

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

ELECTION PETITION No.14 of 2019

ORDER:

This Election Petition is filed by Dr.Nagam Janardhan Reddy, who lost the election, under Sections 30, 33(A), 34, 80, 80A, 81, 83, 84, 100(1)(b)(d) and 101 of the Representation of the People Act, 1951 (for short, the R.P. Act) read with Rules made thereunder to Regulate the Trial of Election Petitions under the R.P.Act issued by the High Court of Telangana, seeking to (a) declare the election of the first respondent - Sri Marri Janardhan Reddy from 81 - Nagarkurnool Assembly Constituency, Nagarkurnool District, Telangana State, declared as such on 11.12.2018, as void and set aside the same; (b) declare that the petitioner is elected candidate from 81 - Nagarkurnool Assembly Constituency, Nagarkurnool District, Telangana State; and (c) award the costs of this Election Petition from the first respondent.

2) The brief facts of the case are that the Election Commission of India notified to conduct the General Elections to the Telangana Legislative Assembly in 2018 including that of the

election to 81 - Nagarkurnool Assembly Constituency, Nagarkurnool District. The petitioner contested as one of the candidates from 81 - Nagarkurnool Assembly Constituency to the Telangana Legislative Assembly. As per the election schedule, polling was held on 07.12.2018. Totally 15 candidates contested from 81-Nagarkurnool Assembly Constituency. The first respondent herein is one of the candidates contested in the elections from the said Constituency and he was declared to have been elected from the 81-Nagarkurnool Assembly Constituency by a majority of 54,354 votes and respondent Nos.2 to 14 are the other contestants in the said election.

3) It is stated that the petitioner was the official candidate put up by the Indian National Congress and the first respondent was the nominee of Telangana Rashtra Samithi. The candidates, who contested in the election and the votes secured (including postal ballots) by each of them are as under:

Sl.No	Name	Party	Votes secured
1.	Marri Janardhan Reddy	Telangana Rashtra Samithi	102493
2.	Dr.Nagam Janardhan Reddy	Indian National Congress	48139

3.	Anuganti Raju	Nationalist Congress Party	431
4.	Neddanori Dilipa Chary	Bharatiya Janatha Party	3923
5.	Baki Renuka	Bahujan Samaj Party	1507
6.	Velijala Glemma	Praja Swaraj Party	2153
7.	Dhanala Vengala Rao Naidu	Shiv Sena	260
8.	Bahaddhur Srinivas	Bahujana Left Party	523
9.	K.T.Menno Simon	Samajwadi Party Forward Bloc	5545
10.	Athapu Chandra Sway	Independent	341
11.	Kondakindi Jagadeeswar Reddy	Independent	642
12.	Gaddam Vijay	Independent	775
13.	Beesam Gopal	Independent	275
14.	Mogga Anil Kumar	Independent	300
15.	Bijja Sampath Kumar	Independent	351
16.	NOTA	None of the above	923

4) It is stated that the declaration of the election of the first respondent by the Returning Officer from 81-Nagarkurnool Assembly Constituency has to be set aside for the following reasons:

- (i) The first respondent has failed to comply with the provisions regarding the submission of nomination prescribed under the R.P.Act, Conduct of Election Rules, 1961 and orders made thereunder by the Election Commission; and
- (ii) The nomination paper accepted by the Returning Officer was incomplete, not disclosing relevant

materials required under law and defective of substantial nature for the purpose of Section 33 of the R.P. Act.

5) As per Section 9A of the R.P. Act, a person shall be disqualified, if and for so long as there subsists a contract entered into by him in the course of his trade or business with the appropriate Government, for the supply of goods, to or for the execution of works undertaken by that Government. Article 191 of the Constitution also deals with disqualification of membership of a Legislative Assembly, as per which, other than the disqualifications therein, if he is so disqualified by or under any law made by the Parliament.

6) It is further stated that the wife of the first respondent, Mrs.Marri Jamuna Rani, holds the shares of a private limited company viz., M/s. Sri Kakatiya Industries (India) Pvt. Ltd. (hereinafter referred to as 'Kakatiya Industries'). It is submitted that the said Kakatiya Industries has entered into a contract with the Rural Water Supply and Sanitation Department, Government of Telangana, for manufacture, supply and delivery of HDPE

pipes anywhere in Telangana State for Intra-Village Network under Mission Bhagiratha. The said contract was subsisting even on the date of submission of the nomination by the first respondent.

7) As per Section 9A of the R.P. Act, referred to above, since there exists a contract entered into by the first respondent with the Government, first respondent is disqualified for being chosen as a Member of the Legislative Assembly of the State of Telangana. The acceptance of the nomination of such a disqualified person is improper, untenable and illegal and thus, the election of the first respondent is void and liable to be set aside.

8) The term "disqualified" meant by the R.P. Act, is disqualified for being chosen as, and for being Member of the Legislative Assembly under the provisions of the Chapter III and on no other ground. The object for incorporating the above said provision is that the candidates must be free to perform their duties without personal motives being attributed to them and

also to maintain the purity of the Legislature and to avoid conflicts between their duty and interest.

9) It is further stated that the shareholding pattern of the aforesaid company would show that the spouse of the first respondent holds major shares worth Rs.90,000/- in Kakatiya Industries and the same is evident from the affidavit of the spouse of the first respondent filed along with the nomination under Form-26 and she is one of the Promoters/Directors of the company since its incorporation, as per the records available on the website of the Ministry of the Corporate Affairs. The categorical statement of the first respondent in his Form-26 is that his wife holds shares worth Rs.90,000/- in Kakatiya Industries, whereas, the certified copies obtained from the R.O.C/Assistant Registrar of Companies, Telangana, Hyderabad, reveals that Smt. Marri Jamuna Rani @ M. Jamuna Reddy actually holds shares worth Rs.40,90,000/-, which is much higher than the amounts mentioned in the share column of the Affidavit filed along with Form-26.

10) As can be seen from the information obtained from R.O.C/Assistant Registrar of Companies, Telangana, Hyderabad, with regard to Kakatiya Industries generated on 31.12.2018 from MGT-7, dated 31.03.2017, and another certified copy generated on 16.01.2019 from MGT-7-27122018, Smt. Marri Jamuna Rani @ M.Jamuna Reddy, who is a Director in the said company, holds 4,09,000 equity shares worth Rs 40,90,000/-. However, the very same certified copy of Form MGT-7 27122018, discloses that M/s. J.C. Brothers Holding Pvt.Ld., (hereinafter referred to as 'J.C. Brothers') in which the first respondent is one of the Promoters/Directors, is holding equity shares of 19,49,000 each worth Rs.10/- *i.e.*, worth Rs.1,94,90,000 in Kakatiya Industries, but, the said information was not disclosed by the first respondent in his Form-26, and the same is willfully suppressed to avoid disqualification.

11) It is further submitted that the first respondent is the promoter and one of the Directors of J.C Brothers, which is the major shareholder of Kakatiya Industries. The petitioner obtained the aforesaid information from the website of the Ministry of the

Corporate Affairs. This would show that the first respondent has got an active role in Kakatiya Industries and thus he has interest in the subsisting contract of the said company with Government of Telangana, whereas, the certified copies of Form MGT-7, obtained from the R.O.C./ Assistant Registrar of Companies, Telangana, Hyderabad, with regard to J.C Brothers generated on 16.01.2019 and another certified copy of Form AOC-4-01012019 show that the equity shares of Sri. Marri Janardhan Reddy, S/o. Jangi Reddy Marri, Sri.Marri Venkat Reddy, S/o. Jangi Reddy Marri, Smt. Marri Jamuna Reddy @ Jamuna Rani, D/o. Yadagiri Reddy, Smt.Marri Madhumathi, D/o. Mohan Reddy Pochampalli residential address being H.No.8-2-293/82/A, Plot No.1249/A, Road No.62, Amrutha Mansion, Jubilee Hills, Shaikpet, Hyderabad-500033, Telangana State, are holding 2,500 equity shares @ Rs.10/- each worth Rs.25,000/- and the same has been mentioned in the share column of Affidavit Form-26. Further, J.C. Brothers in which the first respondent is the Promotor/Director is holding 19,49,000 equity shares, each worth Rs.10/-, which comes to Rs.1,94,90,000/-. Though J.C. Brothers

is holding a major share in Kakatiya Industries, the same has been suppressed to hide the active role of the first respondent in the subsisting contract with the appropriate Government in order to avoid disqualification at the time of scrutiny. The Ministry of Corporate Affairs (R.O.C) represented by the Assistant Registrar of Companies/Office of Registrar of Companies, Telangana, Hyderabad, also issued documents pertaining to holding of the shares by the first respondent and his family in J.C Brothers, which is a family concern of the first respondent and incidentally the first respondent and his wife and other family members are shareholders, who invested in Kakatiya Industries. Thus, the acceptance of the nomination of such a disqualified person is improper and illegal and thereby the election of the first respondent is void and liable to be set aside.

12) It is further stated that over and above the disqualification of the first respondent under Section 9A of the Act, he deliberately concealed the fact of having a contract with the Government. The first respondent also did not disclose other required information to be submitted by a candidate in

accordance with the provisions of the R.P. Act and the Rules, especially, in view of the directions of the Hon'ble Supreme Court. Therefore, the nomination submitted by the first respondent without disclosing the relevant facts ought not to have been accepted by the Returning Officer.

