

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 17th January, 2020

+ EL.PET.2/2015

NAND KISHORE GARG

... Petitioner

Through: Mr. Alok Kumar, Mr. Abhishek Paruthi, Mr. Amit Kr. Singh, Mr. Sachin Kumar, Mr. Aakash Dubey & Ms. Manisha A. Narain, Advs.

Versus

JITENDER SINGH TOMAR & ORS.

... Respondents

Through: Mr. Kush Sharma and Mr. Kshitiz Ahuja, Advs. for R-1.
Mr. Satyakam, ASC, GNCTD.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition challenges the election of the respondent no.1 to the Legislative Assembly of NCT of Delhi from AC-16 Tri Nagar Constituency, in the General Elections to the Legislative Assembly of NCT of Delhi, held in the year 2015.
2. The petition came up first before this Court on 23rd March, 2015 and thereafter on 25th March, 2015, when notice thereof was ordered to be issued and vide *ex parte ad interim* order, the respondent no.15 i.e. SDM, Kotwali, being the Returning Officer of the subject election, was directed to preserve the entire election records including nomination form, affidavit accompanying the nomination form, objections, pre-publication approvals of election materials and to file the same before this Court.

3. The respondent no.1 filed IA No.17167/2015 under Section 151 CPC, which vide order dated 23rd September, 2015 was ordered to be treated as under Order VII Rule 11 of CPC. Vide order dated 11th December, 2015, pleadings in the Election Petition were ordered to be completed notwithstanding the pendency of the application under Order VII Rule 11 CPC.

4. None appeared for the respondents no. 2 to 4 and 8 to 14 despite service; they were vide order dated 11th December, 2015 ordered to be proceeded against *ex parte*. None appeared for the respondent no.5 also despite service by publication.

5. The petition challenges the election of respondent no.1, pleading (i) that the petitioner is an elector/voter in the subject assembly constituency and also contested the subject election as a candidate of Bhartiya Janata Party; (ii) the respondents no. 1 to 12 were other contesting candidates from the said constituency and the respondents no. 13 and 14 had also filed their nominations for the subject election but their nominations were rejected by the respondent no.15 Returning Officer; (iii) that the respondent no.1, contesting the election as a candidate of Aam Adami Party, (AAP), was declared elected with 63,012 votes as against the petitioner, at second place, with 40,701 votes; (iv) that the result of the election, insofar the respondent no.1, has been materially affected by the improper acceptance of nomination, containing false information regarding educational qualification of respondent no.1; (v) that the respondent no.1, at the time of filing nomination and thereafter, has continued to misrepresent himself to be a law graduate and an Advocate and has thus been successful in exercising undue influence

over the electors/voters, which amounts to a 'corrupt practice' within the meaning of the Representation of the People Act, 1951; (vi) that though the nomination form requires the candidate to give full details of all educational qualifications, the respondent no.1 gave details of only his LL.B. qualification and not about the preceding qualifications/eligibilities; (vii) that the highest educational qualification, of law graduate, declared by the respondent no.1 is false and bogus; (viii) that the respondent no.1, is not even a graduate and the question of the respondent no.1 getting admission in law college for a three years law program did not arise; (ix) consequently, the respondent no.1's enrolment with the Bar Council of Delhi and his claim of being an Advocate, are also false, incorrect and bogus; (x) that for admission into a three year programme in a law college, a three year graduation degree is a must; a bare perusal of the graduation degree of the respondent no.1 shows that it was a two years and not a three years degree; the respondent no.1 thus did not possess the requisite qualification for admission to the three years law program; (xi) the respondent no.1, even before notification of the election, had been campaigning as possessing an LL.B. degree as his educational qualification and portraying himself to be an Advocate; the respondent no.1 has been distributing the election materials like pamphlets, life biography, banners and TV interviews, claiming himself to be a law graduate and an Advocate; (xii) that the respondent no.4 Mohd. Saleem filed an objection affidavit before the Returning Officer, that the information given by respondent No.1 with respect to his educational qualification is false and incorrect; however despite the said objection, the respondent no.1 was allowed to contest the election, without taking any action on the objection and the respondent no.1 continued to campaign,

