in favour of Mrs. Firdousia Bano, the spouse of the Respondent
- Ext.EQ Certified copy of the registered sale deed bearing No.3405/2015 executed by Sima Nafis on 29/08/2015 in favour of the Respondent with respect to 'Dist: Cuttack, Mouza: Unit-13, Chandinichowk, Khata No.519, Plot No.221/3704' area Ac.0.040 dec. for consideration of Rs.20,00,000/-
- Ext.ER Certified copy of the registered sale deed bearing No.5083/2006 dated 28/09/2006 executed by Smt. Snigdha Mohapatra and Smt. Jayalaxmi Mohapatra through the Respondent being their power of attorney holder vide registered general power of attorney bearing No.192 dated 19.04.1997, in favour of the Respondent and in favour of Sri Peeyush Dhari

Mohanty with respect to 'Metro Riverview Complex, Mouza: Cuttack Town Unit-15, Khata No.3 & 1 Plot No.4 & 47 Unit No.OS-01 Ground & 1st Floor' situated in the Commercial Building for consideration of Rs.24,13,650/-

- Ext.ES Certified copy of the registered sale deed bearing No.2087/2007 dated 02/05/2007 executed by Smt. Snigdha Mohapatra and Smt. Jayalaxmi Mohapatra through the Respondent being their power of attorney holder vide registered general power of attorney bearing No.192 dated 19.04.1997, in favour of the spouse of the Respondent Mrs. Firdousia Bano, with respect to 'Metro Riverview (Pent House No.1, 6th Floor), Dist: Cuttack Mouza: Unit-15 Cuttack Town, Khata No.3, 1 Plot No.4, 47' situated in the Residential Building for consideration of Rs.11,11,360/-
- Ext.ET Certified copy of the registered power of attorney bearing No.192 dated 19.04.1997 executed by Smt. Snigdha Mohapatra and Smt. Jayalaxmi Mohapatra in the favour of the Respondent being the Managing Director of M/s. Metro Builders (Orissa) Pvt. Ltd.
- Ext.EU Certified copy of the registered Hibanama bearing No.3833 executed by S. Khalilullah on 19/07/1983 in favour of the spouse of the Respondent Mrs. Firdousia Bano, with respect to 'Dist: Cuttack, Mouza: Odia Bazar Unit 11, Khata No.41, Plot No. 231' valued at Rs.10,000/-
- Ext.EV Certified copy of the registered power of attorney bearing No.67/1996 executed on 16/02/1996 by

Iswar Das Agrawal S/o- Tarachand Agrawal, Mala Debi Agrawal W/o- Iswar Das Agrawal, Bikas Kumar Bharalawala S/o- Ratan Kumar Bharalawala and Suresh Kumar Bharalawala S/o- Rameswarlal Bharalawala with respect to Khata No.155 Plot Nos.1278/1480 and Plot No.1280/1461 total area Ac.0.232 dec and Khata No.126 Plot Nos.1278 and 1280 total area Ac.0.210 dec situated at Cuttack Town Unit No.11, Odia Bazar, Town/Dist.: Cuttack in favour of the Respondent

Ext.EW

Certified copy of the second registered power of attorney bearing No.476/2007 executed on 04/05/2007 by Suresh Kumar Bharalawala S/o Rameswarlal Bharalawala for rectification of Plot No.1278/1480 of Khata No.155 (corresponding to new Khata No.180/4) as Plot No.1278/1460 of Khata No.155 (corresponding to new Khata No.180/4) situated at Cuttack Town Unit No.11, Odiabazar, Town/Dist.: Cuttack in favour of the Respondent