13) It is further stated that the column (9B) of Form 26 deals with the details of the contracts entered by the candidate or his spouse or dependents with the appropriate Government and any public company or companies, and sub clause (f) thereof pertains to the contracts entered into by the private companies in which the candidate or spouse or dependent hold shares. However, in the said 9(B) column, the first respondent has mentioned "NIL". In fact, as stated above, the spouse of the first respondent, Mrs.Marri Jamuna Rani is having a major share in Kakatiya Industries and the said company is having a contractual relationship with the Government of Telangana. Moreover, the major shareholder of Kakatiya Industries is J.C Brothers and the first respondent is the Promoter/Director of the latter company. Thus, J.C Brothers has a vital role in Kakatiya Industries.

Therefore, the information furnished in Column (9B)(f) of Form 26 as "NIL" is nothing but non-disclosure of the relevant details of the contracts entered into by the private company, in which, the first respondent and his spouse hold shares, with the Government.

14) The aforesaid non-compliance of the mandatory requirements were brought to the notice of the Returning Officer by the petitioner at the time of scrutiny of the Nominations under Section 36 of the R.P. Act and the petitioner had also filed a detailed objection with respect to the acceptance of nomination of the first respondent by the Returning Officer. But, the Returning Officer has not taken any action and accepted the nomination of the first respondent improperly. Therefore, the petitioner again filed a representation before the Returning Officer seeking to furnish the grounds for overruling the objection and the reasons for accepting the nomination of the first respondent. The Returning Officer has given a reply stating that in view of the provisions of 6.10.(iv) of the Hand Book of Returning Officer, if

an affidavit is filed by the candidate, it should not be rejected merely for the reason of containing false or defective information.

15) Though the affidavit filed by the first respondent was supposed to be rejected for contravening Sections 33 and 34 of the R.P. Act, the Returning Officer overruled the objections raised by the petitioner and improperly and illegally accepted the nomination of the first respondent and allowed him to contest in the election. The nomination paper of the first respondent was therefore false and cryptic and the same was nugatory as required by the R.P. Act, the Rules and orders made thereunder. Since there was no valid nomination in terms of the provisions of the Act, the nomination submitted by the first respondent is invalid, void and inoperative and should not have been accepted. What is contemplated as "nomination" under the R.P. Act and the Conduct of Election Rules and orders of the Election Commission issued thereunder is a valid nomination. No nomination, which is invalid for any reason whatsoever, can be accepted by the Returning Officer, irrespective of whether he is aware of the same or not, and the same will remain as void in the eye of law. In

view of the same, the nomination paper submitted by the first respondent was invalid and the acceptance of the same was improper. Thus, there was improper acceptance of an invalid nomination submitted by the first respondent in relation to 81-Nagarkurnool Assembly Constituency, which materially affected the result of the election from that constituency.

16) It is further submitted that basing on the application given by the petitioner to the Public Information Officer, office of Chief Engineer-II, Mission Baghiradha Hyderabad, Government of Telangana, the said Public Information Officer provided the documents, which establish the very fact that Kakatiya Industries is in the list of companies which are supplying HDPE/PVC pipes as on 05.01.2019 and also indicates that on 08.10.2018 and 27.10.2018, supply-orders were given to Kakatiya Industries, which clearly indicates that the first respondent and his wife have intentionally suppressed the very fact of doing Government contracts, which disqualifies the first respondent from filing nomination.

17) It is further stated that the Election Commission has given a format of the affidavit to be submitted along with the nomination and later, the affidavit as has been incorporated in the Rules, has to be complied with as it is and not otherwise. The Hon'ble Supreme Court has considered the question whether there was substantial compliance in disclosing requisite information in the affidavits filed by the candidate along with the nomination and whether non-disclosure of the requisite information on account of the fact that the candidate had failed to give details of the property owned by him or his spouse or non-disclosure of particulars of the dues to the Government would materially affect the result of the election or not.

18) When the Rules necessitate filing of an affidavit in the prescribed format disclosing all the relevant information of the contesting candidates, such as, his antecedents, educational qualifications, assets and liabilities and details of movable and immovable assets, liabilities and dues to the public institutions and Government, subsisting contracts with appropriate Government, the said information has to be compulsorily

furnished by the candidate. It is for that purpose, in view of the direction issued by the Hon'ble Supreme Court, Rule 4-A was incorporated in the Conduct of Election Rules, 1961. This was introduced for the purpose of enabling the voter to understand the credentials of the candidate to whom he has to vote in the election. Any false information or non-disclosure of the relevant materials stated in Form No. 26 would be fatal and such nomination cannot be considered as a valid nomination as required by the R.P. Act and the Rules. Therefore, it is clear from the particulars that there is non-disclosure of material facts in the nomination submitted by the first respondent and it cannot be treated as valid nomination and acceptance of such invalid nomination was improper and illegal.

19) Right to know about the candidate and his credentials is a fundamental, statutory and constitutional right of the voter and if any of the candidate to the election does not furnish such information in his/her nominations, that will certainly affect the result, as the voters are exercising their right without knowing the credentials of the candidates.

20) It is further stated that the first respondent consciously omitted to disclose in the affidavit filed by him along with nomination that in J.C Brothers, he is the promoter and one of the Directors and the said company holds major share in Kakatiya Industries, in which the spouse of the first respondent is a major shareholder and one of the Directors and that the latter company has a subsisting contract with the Government of Telangana. Thus, the affidavit in prescribed format submitted without disclosing the above information is an invalid one and acceptance of the same by the returning officer was improper and illegal.

21) It is further stated that the election of the first respondent herein and the declaration to that effect made by the Returning Officer on 11.12.2018 from 81-Nagarkurnool Assembly Constituency is therefore liable to be declared as void and the election has to be set aside and the petitioner has to be declared as elected from the said constituency.

22) The first respondent filed a written statement denying the averments made in the affidavit filed in support of the petition and *inter alia* contending that he has filed his nomination in

accordance with the procedure prescribed under the R.P.Act, Conduct of Election Rules, 1961, and also in accordance with the orders of the Election Commission; that the first respondent has furnished the information as required under Section 33 (A) of the R.P. Act and under Form-26 and that the Returning Officer has accepted his nomination only after thoroughly verifying all the required documents. It is further stated that the first respondent has won the election with a huge majority of 54,354 votes and the petitioner is not in a position to accept the same since he had earlier won six times as a Member of Legislative Assembly; that the petitioner has lost the elections due to the fact that he was never accessible to the general public and never had a ground level knowledge of the practical issues faced by the public in general and therefore, the people of the constituency have rejected him and that the present Election Petition is nothing but an attempt to defeat the peoples' mandate.

23) It is further stated that the first respondent, after winning the election in 2014, has taken up several developmental activities in his five years tenure, for which, the voters of the constituency

have given him another chance in 2018, that too, with a huge majority of 54,354 votes. It is further stated that the people in the constituency or the opposition party have never tried to object the first respondent during the course of election and the petitioner has come up with the present petition with unclean hands and with false and misleading allegations to defeat the peoples' mandate/choice. It is further stated that the first respondent is a respectful member of the society and is involved in political and social works with growing popularity and the petitioner could not tolerate the same and therefore, he is trying to defame him by making false and irrelevant allegations against him.

24) It is further stated that the office of the Chief Electoral Officer, Telangana *vide* its Memo No.2732 dated 12.10.2018 has issued a Circular stating that Form-26 has been amended *vide* Ministry of Law & Justice Notification No.H.11019(4)/2018-Leg.II, dated 10th October, 2018, as per the directions of the Hon'ble Supreme Court in the judgments in Election Petition No.784 of 2015 (Lok Prahari Vs. Union of India & Others) and Election Petition No.536 of 2011 (Public Interest Foundation &

Ors. Vs. Union of India & Anr.) with regard to criminal antecedents of contesting candidates. Section 33(A) of the R.P. Act states that, a candidate shall, apart from any information which he is required to furnish, under this Act or the rules made there under, in his nomination paper delivered under sub-Section (1) of Section 33 shall also furnish the information as to whether he is accused of any offence or he has been convicted of any offence and sentenced to imprisonment for one year or more.

25) It is further stated that the first respondent, in the course of his trade and business, has not entered into contract with the Government for supply of goods to, or for the execution of any works undertaken by the Government and as such, disqualification under Section 9(A) of the R.P. Act is not applicable to him and that Article 191 of the Constitution of India would not apply to him.

26) It is further stated that the wife of the first respondent was holding only 9000 shares worth Rs.90,000/- only, out of Rs.5,93,40,000/- in Kakatiya Industries, which constitutes a miniscule of 00.0015% of the total shares. Therefore, the

contention of the petitioner that the first respondent owned the company- Kakatiya Industries, is absolutely false, fabricated and created by the petitioner for the purpose of filing the present Election Petition.