claiming himself to be a law graduate and a practicing Advocate; (xiii) that the respondent no.1 has indulged in creation of false, forged and fabricated documents in the form of his undergraduate degree/mark-sheet of Dr. Ram Manohar Lohia Avadh University, Faizabad, UP; (xiv) the respondent no.1, while furnishing false information to the effect that his highest educational qualification is LL.B., and suppressing his alleged two year graduation degree from Avadh University, has committed a corrupt practice under Section 123(4) of the Representation of the People Act; (xv) had the respondent no.1 mentioned about his alleged two year degree course in his affidavit, the voters of the constituency would have had occasion to check the veracity of his alleged educational credentials and on being made aware that the alleged two year degree and mark-sheet were false, forged and fabricated, might not have preferred to elect the respondent no.1 as their law-maker; (xvi) that the act of the respondent no.1, of withholding the relevant information of his alleged two year degree and mark-sheet of Avadh University and circulating election material describing himself to be an Advocate, has materially affected the result of the election; (xvii) the respondent no.1 has succeeded in befooling the voters and in persuading the Chief Minister into making him the Law Minister; (xviii) that the petitioner has lost the election on account of undue influence and corrupt practice undertaken by the respondent no.1; and, (xix) that the respondent no.1's false declaration and concealment in his affidavit qua his educational qualification was in the special knowledge of the respondent no.1 and the respondent no.1 owed a duty to disclose the full truth in the affidavit. The petitioner, in the petition has also given specific instances of publication got done by the respondent no.1 of the pamphlets describing himself as an Advocate,

circulation of the said pamphlets and of the other claims in interviews, etc. made by the respondent no.1, of being an Advocate.

6. The respondent no.1 sought rejection under Order VII Rule 11 of the CPC of the of the Election Petition, on the grounds (i) that furnishing of wrong information with the nomination form does not constitute a ground for setting aside of the election; (ii) that there was no material on record to show that the result of the election was materially affected by the declaration, even if wrong; (iii) that the respondent no.1, in an earlier election also had declared himself to be a law graduate and though the petitioner also had contested the said election against the respondent no.1 but had not raised any objection; (iv) that on similar ground, WP(C)No.1056/2015 filed by some other person was pending; (v) that on similar ground, FIR No.605/2015 of PS Hauz Khas had also been lodged against the respondent no.1 and the investigation was underway; and, (vi) that if this proceeding culminates before the investigation in prosecution if any, the same would cause serious prejudice to the respondent no.1.

7. The application aforesaid under Order VII Rule 11 of the CPC was dismissed vide order dated 21st September, 2016, relying upon *Nand Ram Bagri Vs. Jai Kishan* 200 (2013) DLT 402, *Union of India Vs. Association for Democratic Reforms* 2002 (5) SSC 294, *Kishan Shankar Kathore Vs. Arun Dattatray Sawant* (2014) 14 SSC 162, *Krishnamoorthy Vs. Sivakumar* (2015) 3 SSC 467 and *Sri Mairembam Prithviraj Vs. Shri Pukhrem Saratchandra Singh* 2016 SSC OnLine SC 1207 and *inter alia* reasoning, (i) that the contention, that the only consequence of falsehood, misrepresentation and suppression in the affidavit in Form-26 filed along with the nomination form, can be under Section 125 of the Representation of

the People Act i.e. of imprisonment, cannot be accepted; (ii) the reason for requiring disclosure by the candidate, was to vest the voters with a right to elect on the basis of antecedents, past performance, educational qualifications, etc. of a candidate; (iii) logically, if the disclosure is false, the election in pursuance thereto would be impure one; (iv) furnishing of wrong information would *res ipsa loquitur* lead to inference of undue influence within the Section 125(2) of the Representation of the People Act; (v) the members of a democratic society have to be sufficiently informed so that they may intelligently take the decisions which may affect themselves and this would include their decision of casting a vote in favour of a particular candidate; (vi) it may not be possible for the Returning Officer to conduct a detailed examination when the affidavit is filed along with the nomination papers by a candidate and the summary enquiry may not suffice; it would thus not be possible for the Returning Officer to reject the nomination for want of verification of 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 did not contain complete information leading to suppression, it can be held at that stage that the nomination was improperly accepted; (vii) an act which is calculated to interfere with the free exercise of electoral right, is a true and effective test, whether or not a candidate is guilty of undue influence; (viii) while in ***Nand Ram Bagri***, there was no challenge to the highest qualification required to be declared and for which reason the Election Petition was dismissed, in the present case there was a challenge to the highest qualification declared by the respondent no.1; (ix) that WP(C) No.1056/2015 had since been disposed of owing to Bar Council of India having also initiated proceedings against the respondent no.1 and taking note of the FIR lodged against the respondent no.1; and, (x) the argument of the respondent no.1, that the proceedings in the Election Petition would

prejudice him inasmuch as he would be required to disclose his defense and which in prosecution he can withhold till the last stage, also did not merit rejection of the petition or deferment of proceedings therein to after the culmination of the prosecution.