Ext.EX

Certified copy of the registered sale deed bearing No.388/2007 dated 22/01/2007 executed by Iswar Das Agrawal S/o- Tarachand Agrawal, Mala Debi Agrawal W/o- Iswar Das Agrawal, Bikas Kumar Bharalawala S/o- Ratan Kumar Bharalawala and Suresh Kumar Bharalawala S/o- Rameswarlal Bharalawala through the Respondent being their power of attorney holder in favour of the spouse of the Respondent Mrs. Firdousia Bano, with respect to 'Metro Plaza-I, Dist: Cuttack Mouza: Unit-11, Khata No.126, 155 Plot No.1278, 1280 & 1278/1460 &

1280/1461 (Shop No. Gd. Floor: 13, 14, 15, 1st Floor: 13, 14, 15 & 16 & 13A, 14A & 15A)' situated in the Commercial Building namely Metro Plaza-I for consideration of Rs.22,51,844/-

Ext.EY Certified copy of the registered power of attorney bearing No.1014/2001 dated 04/12/2001 executed by the legal heirs of Ramachandra Prusty, Laxmidhar Prusty namely Santilata Prusty W/o- Late Laxmidhar Prusty, Srikanta Prusty S/o- Late Laxmidhar Prusty, Sabitri Prusty W/o- Late Rama Chandra Prusty, Mayadhar Prusty S/o Late Rama Chandra Prusty and Bansidhar Prusty S/o- Late Rama Chandra Prusty in favour of the Respondent with respect to the property situated at Mouza Rudrapur in Khordha district Khata No.345 Plot No.414 area Ac.3.13 dec.

Ext.EZ Certified copy of the registered sale deed bearing No.11053/2006 dated 31/10/2006 executed by Santilata Prusty W/o- Late Laxmidhar Prusty, Srikanta Prusty S/o- Late Laxmidhar Prusty, Sabitri Prusty W/o- Late Rama Chandra Prusty, Mayadhar Prusty S/o Late Rama Chandra Prusty and Bansidhar Prusty S/o- Late Rama Chandra Prusty through the Respondent being their power of attorney holder in favour of the Respondent and one Peeyush Dhari Mohanty with respect to the property situated at Mouza Rudrapur in Khordha district Khata No.345 Plot No.414 area Ac.3.13 dec.

Ext.FA Affidavit evidence of Santosh Kumar Lenka (R.W.2)

Exts.FA/1

- to FA/25 Signatures of Santosh Kumar Lenka appearing at every pages of the evidence affidavit
- Ext.FB Affidavit evidence of Prashanta Kumar Mohanty (R.W.3)
- Exts.FB/1
- to FB/40 Signatures Prashanta Kumar Mohanty appearing at every pages of the evidence affidavit
- Ext.FC Affidavit evidence of Sourjya Prakash Mohapatra (R.W.4)
- Exts.FC/1
- to FC/6 Signatures Sourjya Prakash Mohapatra appearing at every pages of the evidence affidavit
- Ext.FD Evidence on affidavit filed by R.W.5 Sofia Eirdous
- Exts.FD/1
- to FD/16 Signatures of R.W.5 Sofia Eirdous appearing at every pages of the evidence affidavit
- Ext.FE Certified copy of the order dated 19.10.2022 passed by this Court in I.A. No.1657 of 2022 arising out of CRLA No.880 of 2022
- Ext.FF Downloaded copy of the order dated 22.09.2023 passed by the Hon'ble Supreme Court in Special Leave Petition (Criminal) Diary No.(S).35931 of 2023
- Ext.FG Certified copy of the order dated 02.08.2023 in W.P.(C) (PIL) No.24052 of 2023
- Ext.FG/1 Certified copy of the order dated 18.08.2023 in W.P.(C) (PIL) No.24052 of 2023
- Ext.FH News paper publications made in 'Matrubhasha' on 16.04.2019
- Ext.FH/1 News paper publications made in 'Matrubhasha' on 17.04.2019

Ext.FH/2 News paper publications made in 'Matrubhasha' on
18.04.2019

.....
S. K. Sahoo, J.

Orissa High Court, Cuttack
The 4th March 2024/RKMishra