27) The first respondent has admitted that in Form-26, it was declared that his wife was holding shares worth Rs.90,000/- in Kakatiya Industries and that the certified copy of Form No.MGT-7 obtained from ROC/Assistant Registrar of Companies, Telangana, reveals that Smt. Marri Jamuna Rani has shares worth Rs.40,90,000/-. However, the petitioner has not mentioned in the affidavit filed in support of the Election Petition that Form No.MGT-7 relied upon by the petitioner pertains to the period from 01.04.2017 to 31.03.2018. It is further stated that the wife of the first respondent has sold 4,00,000 shares @ Rs.10/- each to Mr.M.Ventak Reddy, who is the brother of the first respondent, and the same was approved by the said company on 16.04.2018 by way of a Resolution, and that the consideration was credited into her account. Since the said transaction took place in April, 2018, the same will be reflected in Form No.MGT-7 for the period

from 01.04.2018 to 31.03.2019 to be filed by the company and that the due date for filing annual returns for the said financial year was November, 2019. It is further stated that the wife of the first respondent tendered her resignation to the post of Director of Kakatiya Industries *vide* letter dated 20.09.2018 and the same was accepted by the Board of Directors, and the same is evident from Form No.DIR-12. The Registrar of Companies has accepted the same and incorporated it in the Company Master Data. The petitioner has deliberately made wild and erratic allegations against the first respondent and his spouse with a motive to mislead this Court and to file the present Election Petition.

28) It is further stated that in Form-26, the first respondent has declared the details of his shareholding in J.C. Brothers. Furthermore, one Y. Hemachandra is the Executive Director of Kakatiya Industries, and he is the In-charge of the affairs of the said company and that neither the first respondent nor his wife are involved in the day-to-day activities of the said company.

29) It is further stated that the petitioner is treating two different entities i.e., J.C. Brothers and Kakatiya Industries, as

one, which is neither legal nor permissible. Furthermore, though in Form-26 the spouse of the first respondent has declared her shareholding in Kakatiya Industries, she has accidentally omitted to mention the details of the contract entered into by Kakatiya Industries, with the Government of Telangana, which is not a disqualification under Section 9A of the R.P. Act.

30) It is further stated that J.C. Brothers has no role in the day-to-day activities of Kakatiya Industries and that the Executive Director of Kakatiya Industries has also nothing to do with J.C. Brothers, and as such, the allegations made by the petitioner does not hold any water.

31) It is further stated that the first respondent has provided all the details as sought for under Form-26 and has not suppressed any relevant information whatsoever, and that the allegations made by the petitioner are only for the purpose of filing the Election Petition and to mislead this Court. Furthermore, he has won the election with a thumping majority of 54,354 votes, and the petitioner, who is rejected by the peoples' mandate, is now making false allegations in order to mislead this Court and is

attempting to defeat the peoples' mandate given in favour of the first respondent owing to the good work taken up by the first respondent in developing the constituency.

32) Based on the above pleadings, this Court, on 29.04.2022, has framed the following issues for trial:

1. Whether the 1st Respondent is disqualified from being chosen as a member of the Telangana Legislative Assembly on account of deliberate concealing/suppressing correct information/particulars and furnishing false, incorrect, incomplete and misleading information/particulars in the Affidavit in Form 26, submitted by him under Rule 4-A of the Conduct of Election Rules, 1961 read with Section 33-A of the Representation of the Peoples Act 1951 ?
2. Whether the 1st respondent is disqualified from being chosen as a Member of the Telangana Legislative Assembly under the provisions of the Representation of the People Act, 1951, more particularly Section 9A ?

3. Whether the nomination of the 1st respondent was improperly accepted by the 15th Respondent in contravention of Sections 9A, 33, 33-A and 36 of the Representation of the People Act, 1951 read with Rule 4-A of the Conduct of Election Rules, 1961?
 4. Whether the petitioner is entitled to be declared as the duly elected member of the Telangana Legislative Assembly from the 81-Nagarkurnool Assembly Constituency in the General Elections conducted on 07.12.2018 ?
 5. To what relief?
- 33) On behalf of the petitioner, he got himself examined as P.W.1 and got marked Exs.A.1 to A.13.
 - 34) On behalf of the first respondent, he got himself examined as R.W.1 and also examined his brother - Sri M. Venkat Reddy as R.W.2 and got marked Exs.R.1 to R.8.
 - 35) This Court *vide* orders dated 17.06.2022, 26.10.2022 and 17.04.2023, has appointed Sri Mangari Rajender, a Retired District Judge, as Commissioner to record the cross-examination of P.W.1,

R.W.1 and R.W.2 respectively. Pursuant to the said orders, the Commissioner has recorded the cross-examination of P.W.1, R.W.1 and R.W.2 and submitted the same to this Court.

36) Sri C.V. Mohan Reddy, learned Senior Counsel representing Sri M. Karthik Pawan Kumar, learned counsel for the petitioner, and Sri D.Prakash Reddy, learned Senior Counsel representing Sri A.Kranti Kumar Reddy, learned counsel for respondent No.1,.

37) Sri C.V. Mohan Reddy, learned Senior Counsel appearing for the petitioner, while reiterating the averments made in the affidavit, has contended that the petitioner is a well-known public figure and politician, who was elected as MLA from the Nagarkurnool Assembly Constituency for six times *i.e.*, in 1985, 1994, 1999, 2004, 2009 and 2012; he has also held various ministerial positions in the erstwhile State of Andhra Pradesh for nine years and held the portfolios of Medical & Health, Excise, Forest, Civil Supplies and Panchayat Raj & Rural Development Departments, apart from other departments.

38) Learned Senior Counsel has further contended that the first respondent is a businessman and politician, belonging to the ruling TRS Party, and he was elected as MLA from the Nagarkurnool Assembly Constituency in 2014 and that he and his family members have direct and indirect interest in J.C Brothers, Kakatiya Industries and other business entities.

39) Learned Senior Counsel has further stated that Form 26 Affidavit filed by the first respondent (Ex.A-2) along with his nomination in the said election was invalid, incomplete and contained false information, particularly, in relation to the shares held by his wife- M Jamuna Rani in Kakatiya Industries, the shares held by J.C. Brothers and the contracts subsisting between Kakatiya Industries and the Government of Telangana. Therefore, the petitioner filed objections and representation dated 20.11.2018 (Exs.A-7 and A-8 respectively) under Section 36 of the R.P. Act before the 15th respondent to reject the nomination of the first respondent; thereafter, the 15th respondent addressed letter dated 20.11.2018 (Ex.A-9) stating that in view of clause 6.10(iv) of the Hand Book of the Returning Officers, the nomination filed by

the first respondent cannot be rejected on the ground that Form 26 filed by him contains false or defective information; that clause 6.10(iv) of the Hand Book of the Returning Officers has no relevance whatsoever and therefore, the nomination of the first respondent was improperly accepted by the 15th respondent, in contravention of Sections 9A, 33, 33-A and 36 of the R.P. Act read with Rule 4-A of the Conduct of Election Rules, 1961.

40) Learned Senior Counsel has further stated that Form 26 submitted by the first respondent is invalid, incomplete and misleading since the first respondent furnished incorrect information, relating to the shareholding of his wife- Smt. M.Jamuna Rani in Kakatiya Industries, in paragraph 7A(iii) as well as the information, relating to the details of contracts entered into by private companies in which he himself and his spouse hold shares, in paragraph 9B(f). It is further contended that J.C. Brothers was incorporated on 12.12.2011; that the said company is owned by the first respondent and that the wife, brother and sister-in-law of the first respondent are the shareholders of the said company, holding 2500 shares each. It is

further stated that Kakatiya Industries was incorporated on 06.02.2015; that J.C. Brothers, the brother and wife of the first respondent and three others are its shareholders; that J.C.Brothers holds 19,49,000 shares worth Rs.1,94,90,000/- in Kakatiya Industries; that Kakatiya Industries entered into contracts with the Government of Telangana for manufacture, supply and delivery of HDPE Pipes, which is subsisting as on the date of filing of the nomination by the first respondent; that as per Ex.A.13, the wife of the first respondent holds 409000 shares in Kakatiya Industries from 01.04.2017 to 31.03.2019; that she sold 400000 shares to Sri M.Venkat Reddy on 15.04.2019 and therefore, the information furnished by the first respondent in Form 26 that the wife of the first respondent holds 9000 shares is false. Learned Senior Counsel further states that even assuming that the wife of the first respondent holds only 9000 shares in Kakatiya Industries and the information provided by the first respondent in Paragraph 7A(iii) of Form 26 is correct, he is still liable for disqualification for providing incomplete and incorrect particulars in paragraph 9B(f) of Form 26, which relates to details

of contract entered into by private companies in which the candidate or spouse or dependants hold shares; that the first respondent deliberately with a *mala fide* motive of avoiding disqualification stated "NIL" against paragraph 9B(f) even though he indirectly holds shares in J.C. Brothers and his wife directly holds shares in Kakatiya Industries, which had subsisting contract with the Government of Telangana as on the date of filing nomination by respondent No.1. It is further stated that the first respondent himself admitted in the written statement that he omitted to mention in Form 26 that Kakatiya Industries had entered into contracts with the Government of Telangana and also to provide such details and that Sri M.Venkat Reddy (R.W.2) in his cross-examination has admitted that Kakatiya Industries had entered into contracts with the Government of Telangana.

41) Learned Senior Counsel further contended that non-disclosure of information under paragraph 9B(f) amounts to corrupt practice falling under the heading "undue influence" as defined under Section 123(2) of the R.P.Act, and therefore, the first respondent is liable to be disqualified under Section 100 of

the R.P. Act. Learned Senior Counsel further states that the contracts of the first respondent entered with the Government were subsisting as on the date of filing of his nomination and that he deliberately suppressed the details relating to the same in Form 26, and therefore, the first respondent is disqualified from being chosen as a Member of Telangana Legislative Assembly under Section 9A of the R.P.Act.