8. The respondent no.1 contested the petition by filing a written statement, pleading that, (i) in the Conduct of Election Rules, 1961 and the format prescribed thereunder, the only requirement is that every candidate should disclose his/her highest education; (ii) the highest education acquired by the respondent no.1, is graduation in law (LL.B.) and consequently the respondent no.1 in his affidavit stated that he studied his LL.B. classes from Bishwanath Singh Institute of Legal Studies, college of Munger as a regular student and during the study period stayed at Munger, i.e. the place where the LL.B. classes were regularly held; (iii) the said law degree is subsisting and is in operation and has not been withdrawn or set aside; (iv) the petitioner thus cannot claim the declaration by the respondent no.1 to be false or incorrect; (v) in earlier elections also, the respondent no.1 had declared the same educational qualification and the petitioner, though a candidate in the earlier elections of the year 2013 also, had not raised any objection thereto; (vi) eligibility to take admission to a course is not within the scope of Election Petition; (vii) the respondent no.1 was found to be eligible to be admitted to law college, where he successfully completed the law course and was awarded the law degree; (viii) the fact that the respondent no.1 is a law graduate or an Advocate, did not amount to any special appeal to the electors/voters to vote for the respondent no.1 or to refrain from voting for any other candidate; it did not impair the electoral choice of any elector/voter in any manner whatsoever; if it was so, the

respondent no.1 would have also got elected in the election of the year 2013 in which the petitioner was a successful candidate; (ix) there is not an iota of allegation or material particulars in the Election Petition, of any person who got influenced and/or got carried away and voted for the respondent no.1 merely because the respondent no.1 is an Advocate; (x) the Representation of the People Act does not lay down any minimum qualification required for contesting an election; thus qualification is irrelevant for the purposes of electorate to exercise their franchise; (xi) the mandate of the people cannot be dislodged; (xii) the Election Petition is based on averments in the writ petition, which writ petition itself was awaiting adjudication; (xiii) the law degree was/is subsisting on the date of nomination and election; (xiv) the Bar Council of Delhi, at the instance of some vested interest, failed to carry out its statutory duty and instead illegally utilized the forum of the State Police, where the investigation is on; (xv) Election Petition cannot be proceeded with till the disposal of the said proceedings; (xvi) the Election Tribunal under the Representation of the People Act is not vested with the jurisdiction to determine the status of the respondent no.1 as a law graduate and/or an Advocate; (xvii) there was neither any undue influence nor can the same be possible merely by adding the prefix, 'Advocate'; (xviii) the law college considered the educational qualification of the respondent no.1 and admitted him to law course and this Election Tribunal has no jurisdiction to sit over the decision of the law college: (xix) it is denied that the graduation degree of respondent no.1 was for two years and not for three years; (xx) it is denied that the respondent no.1 did not possess the requisite qualification for admission in a three years law program; (xxi) after completion of law graduation in 1999, the respondent no.1 was given a law degree in the year

2012; (xxii) there was no occasion for respondent no.1 to campaign and represent that he was a law graduate or a practicing Advocate; people adjudged the respondent no.1 by his work and reposed their confidence to elect him; there was no deprivation of any right of any elector/voter; none of the electors/voters were ever influenced by educational qualification of the respondent no.1; (xxiii) mere numerical mistakes at the hands of the University or law college or any school, in mentioning the duration of course, does not render any course bad or non-existent; mere irregularity in any event is irrelevant; the fact of the matter remains that respondent no.1 took admission in law course and successfully completed it; (xxiv) the law degree was not false or fabricated or forged; and, (xxv) publication of pamphlets had no impact on the result of the election and the pamphlets did not in any manner impair or influence the decision of the elector/voter.

9. The petitioner filed a replication to the written statement aforesaid of the respondent no.1. The respondent no.15 has also filed a written statement. However, the need to advert thereto is not felt.

10. On the pleadings of the parties, the following issues were framed in the Election Petition on 14th December, 2016:

“(i) Whether the respondent no.1 furnished false information of his educational qualification in the affidavit filed with his nomination paper? OPP.

(ii) Whether the respondent no.1 has lawfully obtained a LL.B. Degree and was duly enrolled as an Advocate at the time of filing his nomination? OPD

(iii) Whether the nomination of respondent no.1 has been improperly accepted? OPP

(iv) *Whether the respondent no.1 published statements of facts which were false and which he did not believe to be true in relation to his personal character/educational qualifications being statements reasonably calculated to unduly influence the prospect of his election which amounts to corrupt practice? OPP*

(v) *Whether any alleged corrupt practice has resulted in inducement and thwarted the free exercise of the Electoral Right of the Voter? OPP*

(vi) *Whether the election of respondent no.1 is liable to be declared null and void? OPP*

(vii) *Relief.”*

and the parties relegated to evidence.

11. Though the respondent no.1 preferred FAO(OS) 15/2017 against the order dated 21st September, 2016 of dismissal of the application under Order VII Rule 11 CPC, but on 12th September, 2018, withdrew the same.

12. The petitioner, besides examining himself as PW-1, examined Mr. Sant Lal Pal, Examination Controller, Dr. Ram Manohar Lohia Avadh University, Faizabad, UP as PW-2, Dr. Shambhu Nath Choudhary, Registrar of TNB College, Bhagalpur University, Bihar as PW-3, Mr. Avnish Kumar Pandey, Assistant Secretary, Bar Council of India as PW-4, Mr. J.R. Sharma Sharma, Additional Secretary, Bar Council of India and Mr. Arun Sharma, Secretary, Bar Council of Delhi as PW-5 and closed his evidence in affirmative.

13. The respondent no.1 examined Dr. Ranbir Singh Pawar, an elector/voter in the subject assembly constituency as R1W1, Mr. Rama Kumar Sharma, another elector/voter of the subject constituency as R1W2, Mr. Umesh Verma, Judicial Assistant, Writ Branch of this court as R1W3, Dr. R.K.Mishra, Principal, Bishwanath Institute of Legal Studies, Mongyr,

Bihar as R1W4, Mr. B.L. Meena, SDM Election and Returning Officer of the subject constituency as R1W5, Mr. Inderjit Dabas, Ahlmad from the Court of ACMM where prosecution of the respondent no.1 was pending, as R1W6 and Sh. Manto Sen, Secretary, Bar Council of India as R1W7. The respondent no.1 did not examine any other witness and on 28th February, 2019 stated that no further evidence was required to be led. The evidence of the respondent no .1 was thus closed.

14. The counsels, on 14th March, 2019 stated that the recording of evidence stood concluded and the Election Petition was ripe for final hearing.

15. The counsels were heard on 7th August, 2019. On 23rd September, 2019, the counsel for the petitioner stated that he had filed a detailed note of arguments and did not want to argue anything beyond that and the petition be decided on the basis thereof.

16. The counsel for the respondent no.1, on 23rd September, 2019 stated that he had during the proceedings, filed an application under Section 340 of the Cr.P.C. and which was disposed of granting liberty to agitate at the time of final argument. Judgment was reserved on 23rd September, 2019.

17. I have perused the records and have considered the note of final arguments of the counsel for the petitioner. The counsel for the respondent no.1, despite opportunity, did not make any arguments.

18. Considering the nature of the issues, it is deemed appropriate to generally discuss the evidence with respect thereto and record issue-wise finding thereafter.

19. The respondent no.1, at the time of filing his nomination for the subject election, in his affidavit notarized on 16th January, 2015, in Form-26, in terms of Rule 4A of the Conduct of Election Rules, proved as Ex.PW1/4, against the information sought at serial no.9, 10 and 11, stated as under:-

“(9) *Details of profession or occupation:*

(a) *Self* **SELF EMPLOYED**

(b) *Spouse* **HOUSE WIFE**

(10) *My educational qualification is as under:*

(Give details of highest School/University education mentioning the full form of the certificate/diploma/degree course, name of the School/College/University and the year in which the course was completed.)