42) Learned Senior Counsel further contended that the term "NIL" as indicated by the first respondent in Paragraph 9B(f) of Form 26 amounts to non-disclosure of relevant information as well as disclosure of false and misleading information and on this ground alone, the first respondent is liable to be disqualified.

43) Learned Senior Counsel further contended that it is well settled that every voter has the elementary right to know the full particulars of a candidate, who has to represent him in the Legislative Assembly and such a right is paramount.

44) In support of the said contentions, the learned Senior Counsel appearing for the petitioner has referred to various

provisions *viz.*, Sections 9A, 33, 33-A, 36, 123(2) and 100 of the R.P. Act read with Rule 4-A of the Conduct of Election Rules, 1961 and relied upon the following judgments of the Hon'ble Supreme Court in *Peoples Union for Civil Liberties v. Union of India*¹, *Resurgence India v. Election Commission of India*², *Kisan Shankar Kathore v. Arun Dattatray Sawant*³, *Public Interest Foundation v. Union of India*⁴, *Krishnamoorthy v. Siva Kumar*⁵, *Lok Prahari v. Union of India*⁶, *S. Rukmini Madegowda v. State Election Commission*⁷ and *Satish Ukey v. Devendra Gangadhar Rao Fadnavis*⁸ and the judgment dated 11.03.2022 passed by this Court in E.P.No.15 of 2019.

45) Per contra, Sri D.Prakash Reddy, learned Senior Counsel representing Sri A.Kranti Kumar Reddy, learned counsel for respondent No.1, while refuting the allegations made by the petitioner in the election petition & rejoinder and by reiterating

¹ 2003 (4) SCC 399

² 2014 (14) SCC 189

³ 2014 (14) SCC 162

⁴ 2019 (3) SCC 224

⁵ 2015 (3) SCC 467

⁶ 2018 (4) SCC 699

⁷ 2022 SCC Online SC 1218

⁸ 2019 (9) SCC 1

his contentions in the written statement, has advanced the following submissions:

46) As regards the issue relating to shares, it is submitted that though the first respondent was holding 9000 shares worth Rs.90,000/- in Kakatiya Industries, the same constitute only 00.15% of the total shares held by the said company; that Exs.A.5 and A.13, which were relied upon by the petitioner to state that wife of the first respondent was holding 4,09,000 shares worth of Rs.40,90,000 in Kakatiya industries, are the annual returns filed by Kakatiya Industries for the period from 01.04.2017 to 31.03.2018 and that petitioner in his affidavit filed in support of the Election Petition, deliberately did not mention that Form No.MGT-7 relied upon by him pertains to the aforesaid Financial Year, which includes the transactions/shareholdings prior to 31.03.2018 only.

47) It is further submitted by the learned Senior Counsel for respondent No.1 that the wife of the first respondent had sold 4,00,000 shares to Mr. M.Venkat Reddy (R.W.2), which was approved by the Company on 16.04.2018 by way of a Resolution

(Ex.R.3) and a duly stamped Form No.SH-4 and has received the consideration of Rs.43,00,000/- into her account; and that therefore the allegation of the petitioner that the wife of the first respondent was holding shares worth of Rs.40,90,000/- as on the date of filing nomination and not Rs.90,000/- as mentioned in Form-26 is false. However, it is stated the said transaction having been taken place in the month of April, 2018, the same would be reflected in Form No.MGT-7 from 01.04.2018 to 31.03.2019 filed by the Company.

48) Learned Senior Counsel for the first respondent further submits that though the case of the petitioner is that transfer of shares by wife of the first respondent was noted to have been taken place on 15.04.2019 in Ex.A.13, in the cross-examination of R.Ws.1 and 2, it is categorically stated that it was a mistake and taking advantage of the same, the petitioner has raised the allegation that wife of the first respondent was holding 409000 shares (worth Rs.40,90,000/-) and not 9000 shares (worth Rs.90,000/-) as declared in Form 26. It is further submitted that though it is argued on behalf of the petitioner that there was no

transfer of shares by the wife of the first respondent in favour of Sri M. Venkat Reddy (R.W.2), the entry made in the Financial Statement at page Nos.707 and 708 of material book, clearly indicates the fact that Sri M. Venkat Reddy (R.W.2) has increased his shares on 15.04.2018 after purchase of the same from Smt. Marri Jamuna Rani and that Sri M. Venkat Reddy (R.W.2) holds 10,09,000 shares as against his earlier holding of 6,09,000 shares and the entries in Page Nos.706, 737 and 738 (Ex.A.13) of the material book are obvious errors by auditors of Kakatiya Industries, and the election petitioner cannot take advantage of the same to declare the election of respondent No.1 as void.

49) It is further submitted that the petitioner intentionally does not refer to the details given in the paper book to the effect that Sri M. Venkat Reddy was initially holding 6,09,000 shares and has later, increased his shareholding to 10,09,000 shares on 15.04.2018, which was prior to the date of filing of nomination by respondent No.1, and which confirms the contents in Exs.R.1, R.2 and R3 and also in the statement made in Form 26.

50) As regards the contention of the petitioner that the consideration agreed for transfer of 4,00,000 shares was more than the face value of the share, the same is nothing but desperate attempt by the petitioner, since it is submitted by learned Senior Counsel for respondent No.1 that the receipt of sale consideration of Rs.43,00,000/- *qua* transfer of 4,00,000 shares to Sri M. Venkat Reddy (R.W.2) is evident from Ex.R.8- bank statement filed by RW.2 and the concerned entries are found on page Nos.856 to 860 of the paper book.

51) As regards the submission of the petitioner regarding payment made by Sri M. Venkat Reddy (R.W.2) to wife of the first respondent towards purchase of 4,00,000 shares for an amount of Rs.43,00,000/- when the face value was Rs.10/-, it is submitted that it is purely upto the parties to decide the value of share based on their valuation of shares and it is not mandatory to purchase the share for the face value.

52) As regards the argument on behalf of the petitioner that, consideration for share transfer was paid in three installments to wife of respondent No.1 by Sri M.Venkat Reddy (R.W.2) raises a

suspicion as to the transaction, it is submitted by learned Senior Counsel for respondent No.1 that mere suspicion cannot be a ground to set aside the election as suspicion can never be substituted for proof and that the another grievance of the petitioner that there was no specific reason cited for sale and purchase of shares by wife of respondent No.1 and RW.2 is not relevant for disposal of election petition.

53) It is further submitted that as evident from Exs.R.4 to R.7, wife of respondent No.1 was not the Director of Kakatiya Industries as on the date of filing of his nomination; that she resigned from the post of Director of Kakatiya Industries *vide* letter dated 20.09.2018 (Ex.R.4), which was accepted by the Board Resolution dated 28.09.2018 (Ex.R.5); and that the same was informed to the wife of respondent No.1 *vide* letter dated 28.09.2018 (Ex.R.6).

54) As regards the contention of the petitioner that as per Ex.A.11, an amount of Rs.40,00,000/- was advanced as unsecured loan to Kakatiya Industries by the wife of the first respondent and that the said transaction is tallying with the consideration for

which the shares were transferred by her in favour of Sri M.Venkat Reddy, it is submitted that while the consideration for share transfer is Rs.43,00,000/-, the unsecured loan advanced to Kakitaya Industries is Rs.40,00,000/- and both the transactions are different and independent from each other.

55) In view of the contentions raised by the petitioner regarding the genuineness of the transactions, learned Senior Counsel for the first respondent submits that suspicion, however, strong cannot be a substitute for proof. In this regard, he relied upon a judgment of the Hon'ble Supreme Court in *Abdulla Mohammed Pagarkar & ors. V. State (Union Territory of Goa, Daman and Diu)*⁹.

56) As regards the contention of the petitioner that even though the wife of the first respondent was holding major share in Kakatiya Industries, the first respondent has deliberately mentioned as 'NIL' against Column 9B(f) of Form 26, it is submitted by learned Senior Counsel for respondent No.1 that she is not a major shareholder, *for*, she holds only 00.15% of total

⁹ 1980 (3) SCC 110 (Volume-I)

shares in Kakatiya Industries and that one Y.Hemachandra is the Executive Director of the said company, who is in-charge of its day-to-day activities and that respondent No.1 had no knowledge of any contract between Kakatiya Industries and Government of Telangana and mentioning as "NIL" as against the Column 9B(f) of Form 26 was not deliberate and was only an accidental omission.

57) It is further submitted by the learned Senior Counsel for respondent No.1 that though respondent No.1 in his cross-examination stated that he was informed that there was no contract between Kakatiya Industries and the Government of Telangana, no suggestion was put to him during his cross examination as to who informed the same to him and that even if he is presumed to have knowledge, such contract would not attract any disqualification under the R.P.Act and it is of no consequence under the R.P.Act.

58) Ultimately, it is submitted that the first respondent has provided information to the best of his knowledge and belief in his Form 26 filed along with nomination and that the petitioner

failed to prove that first respondent had knowledge of the contract between Kakatiya Industries and Government of Telangana as on the date of filing the nomination and that mentioning as 'NIL' by the first respondent in Form 26 would amount to corrupt practice and a material lapse to attract the ingredients of Section 123 of the R.P.Act.