(10) *My educational qualification is as under:*

Education	Board/University	Course	Year
<i>University education</i>	<i>TILKAMANJHI BHAGALPUR UNIVERSITY, BIHAR</i>	<i>LL.B</i>	<i>1999</i>
<i>Certificate/diploma</i>	<i>N.A.</i>	<i>N.A.</i>	<i>N.A.</i>
<i>Other</i>	<i>N.A.</i>	<i>N.A.</i>	<i>N.A.</i>

and verified the said affidavit as under:-

“VERIFICATION

I, the deponent, above named, do hereby verify and declare that the contents of this affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed therefrom. I further declare that :-

(a) *there is no case of conviction or pending case against me other than those mentioned in items 5 and 6 of Part A and B above;*

(b)I. my spouse, or my dependents do not have any asset or liability, other than those mentioned in items 7 and 8 of Part A and items 8, 9 and 10 of Part B above.

Verified at DELHI this the 16TH day of January, 2015”

20. The adjudication required *inter alia* is of, (a) correctness of the claim of the respondent No.1, of being an Advocate and a law graduate; (b) validity of the admission of respondent No.1 to the law college; and, (c) the effect if any of the wrong declaration if any by the respondent No.1, at the time of filing of his nomination.

21. PW-5 Arun Sharma, Secretary Bar Council of Delhi, in his examination-in-chief *inter alia* deposed, (a) that he had brought the photocopies of the Enrolment Form and photocopies of the documents submitted along with the Enrolment Form filled by the respondent no.1 at the time of enrolment with Bar Council of Delhi; photocopy of the enrolment form was Ex.PW5/1; (b) photocopy of the mark sheet of Avadh University of B.Sc. Part I exam of Roll No.40717, Certificate No.20252 dated 22nd October, 1987 of B.Sc. Part I examination taken by respondent No.1 was Ex.PW-5/6; (c) photocopy of the mark sheet of Avadh University of Roll No.31331 dated 16th November, 1988 of B.Sc. Part II examination taken by respondent No.1 was Ex.PW-5/7; (d) photocopy of degree of the year 1988 of Avadh University of B.Sc. programme of Roll No.31331, of respondent No.1 was Ex.PW-5/8; (e) photocopy of degree of Tilka Manjhi Bhagalpur University (TMBU), Serial No.3687 dated 18th May, 2009 of respondent No.1 was Ex.PW5/9; (f) photocopy of mark sheet of TMBU of Registration No.1306 dated 23rd August, 1996 (1994-1995) of respondent No.1 was Ex.PW-5/10; (g) photocopy of mark sheet of TMBU of Registration

No.1306 dated 10th July, 1997 (1996) of respondent No.1 was Ex.PW-5/11; and, (h) photocopy of mark sheet of TMBU of Registration No.1306 dated 18th May, 2001 (1999) of respondent No.1 was Ex.PW-5/12. In cross-examination, he stated (i) that he was not personally aware of the facts but was deposing as per the records available; (ii) that on receipt of complaint of Ripu Daman Singh Bhardwaj, a decision was taken on 8th May, 2015 to forward the complaint to Deputy Commission of Police (South) for the purpose of preliminary enquiry and investigation; (iii) that the Bar Council of Delhi had received a communication from Bar Council of India on 10th January, 2017 forwarding the order dated 29th December, 2016 of the Bar Council of India; (iv) that the Bar Council of Delhi had issued a Notification dated 27th January, 2017 Ex.PW-5/22 in respect of the respondent No.1; and, (v) that no specific order of cancellation of enrolment of the respondent No.1 had been passed and the document submitted by the respondent No.1 had been sent for verification.

22. The respondent no.1 in his application dated 12th July, 2010 under Section 25 read with Section 24 of the Advocates Act, 1961 to the Bar Council of Delhi for enrolment as an Advocate, proved as Ex.PW5/1, is found to have declared that (a) he was qualified to be admitted as an Advocate on the State Roll under Clause (c) of Sub-Section (1) or Sub-Section (2) or Sub-Section (3) or Sub-Section (4) of Section 24 of the Advocates Act; (b) he held a degree in Law of a university in India recognized by the Bar Council of India under Section 24(1)(c) of the Advocates Act i.e. TMBU in three years LL.B. course culminating in the year 1999 and had taken instruction from the Institute of Legal Studies, Munger by actually attending classes for a period of three years in English

language; (c) he had a degree in Science i.e. B.Sc. from K.S. Saket P.G. College, Faizabad, U.P., affiliated to Avadh University, obtained in the year 1988 and that he had qualified for admission to the said course vide CBSE Senior Secondary Exam, 1983 and CBSE Secondary Exam, 1981; (d) that he was enclosing therewith (i) Certificate and Marksheet of Secondary Examination; (ii) Certificate and Marksheet of Senior Secondary Examination; (iii) Provisional Certificate and Marksheet of graduation; and, (iv) Provisional Certificate and Marksheet of LL.B. examination. The Enrolment Form is also accompanied with affidavit verified on 3rd August, 2010 of the respondent no.1 proved as Ex.PW5/16, affirming that the respondent no.1 passed his Secondary Examination in the year 1981, the Senior Secondary Examination in the year 1983 and that thereafter the respondent no.1 in the year 1986 took admission in B.Sc. from Avadh University, Faizabad and passed the first year examination in the year 1987 and “the second i.e. final year” examination in the year 1988 and thereafter had taken admission in LL.B. in the year 1994 and took the final year LL.B. examination in the year 1999 from TMBU. In the said affidavit it was also affirmed that after the Senior Secondary Examination, the respondent no.1 did not take admission in any university or college as was then preparing for entrance examination of other courses and from the year 1989 to 1993 was also preparing for the entrance examination of various courses and did not join any university and that after he passed the second year LL.B. examination in the year 1996, he could not fill the final year examination form within the prescribed time owing to illness and domestic circumstances.

23. The aforesaid documents submitted by the respondent no.1 with the Bar Council of Delhi at the time of seeking enrolment as an Advocate, leave

no manner of doubt that the admission of respondent no.1 in three years LL.B. programme of T.M. Bhagalpur University, Bhagalpur was on the basis of two years course in graduation in B.Sc. from Avadh University, Faizabad with Roll No. 31331.

24. It is admitted by the respondent no.1 also that the eligibility criteria for admission to the three years LL.B. programme of TMBU was a three years graduation degree. It is clear from the documents aforesaid that the respondent no.1 did not possess the same. However notwithstanding the same, the respondent no.1 in his written statement to this Election Petition did not make a clean breast of the state of affairs and which if made would not have required the matter to be put to trial, at least on this aspect. The respondent no.1, in paragraph 26 of Reply on Merits of the written statement, pleaded as under:

“26.Even otherwise mere numerical mistake at the hands of the University of Law College or any school does not render the degree of a course bad or non-existent. Mere irregularity in any event is irrelevant.....”

conveying that the mention in the B.Sc. degree of Avadh University of the B.Sc. programme being of two years, was a numerical mistake or irregularity. Had the respondent no.1 in the written statement categorically admitted that his B.Sc. programme was of two years and on the basis of a degree wherein he took admission to LL.B. programme, the need for examination of several of the witnesses would have been obviated.

25. However the matter does not rest at that. The petitioner has also been successful in proving that in fact the claim of the respondent no.1, of being a graduate in two years B.Sc. programme of Avadh University is fabricated.

26. PW2 Sant Lal Pal, Examination Controller, Dr. Ram Manohar Lohia Avadh University deposed, (i) that he was the Controller of Examination since 2016 and prior to that he was the Deputy Registrar (Examination); (ii) that he had examined graduation degree with Roll No.31331 of the year 1988, being Ex.PW2/A (also Ex.PW5/8) claimed by the respondent No.1 to have been granted to him; (iii) that this Roll No. was not allotted to any candidate for B.Sc. Part-II examination in the year 1988; (iv) that Ex.PW2/A (also Ex.PW5/8) had not been issued by Avadh University; and, (v) that in the year 1988, the B.Sc. course offered by Avadh University was of two years. In his cross-examination, he stated, (a) that EX.PW1/DX-2, being the photocopy of a letter dated 22nd January, 2015 of Avadh University, to Sh. Pradeep son of Sh. Ved Prakash, in response to his letter dated 21st January, 2015 and stating that the Certificate of the respondent No.1 of B.Sc. Second Year, Roll No.31331, Year 1988 was not issued by him but was issued by his predecessor A.M. Ansari and the stationary on which the same was written belonged to the university; (b) it was however correct that the word 'LOHIA' in English on EX.PW1/DX-2 was wrongly spelt; (c) that he could not say who has issued EX.PW1/7, being the letter dated 24th February, 2015 of Avadh University to Sh. Pradeep in response to his letter dated 21st January, 2015 and again informing that the degree and mark sheet of the respondent No.1 was bogus; (d) that he was stating that EX.PW-2/A (also Ex.PW5/8) was not issued by Avadh University because the Roll Number mentioned thereon was not allotted to any candidate in that year in college, 'K.S. Saket, Mahavidhyalya Ayodhya, Faizabad, U.P.' and because he had gone through the tabulation chart of the relevant year in the university and found that this roll number was never allotted to any candidate in that

Mahavidhyalaya; and, (e) that he had personally gone through the tabulation charts on being asked by the Vice-Chancellor of the university to depose in that matter.