59) In support of his submissions, learned Senior Counsel for the first respondent has referred to Sections 9A and 123(2) of the R.P.Act and relied upon the judgments of the Supreme Court in *Kisan Shankar Kathore v. Arun Dattatray Sawant and others*¹⁰, *Mangani Lal Mandal v. Bishnu Deo Bhandari*¹¹, *Lok Prahari v. Union of India and others*¹², *Public Interest Foundation and other v. Union of India*¹³, *N.C.Zeliang v. Aju Newmal and others*¹⁴, *Baldev Singh Mann v. Surjit Singh Dhiman*¹⁵, *Thiru John v. The Returning Officer and others*¹⁶ and *Mangilal v. K.R.Pawar*¹⁷,

¹⁰ 2014(14) (SCC) 162 (Volume-I)

¹¹ 2012(3) SCC 314 (Volume-I)

¹² 2018(4) SC 699

¹³ 2019(3) SCC 224 (Volume-I)

¹⁴ 1980 Supplement SCC 591 (Volume-I)

¹⁵ 2009(1) SCC 633 (Volume-I)

¹⁶ 1977(3) SCC 540

¹⁷ 1971 (2) SC 399

*Muniraju Gowda P.M. v. Munirathna and others*¹⁸, *Prakash Khandre v. Dr. Vijay Kumar Khandre and others*¹⁹ and the judgment of this Court in *Prem Singh Rathore v. T.Raja Singh & ors.*²⁰.

60) Let us first deal with the provisions which are relevant for the purpose of disposal of this Case:

61) Section 9A of the R.P. Act deals with Disqualification for Government contracts, which reads as under:

“9A. Disqualification for Government contracts, etc. – A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government.

Explanation. – For the purposes of this section, where a contract has been fully performed by the person by whom it has been entered into with the appropriate Government, the contract shall be deemed not to subsist by reason only of the fact that the Government has not performed its part of the contract either wholly or in part.”

62) Section 33 of the R.P. Act specifies about the presentation of nomination paper and requirements for a valid nomination. A nomination paper to the State Legislative Assembly has to be submitted in a prescribed Form i.e. Form 2-B as per Rule 4 of the

¹⁸ 2020(10) SCC 192

¹⁹ 2002(5) SCC 568

²⁰ 2022 SCC Online TS 1138

Conduct of Election Rules and an Additional Affidavit is to be filed in Form 26 as per Rule 4A of the said Rules. On presentation of nomination paper, the Returning Officer shall satisfy himself that the name and electoral roll number of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls.

63) As per Section 33-A of the R.P. Act, a candidate shall, apart from any information which he is required to furnish, under the said Act or Rules in his nomination paper delivered under Section 33(1), also furnish information as to his involvement in a criminal case and convictions, if any, assets and liabilities, etc.

64) Section 36 of the R.P. Act deals with Scrutiny of Nominations, which reads as under:

"36. Scrutiny of nomination. –

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

(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks

necessary, reject any nomination on any of the following grounds:— (a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:— Articles 84, 102, 173 and 191, Part II of this Act, and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963)]; or (b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or (c) that the signature of the candidate or the proposer on the nomination paper is not genuine.]

(3) Nothing contained in clause (b) or clause (c) of sub-section (2) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

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

(5) 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."

65) Section 100 of the R.P. Act deals with the grounds for declaring election to be void, which reads as under:

"100. Grounds for declaring election to be void. –

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion –

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

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

(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 or any nomination, or

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

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

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.

(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."

66) Section 123 of the R.P. Act deals with Corrupt Practices.

Section 123 (2) of the R.P. Act reads as under:

“123. Corrupt practices. – The following shall be deemed to be corrupt practices for the purposes of this Act: –

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

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who –

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of publication, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

(3) The appeal by a candidate or his agent or by any other person with the consent of a candidates or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate: Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.”

67) Now, coming to the decisions rendered by the Hon’ble Supreme Court, as relied upon by Sri C.V. Mohan Reddy, the

learned Senior Counsel for the petitioner, in *Peoples Union for Civil Liberties's* case the Hon'ble Supreme Court held as under:

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

68) In *Resurgence India's case*, the Hon'ble Supreme Court held as under:

"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 [People's Union for Civil Liberties v. Union of India, (2003) 4 SCC 399] 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."

69) **In Public Interest Foundation's case**, the Hon'ble Supreme

Court held as under:

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

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 a declaration in the widely circulated newspapers in the locality about the antecedents of the candidate and also give wide publicity in the electronic media. When we say wide publicity, we mean that the same shall be done at least thrice after filing of the nomination papers.

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 and informed choice by the citizenry. Be it clearly stated that informed choice is the cornerstone to have a pure and strong democracy."

70) In *Kisan Shankar Kathore's case*, the Hon'ble Supreme

Court had held as under:

"(4) To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.

...

7) Under our Constitution, Article 19(1)(a) provides for freedom of speech and expression. Voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is a must. Voter's (little man-citizen's) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law-breakers as lawmakers."

....

....

....

"11. On the basis of the aforesaid discussion, this Court issued directions for filing of affidavit and the nature of information which

was to be given spelling out the same in para 48 of the judgment, which reads as under (Assn. for Democratic Reforms case)

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)....

(2)....

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

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

(5) The educational qualifications of the candidate."

.....

13. In order to bring the directions contained in the aforesaid two judgments within the statutory framework, revised guidelines were issued by the Election Commission on 23-3-2006. In Para 5 of these Guidelines, para 14 of the judgment in Assn. for Democratic Reforms is reproduced. Likewise, Para 13 takes note of the directions given in People's Union for Civil Liberties. In Para 15, it is noted that the Supreme Court, while striking down Section 33-B of the Act, stated that earlier directions of the Election Commission dated 28-6-2002 would continue to operate subject to the aforementioned directions of the Court and, therefore, revised directions had become necessary. In Para 16, these directions are issued in supersession of earlier directions dated 28-6-2002. Paras 1 and 3 of these Guidelines/Directions are relevant for us, and, therefore, we reproduce the same as under:

"(1) Every candidate at the time of filing his nomination paper for any election to the Council of State, House of the People, Legislative Assembly of a State of the Legislative Council of a State having such a Council, shall furnish full and complete information in regard to the matters specified by the Hon'ble Supreme Court and quoted in paras 13 and 14 above, in an affidavit, the format whereof is annexed hereto as Annexure I to this order.

(3) Non-furnishing of the affidavit by any candidate shall be considered to be violation of the order of the Hon'ble Supreme Court and the nomination of the candidate concerned shall be liable to rejection by the Returning Officer at the time of scrutiny of nomination for such non- furnishing of the affidavit

....

29. The High Court summed up the decision on this aspect in the following manner:

"124. On overall analysis of the evidence, I have no hesitation in concluding that the petitioner has established the allegation that the respondent continued to be partner of the partnership firm Padmavati Developers at least till December 2004. It is also matter of record and admitted position that neither the respondent nor any other partner of Padmavati Developers caused to give public notice of the retirement of the partner or for that matter, intimation to the Registrar of Firms till January 2005. Obviously, intimation has been sent to the Registrar of Firms only after the institution and service of the present election petition, having realised the seriousness of the allegation. If so, it was obligatory on the part of the respondent to disclose his interest in the properties purchased in the name of the said firm."

.....

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?

.....

38. With these remarks we proceed to deal with the first aspect. Insofar as non-disclosure of the electricity dues is concerned, in the given facts of the case, we are of the opinion that it may not be a serious lapse. No doubt, the dues were outstanding, at the same time, there was a bona fide dispute about the outstanding dues in respect of the first electricity meter. It would have been better on the part of the appellant to give the information along with a note about the dispute, as suggested by the High Court, we still feel that when the appellant nurtured belief in a bona fide manner that because of the said dispute he is not to give the information about the outstanding amount, as it had not become "payable", this should not be treated as a material lapse. Likewise, as far as the second electricity meter is concerned, it was in the premises which was rented out to the tenants and the dues were payable by the tenants in the first instance. Again, in such circumstances, one can bona fide believe that the tenants would pay the outstanding amount. No doubt, if the tenants do not pay the amount the liability would have been that of the owner i.e., the appellant. However, at the time of filing the nomination, the appellant could not presume that the tenants would not pay the amount and, therefore, it had become his liability. Same is the position with regard to non-payment of a sum of Rs.1783

as outstanding municipal dues, where there was a genuine dispute as to revaluation and reassessment for the purpose of assessing the taxes was yet to be undertaken. Having said so, we may clarify that it would depend on the facts and circumstances of each case as to whether such a non-disclosure would amount to material lapse or not.

.....

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 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."

71) In *Krishnamoorthy's case*, the Hon'ble Supreme Court held

as under:

11. First, we intend, as indicated earlier, to address the issue whether non-disclosure of criminal antecedents would tantamount to undue influence, which is a facet of corrupt practice as per Section 123(2) of the 1951 Act.

After our advertence in that regard, we shall dwell upon the facts of the case. as Ms V. Mohana, learned counsel for the appellant has astutely highlighted certain aspects to demonstrate that there has been no suppression Or non-disclosure and, therefore, the election could not have been declared null and void either by the Election Tribunal or by the High Court. Postponing the discussions on the said score, at this stage, we shall delve into the aspect of corrupt practice on the foundation of non-disclosure of criminal antecedents.

.....

91. The purpose of referring to the instructions as to election Commission is that the affidavit sworn by the candidate has half 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.

.....

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 area, 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.

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

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

72) **In Lok Prahari's case**, the Hon'ble Supreme Court held as under:

"64. Amendment of the 1951 R.P. Act is a matter exclusively within the domain of Parliament. It is well settled that no court could compel and no writ could be issued to compel any legislative body to make a law. It must be left to the wisdom of the legislature. Prayers 1 (2) and 3, insofar as they seek directions in the nature of mandamus to consider amendment of the 1951 R.P. Act cannot be granted.

.....

78. We are of the opinion that an inquiry/investigation such as the one sought for by the petitioner with reference to the named legislators would amount to selective scrutiny of the matter in the absence of any permanent mechanism regularly monitoring the growth of the assets of all the legislators and/or their associates as a class. Such a selective investigation could lead to political witch-hunting. We, therefore, decline this relief, at this stage.

79. We shall now deal with Prayer 263 which seeks a declaration that non-disclosure of assets and sources of income would amount to "undue influence" a corrupt practice under Section 123(2) of the 1951 RP Act. In this behalf, heavy reliance is placed by the petitioner on a judgment of this Court in Krishnamoorthy v. Sivakumar, It was a case arising under the Tamil Nadu Panchayats Act, 1994, A notification was issued by the State Election Commission stipulating that every candidate at an election to any panchayat is required to disclose information, inter alia, whether the candidate was accused in any pending criminal case of any offence punishable with imprisonment for two years or more and in which charges have been framed or cognizance has been taken by a court

of law. In an election petition, it was alleged that there were certain criminal cases pending falling in the abovementioned categories but the said information was not disclosed by the returned candidate at the time of filing his nomination. One of the questions before this Court was whether such non-disclosure amounted to undue influence the Panchayats Act. It may be mentioned that the Panchayats Act simply a corrupt practice under adopted the definition of a corrupt practice as contained in Section 123 of the 1951 RP Act.

80. On an elaborate consideration of various aspects of the matter, this Court in Krishnamoorthy case held as follows: (SCC p. para 91)

91.... 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, amounts to corrupt practice.

81. For the very same logic as adopted by this Court in Krishnamoorthy", we are also of the opinion that the non-disclosure of assets and sources of income of the candidates and their associates would constitute a corrupt practice falling under heading "undue influence" as defined under Section 123(2) of the 1951 RP Act. We, therefore, allow Prayer 2.

82. Coming to Prayer 4, the petitioner is only seeking information regarding the contracts, if any with the appropriate Government either by the candidate or his/her spouse and dependants.

"....information about the contracts with appropriate Government and any public company by the candidate, his/her spouse and dependants directly or by Hindu undivided family/trust/partnership firm(s)/private company (companies) in which the candidate and his spouse and dependants have a share or interest shall also be provided in the affidavit in Form 26 prescribed under the Rules."

83. In the light of the foregoing discussion, the information such as the one required under the abovementioned prayer is certainly relevant information in the context of disqualification on the ground of undue accretion of assets, therefore, we see no objection for granting the relief as prayed for."

73) In *S. Rukmini Madegowda's case*, the Hon'ble Supreme

Court had held as under:

"55. Corrupt Practices have been defined in Section 39(2) of the KMC Act to include 'undue influence' as defined in Section 123(2) of

the 1951 RP Act. Section 123(2) of the 1951 RP Act came up for interpretation by this Court in Lok Prahari (supra), where this Court held that the non-disclosure would amount to 'undue influence' as defined under the Representation of People Act. The definition of 'undue influence' as used in Section 123(2) of 1951 RP Act is also adopted by Section 39(2) of the KMC Act. Therefore, the non-disclosure of assets in the municipal elections would also amount to 'undue influence' and consequently to 'corrupt practice'.

59. It is not in dispute that the Appellant had suppressed information with regard to the assets of her. Section 35(1)(b) of the KMC Act provides that if the Court is of the opinion that a party has committed a 'corrupt practice', that would result in the election being declared void.

60. Section 35 of the KMC Act enumerates the grounds on which Courts could declare the election of the returned candidate to be void. Section 35(1)(b) mentions corrupt practice by a returned candidate or his election agent or by any other person either with the consent of a returned candidate or his election agent, as one of the grounds for declaring the election to be void. Section 39 of the KMC Act enumerates the acts/practices, which are to be deemed to be corrupt practices, Corrupt practices include 'undue influence. This is specified in Section 39(2) of the KMC Act.

61. The definition of undue influence in Section 123(2) of the 1951 RP Act has expressly been incorporated in the definition of undue influence in Section 39(2) of the KMC Act. Further, having regard to the tenor of Section 39(3) of the KMC Act, any false statement relating to a candidate would be corrupt practice. At the cost of repetition, it is emphasized that KMC Act incorporates the definition of undue influence in Section 123(2) of the 1951 RP Act. The judgments of this Court interpreting undue influence in Section 123(2) of the 1951, RP Act, would squarely apply to the interpretation of undue influence under Section 39(2) of the KMC Act.

62. Mr. Patil rightly argued that Section 123(2) of the Representation of People Act, 1951 had been interpreted by this Court in Lok Prahari (supra) where this Court held that non-disclosure would amount to undue influence as defined in the Representation of People Act, 1951. The non-disclosure of assets would therefore, also amount to undue Influence and consequently to corrupt practices' under the KMC Act. Mr. Patil argued that the Notifications dated 14 July 2003 and in particular 19th June 2018 issued by the State Election Commission made it mandatory for the candidates to file affidavits, disclosing the assets of their spouses.

63. The question of whether the Election Commission had power to issue directions to the candidates to file affidavits disclosing the assets of their spouses, in the absence of any specific provision under the KMC Act or the Rules framed thereunder is no longer res integra. The question is squarely covered by the law laid down by this Court in Union of India

v. Association for Democratic Reforms (supra), where this Court had directed the Election Commission to secure to voters, inter alia, information pertaining to assets not only of the candidates but also of their spouse and dependents.

64. *The Election Commission has to act within the four corners of law made by the Parliament and/or the concerned State legislature, as the case may be, as argued by Mr. Diwan.*

.....

70. *However, in light of the law declared by this Court in Association for Democratic Reforms (supra), we do not see any legal or normative impediment for the State Election Commission to issue directions requiring disclosure of assets of the candidate, his/her spouse and dependent associates by way of affidavit. In issuing the notification dated 14th July 2003, the Election Commission has not encroached into the legislative domain of the Karnataka State Legislature. The direction, as contained in the notification dated 14th July 2003 had been accepted by the Appellant. Having affirmed a false affidavit, it does not lie in the mouth of the Appellant to contend that her election should not be set aside on the ground of corrupt practice under Section 35 (1) of the KMC Act.*

.....

74. *Purity of election at all levels, be it election to the Union Parliament or a State Legislature or a Municipal Corporation or a Panchayat is a matter of national importance in which a uniform policy is desirable in the interest of all the States. A hypertechnical view of the omission to incorporate any specific provision in the KMC Election Rules, similar to the 1961 Rules, expressly requiring disclosure of assets, to condone dishonesty and corrupt practice would be against the spirit of the Constitution and public interest."*

74) Coming to the judgments of the Hon'ble Supreme Court, as relied upon by Sri D. Prakash Reddy, the learned Senior Counsel for the first respondent:

75) In *Mangilal's* case, the Hon'ble Supreme Court had held as under:

" It is not possible to describe the business of the Company to be the trade or business of the Chairman of the Board of Directors. A

Company registered under the Indian Companies Act, it is settled beyond dispute, is a separate entity distinct from its shareholders. The Chairman of the Board of Directors of the Company while functioning as such cannot be said to be engaged in his trade or business as contemplated by S. 9A of the Act. The legal position is so clear that the appellant's learned counsel, after an unsuccessful attempt to persuade us to the contrary view, felt constrained not to pursue this point seriously.

..
The charge relating to disqualifications of the returned candidate was based on the averment that the returned and was a Chairman of the Board of Directors of the Dewas Senior Electric Supply Company Private Limited and that this Company generated electricity and supplied the same to the State Government under a contract. On this basis it was pleaded that under S. 9A of the Act the returned candidate must be held to be disqualified from seeking election to the Assembly. The High Court repelled this contention holding that the returned candidate could not be held to have directly entered into any contract the Government merely by reason of the fact he was the Chairman of the Board, of Directors of the Electric Supply Company."

76) **In Mangani Lal Mandal's case**, the Hon'ble Supreme Court held as under:

"A reading of the above provision with Section 83 of the 1951 Act leaves no manner of doubt that where a returned candidate is alleged to be guilty of non-compliance of the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder and his election is sought to be declared void on such ground, it is essential for the election petitioner to aver by pleading material facts that the result of the election insofar as it concerned the returned candidate has been materially affected by such breach or non-observance. If the election petition goes to trial then the election petitioner has also to prove the charge of breach of non-compliance as well as establish that the result of the election has been materially affected. It is only on the basis of such pleading and proof that the Court may be in a position to form opinion and record a finding that breach or non-compliance of the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder has materially affected the result of the election before the election of the returned candidate could be declared void."

77) **In Abdulla Mohammed Pagarkar's case**, the Hon'ble Supreme Court held as under:

The mind of the learned Special Judge in coming to the finding about the value of the work done being no more than Rs. 32,287.75 appears to have been influenced by the gross irregularities committed by the appellants in the execution of the work, specially their failure to prepare vouchers relating to all the payments as also a proper muster roll. These irregularities no doubt furnish a circumstance giving rise to a strong suspicion in regard to the bona fides of the appellants in the matter of the execution of the work but suspicion, however strong, cannot be a substitute for proof. And it is certainly not permissible to place the burden of proof of innocence on the person accused of a criminal charge. However, that is precisely what the Special Judge appears to have done while observing that "it was for A.2 to prove that he had spent amounts besides those proved by the prosecution which A.2 had failed to do."

78) In *Kisan Shankar Kathore's case*, the Hon'ble Supreme Court has held as under:

"With these remarks we proceed to deal with the first aspect.

Insofar as non-disclosure of the electricity dues is concerned, in the given facts of the case, we are of the opinion that it may not be a serious lapse. No doubt, the dues were outstanding, at the same time, there was a bona fide dispute about the outstanding dues in respect of the first electricity meter. It would have been better on the part of the appellant to give the information along with a note about the dispute, as suggested by the High Court, we still feel that when the appellant nurtured belief in a bona fide manner that because of the said dispute he is not to give the information about the outstanding amount, as it had not become 'payable', this should not be treated as a material lapse. Likewise, as far as the second electricity meter is concerned, it was in the premises which was rented out to the tenants and the dues were payable by the tenants in the first instance. Again, in such circumstances, one can bona fide believe that the tenants would pay the outstanding amount. No doubt, if the tenants do not pay the amount the liability would have been that of the owner, i.e. the appellant. However, at the time of filing the nomination, the appellant could not presume that the tenants would not pay the amount and, therefore, it had become his liability. Same is the position with regard to non-payment of a sum of Rs.1,783/- as outstanding municipal dues, where there was a genuine dispute as to revaluation and reassessment for the purpose of assessing the taxes was yet to be undertaken. Having said so, we may clarify that it would depend in the facts and circumstances of each case as to whether such a non-disclosure would amount to material lapse or not. We are, thus, clarifying that our aforesaid observation in the facts of the present case should not be treated as having general application."

79) In *N.C.Zeliang v. Aju Newmal's case*, the Hon'ble Supreme

Court held as under:

"It is now well settled by a large catena of authorities that a charge under s. 123 of the Act must be proved by clear and cogent evidence as a charge for a criminal offence. It is not open to the court to hold that a charge of corrupt practice is proved merely on a preponderance of probabilities but it must be satisfied that there is evidence to prove the charge beyond a reasonable doubt. The electoral process in this country is an extremely expensive one and by declaring the election of a candidate null and void, the entire process, so far as the candidate is concerned is set at naught resulting in re- election. Such a course should be adopted only when the allegation of corrupt practice is proved conclusively."

80) In *Baldev Singh Mann's case*, the Hon'ble Supreme Court

held as under:

"The law is now well-settled that charge of a corrupt practice in an election petition should be proved almost like the criminal charge. The standard of proof is high and the burden of proof is on the election petitioner. Mere preponderance of probabilities are not enough, as may be the case in a civil dispute. Allegations of corrupt practices should be clear and precise and the charge should be proved to the hilt as in a criminal trial by clear, cogent and credible evidence."

81) In *Thiru John's case*, the Hon'ble Supreme Court had held

as under:

"The ratio decidendi of Viswanatha v. Konappa is applicable only where (a) there are two contesting candidates and one of them is disqualified,. (b) and the election is on the basis of single non-transferable vote. Both these conditions do not exist in the present case. As already discussed, Shri Subramanyan appellant was not the sole surviving continuing candidate left in the field, after exclusion of the disqualified candidate, Shri John. The election in question was not held by mode of single transferable vote according to which a simple majority of votes secured ensures the success of a candidate, but by proportional representation with single transferable vote, under which system the

success of a candidate normally depends on his securing the requisite quota."

82) In ***Muniraju Gowda's case***, the Hon'ble Supreme Court held as under:

"There is one more reason why the petitioner cannot succeed. In the elections in question, there were 14 candidates in the fray, including the petitioner herein and the first respondent. In Viswanath Reddy vs. Konappa Rudrappa Nadgouda1, the Constitution Bench of this Court treated the votes polled in favour of the returned candidate as thrown away votes, on the ground that he was disqualified from contesting and that the election petitioner was entitled to be declared elected, in view of the fact that there was no other contesting candidate. But the Constitution Bench cautioned that the rule for the exclusion of the votes secured by corrupt practices by the returned candidate in the computation of the total votes and the consequential declaration of the candidate who secured the next highest number of votes as duly elected, can be applied only when there are just two candidates at an election."

83) In ***Prakash Khandre's case***, the Hon'ble Supreme Court held as under:

"However, in an election where elected candidate is declared to be disqualified to contest election and there are more than two candidates contesting election, there is no specific provision under the Act under which the person who has secured the next highest number of votes could be declared as elected. The Act is silent on this point. Further, it cannot be presumed that the votes secured by the disqualified elected candidates would have been wasted or would have been secured by the next candidate who has secured more votes. If disqualified candidate was not permitted to contest the election then how the voters would have voted in favour of the candidate who has secured more votes than other remaining candidates would be a question in the realm of speculation and unpredictability. In such a situation, declaring the election of the returned candidate on the ground of his initial disqualification to contest the election by itself would not entitle the election petitioner or any other candidate to be declared elected."

84) In ***Prem Singh Rathore's case***, this Court held as under:

“When petitioner asserts that the first respondent had the knowledge of at least two of the eight crimes relied on by him, covered by Exs.P13 to P17 and when first respondent denies the same, the burden is heavy on him to prove that first respondent received notices under Section 41(A) of Cr.P.C., in crimes covered by Exs.P13 to P17 and that signatures found in Exs.P15 and P17 belong to him. Petitioner miserably failed in bringing forth cogent, unimpeachable and legally sustainable evidence to prove that first respondent was having the knowledge of two crimes shown in Exs.P14 and P17 and the signatures on Exs.P15 and P17 belong to him.

....

Verification appended to affidavit in Form-26 requires the candidates to declare as, 'to the best of my knowledge and belief'. This term literally means, according to a deponent his statement is true based on what he knows or believes to be true. Knowledge of a fact not disclosed can not be ascribed to a deponent based on surmises and conjectures.

From the scheme of the Act, the Rules and decisions of the Hon'ble Supreme Court, it is discernible that non-disclosure of criminal antecedents would amount to 'corrupt practice' only when the declarant was aware of the crimes registered against him but does not seek to disclose them. It does not envisage an automatic disqualification/declaration of election as void the moment it is discovered that certain crimes registered against the candidate were not disclosed even if candidate was not aware of registration of crimes. Such a course will lead to disastrous consequences.

53. Thus, to hold first respondent guilty of non disclosure of all crimes registered against him, it has to be proved that he was aware of registration of those crimes with clear and unimpeachable evidence.”

- 85) Perused the entire record.
- 86) The allegations made in the Election Petition are that in the nomination form submitted by the first respondent, though the details pertaining to the shareholding of the spouse of the first respondent in Kakatiya Industries have been mentioned, the details pertaining to the contract that has been entered into by Kakatiya Industries have not been disclosed; that the wife of the

first respondent was, in fact, a Director of Kakatiya Industries when the said company entered into contract with the Government; an amount of Rs.40,00,000/- was advanced by the wife of the first respondent as unsecured loan to Kakatiya Industries and the said transaction is tallying with the consideration for which shares were transferred by her in favour of Sri M. Venkat Reddy (R.W.2); that J.C. Brothers is a major share holder and has vital role in the day-to-day activities of the Kakatiya Industries and the first respondent is the Director of the said J.C. Brothers; the shareholding pattern of the aforesaid company would reveal that the spouse of the first respondent is having major number of shares and she is one of the Promoters/Directors of the company since its incorporation, as per the records available on the website of the Ministry of the Corporate Affairs; and that the documents filed by Kakatiya Industries for the period from 01.04.2017 to 31.03.2018 reveal that the spouse of the first respondent owns 4,09,000 shares in the said company which forms the basic element of misrepresentation and non-disclosure of the assets.

87) Furthermore, specific allegations are made against the first respondent that Kakatiya Industries has entered into a contract with the Rural Water Supply and Sanitation Department, Government of Telangana, for manufacture, supply and delivery of HDPE pipes anywhere in Telangana State for Intra-Village Network under Mission Bhagiratha and that the said contract was in subsistence till 16.11.2018 i.e., on the date of filing of the nomination by the first respondent, and therefore, the first respondent is disqualified for contesting the election in view of Section 9A of the Act.

88) A perusal of the record discloses that no material is placed on record before this Court to prove that the first respondent has entered into any contract with the Government as on the date of filing of the nomination in order to attract Section 9A of the R.P. Act.

89) Section 9A of the R.P. Act, which deals with disqualification for Government contracts, is not being dealt with in detail since during the course of arguments, Sri C.V.Mohan Reddy, the learned Senior Counsel for the petitioner has

submitted that he is not pressing the allegations made against the first respondent under the said Section.

90) As already stated supra, the counter of the first respondent is the complete denial of the allegations made by the petitioner.

91) The counter discloses that the first respondent, while mentioning the share holdings of his wife, Smt. Jamuna Rani, has accidentally omitted to mention the details of the contract entered into by Kakatiya Industries with the Government of Telangana.

92) It is stated that as on the date of filing of the nomination, the wife of the first respondent was having negligible shareholdings in Kakatiya Industries amounting to 00.15% of the total shareholding of Kakatiya Industries. Further, the first respondent had filed the necessary original communication between his wife and Kakatiya Industries, which shows that she resigned to the post of Director of Kakatiya Industries *vide* letter dated 20.09.2018 (Ex.R.4) and the same was accepted by the Board of Directors of the said company by way of Resolution (Ex.R.5) w.e.f. 20.09.2018.

93) The record further reveals that the documents filed by the petitioner pertain to the period from 01.04.2017 to 31.03.2018 i.e., prior to the filing of the nomination by the first respondent. The Bank Statement (Ex.R.8) filed by Sri M. Venkat Reddy (R.W.2) clearly shows that the shares have been purchased by him and the sale consideration has been transferred to the wife of the first respondent in three spells much prior to the filing of the nomination.

94) It is the specific contention of Sri C.V. Mohan Reddy, the learned Senior Counsel, that the petitioner has raised objections and representation dated 20.11.2018 (Exs.A-7 and A-8 respectively) before the Returning Officer, but, the Returning Officer, without passing any orders, has permitted the first respondent to contest the election.

95) In this context, it is apt to refer to Section 101 of Indian Evidence Act, 1872, which deals with burden of proof.

96) Section 101 of the Indian Evidence Act reads as under:

“101. Burden of proof. – Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of

facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

97) As per the above provision, the burden is always on the petitioner to prove that the first respondent is liable to be disqualified from contesting the election. Furthermore, it is always open for the petitioner to prove that the first respondent was the Director of J.C. Brothers and his wife was the Director of Kakatiya Industries, which in turn, had entered into contract with the Government.

98) As already stated supra, as on the date of filing of the nomination, the wife of the first respondent was not the Director of Kakatiya Industries and she is only a shareholder. The petitioner has failed to prove that the wife of the first respondent has significant shareholdings and control in the affairs of Kakatiya Industries. In fact, the first respondent in the affidavit filed under Form 26 has also disclosed the fact that his wife holds shares to a tune of 409000 in Kakatiya Industries, which is not disputed. Furthermore, the statement of the Bank Account filed by Sri M. Venkat Reddy (R.W.2) goes to show that 400000 shares

have been transferred much prior to the election and not after the election notification, as alleged by the petitioner, and it would be reflected in Form No.MGT-7 from 01.04.2018 to 31.03.2019 filed by the company. Therefore, the transfers made on 15.04.2018 being reflected in the statement for the period from 01.04.2017 to 31.03.2018, is highly improbable.

99) No reasons have been given as to how the transaction i.e., 15.04.2018, which is subsequent to the said period from 01.04.2017 to 31.03.2018, has been incorporated in the financial statement. The discrepancies, if any, found in the said documents cannot form any basis for penalizing the first respondent.

100) As stated earlier, as per the provisions of the R.P. Act, a person shall be disqualified, if and for so long as there subsists a contract entered into by him in the course of his trade or business with the appropriate Government, for the supply of goods, to or for the execution of works undertaken by that Government.

101) In the present case, the petitioner has failed to prove that neither the first respondent nor his wife has entered into any contract with the Government directly or indirectly.

102) Furthermore, holding a miniscule share of 00.15% by the wife of the first respondent in Kakatiya Industries, at the time of filing of the nomination, cannot be a ground to disqualify the first respondent from contesting the election. The petitioner has not filed any documents with regard to the holding of the shares by the wife of the first respondent or the balance shares of Kakatiya Industries, to disqualify the first respondent from contesting the election.

103) It is the specific contention of Sri D. Prakash Reddy, the learned Senior Counsel appearing for the first respondent, that as per the principles formulated by the Hon'ble Supreme Court, an Election Petition has to be dealt like a Criminal Case and that in the criminal trial, the burden is always on the prosecution to prove the case beyond all reasonable doubt, and similarly, in the Election Petition also, the burden is on the petitioner to prove the case beyond all reasonable doubt.

104) In the present case, in fact, the first respondent has disclosed the details of the shareholdings of his wife in Kakatiya Industries. Insofar as the amount of Rs.40,00,000/-, which was advanced as unsecured loan to Kakatiya Industries by the wife of the first respondent is concerned, the said amount is completely independent of the shares that were sold by the wife of the first respondent to Sri M. Venkat Reddy (R.W.2). As per the record, the said amount was repaid by Kakatiya Industries.

105) Furthermore, the Bank statement (Ex.R.8) filed by Sri M.Venkat Reddy clearly discloses that the transaction was for an amount of Rs.43,00,000/- and not for Rs.40,00,000/- and that the stamp duty was also calculated and was paid, as per the Security Transfer Form (Ex.R.3- Form No.SH-4). Furthermore, the record reveals that the said amount of Rs.43,00,000/- was paid in three spells.

106) Insofar as the allegation that J.C. Brothers has a vital role in the day-to-day activities of Kakatiya Industries is concerned, it can be construed that the shareholding pertaining to the first respondent in J.C. Brothers has been disclosed in Form 26.

Further, it is not the case of the petitioner that J.C. Brothers is having any contract with the Government, and it is the specific contention of the learned Senior Counsel that J.C. Brothers, which is the major shareholder of Kakatiya Industries, is having a vital role in Kakatiya Industries, and further Kakatiya Industries has entered into contract with the Government and that cannot be taken into consideration for disqualifying the first respondent for contesting the election.

107) In view of the specific allegation made by the petitioner that Kakatiya Industries has entered into a contract with the Rural Water Supply and Sanitation Department, Government of Telangana, for manufacture, supply and delivery of HDPE pipes anywhere in Telangana State for Intra-Village Network under Mission Bhagiratha and the said contract was in subsistence till 16.11.2018 i.e., on the date of submission of the nomination by the first respondent, this Court is of the considered view that subsistence of the contract with the Government as far as the first respondent is concerned is not directly or indirectly, is not a

ground for disqualifying the first respondent from contesting the election.

108) Though the wife of the first respondent is directly connected with Kakatiya Industries as a shareholder, as she is having a miniscule shareholding of 00.15% in Kakatiya Industries, it would not have any bearing on the decision taken by the said company.

109) In the present case, the wife of the first respondent has also filed nomination in the election and subsequently, she has withdrawn the same, and therefore, the same cannot be a ground for disqualification of the first respondent from contesting the election. As far as the document relied upon by the petitioner to prove the share holding of the spouse of the first respondent in Kakatiya Industries is concerned, the same cannot be taken into consideration, as the Financial Statement filed by the petitioner for the period from 01.04.2018 to 31.03.2019 discloses the transfer of share, which was done subsequent to the said period, which is highly unbelievable. Further, the Financial Statement of Kakatiya Industries for the period from 01.04.2018 to 31.03.2019 (Page

Nos.707 and 708 of the material papers) shows that the wife of the first respondent was owning 4,09,000 shares. It was the specific contention of the learned Senior Counsel appearing for the first respondent that 4,00,000 shares were sold to M. Venkat Reddy (R.W.2) prior to the filing of the nomination and that the wife of the first respondent is holding only 9000 shares.

110) As already stated supra, the burden is always on the election petitioner to prove that the first respondent cannot contest the election in view of non-disclosure of the assets. Further, it is always open for the petitioner to prove the same by adducing oral and documentary evidence. The oral evidence adduced about the irregularities or non-disclosure of the assets by the first respondent, is not corroborated by any documentary evidence to prove the said fact.

111) Furthermore, the petitioner does not refer to the internal page Nos.25 and 26 of the Financial Statement of Kakatiya Industries pertaining to the period 01.04.2018 to 31.03.2019 (Page Nos.707 and 708 of material papers), a perusal of which discloses that Sri M. Venkat Reddy (R.W.2) was initially holding 6,09,000

shares and has increased his shareholding to 10,09,000 shares on 15.04.2018, which confirms the contents in Exs.R.1, R.2 and R.3 and also the statement made in Form-26.

112) Coming to the judgments of the Hon'ble Supreme Court relied upon by both the parties, there is no doubt the ratio laid down in the said judgments is binding on the Election Commission and on the contesting candidates.

113) However, Sri C.V. Mohan Reddy, the learned Senior Counsel appearing for the petitioner, has specifically contended that non-disclosure of information under paragraph 9B(f) column of Form 26 Affidavit amounts to corrupt practice falling under the heading "undue influence" as defined under Section 123(2) of the R.P.Act, and therefore, the first respondent is liable to be disqualified under Section 100 of the R.P. Act.

114) In view of the admitted fact that neither the pleadings nor the evidence on record do not have any material substance to attract the ingredients of Section 123 of the R.P. Act, and therefore, no issue was framed as far as the ingredients under

Section 123 of the R.P. Act is concerned. In view of the same, the averments made in the written submissions of the petitioner it cannot be taken into consideration. Hence, this Court is of the considered view that no finding needs to be given as to Section 123 of the R.P. Act.

115) For the foregoing reasons, this Court is of the considerable view that the petitioner failed to prove the allegation by adducing appropriate documentary evidence. Therefore, the Election Petition is devoid of any merit and the same is liable to be dismissed.

116) Accordingly, the Election Petition is dismissed. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

G. ANUPAMA CHAKRAVARTHY, J

Date: 14.08.2023
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