27. It is clear from the testimony of PW2 and which could not be shaken in cross-examination, that the claim of respondent No.1, of his highest educational qualification being an LL.B. from TMBU and of being an Advocate, has its edifice on the false claim of being a graduate of in two years B.Sc. programme of Avadh University.

28. Though on going through the remaining evidence led, I do not find the same to be of any relevance to the matters in controversy, but for the sake of completeness, proceed to discuss the same.

29. PW3 Dr. Shambhu Nath Chaudhary, Registrar from TMBU deposed, (a) that LL.B. Provisional Certificate No.3687 was issued to the respondent No.1 but the degree had been cancelled on 20th March, 2017 as it was not genuine; (b) that the cancellation was effected by the Senate, being the supreme body of the university; (c) that he had brought the copies of the minutes of the said decision; (d) that enquiry was made in this regard and thereafter the Senate took the decision; (e) that he had brought the certified copies of the two enquiry reports, one conducted by the Inspector of College and the other by a committee headed by the Pro-Vice Chancellor; (f) that a notification of cancellation had been issued; (g) that the minimum qualification for admission for LL.B. degree course from TMBU was graduation i.e. 10+2+3; (h) that he had not brought the complete copies of the documents which were submitted by the respondent No.1 at the time of admission of LL.B. course; (i) that criminal cases were lodged against 16

person indicted by Pro-Vice Chancellor headed enquiry report and the persons in service, table transferred; (j) that the original resolution of the Senate was EX.PW3/1 and the original enquiry report was EX.PW3/2; (k) that the original report of enquiry headed by Pro-Vice Chancellor had been seized in FIR No.605/2015 of Police Station Hauz Khas, New Delhi; and, (l) that the original Notification No.98/2017 dated 15th May, 2017 by which the LL.B. degree of respondent No.1 was cancelled was EX.PW3/3 and the same was got published in 'Times of India', Patna edition and in 'Hindustan' Bhagalpur, Patna edition. In cross-examination, he deposed, (i) that he was then Inspector of Science College and was authorised by Registrar to bring the enquiry report; the authorization in his favour was EX.P; (ii) that he had brought the original proceedings done in the enquiry; (iii) that he was not a member of the enquiry committee and had knowledge of the enquiry report from the records; (iv) that he could not say, when show cause notice was issued to the respondent No.1 but had knowledge that in one such previous enquiry, notice was sent to respondent No.1 and he had replied to the same; (v) that he could not admit or deny that no show cause notice was sent to respondent No.1; (vi) that the order dated 26th April, 2018 of the High Court of Patna was EX.Q; and, (vii) that he did not know if any new enquiry had been started in view of the order dated 26th April, 2018 (a perusal of EX.Q shows the Division Bench of the High Court of Patna to have directed the TMBU to cause an enquiry into the matter in accordance with law, giving opportunity to the respondent No.1 to defend himself and prohibited the respondent No.1, till the enquiry was conducted, from using the degree/certificate in question).

30. PW4 Awanish Kumar Pandey, Assistant Secretary, Bar Council of India deposed, (a) that a complaint was filed against the enrolment of respondent No.1 with Bar Council of Delhi; (b) that it was not disposed of in one year and due to that was transferred to the Bar Council of India, by the direction of the High Court; (c) that the Bar Council of India, on 29th December, 2016 had passed an order on the said complaint; and, (d) that the certified copy of the said order was EX.PW4/1 (a perusal of the same shows the Bar Council of India to have directed the enrollment of respondent No.1 with the Bar Council of Delhi to remain in abeyance till the competent authority or court of law declared or decided that the Certificate of Graduation and LL.B. degree issued to the respondent No.1 was genuine and the enrollment shall stand cancelled, if no declaration or decision took place within two years, with right to the respondent No.1 to get enrolled afresh as and when he got valid certificate to the satisfaction of the Bar Council).

31. PW4 J.R. Sharma, Additional Secretary, Bar Council of Delhi deposed, (i) that affiliation of Biswanath Singh Institute of Legal Studies, Munger, Bihar was valid upto 2017-2018, but inspection was still pending; (ii) that the College was having temporary approval of its affiliation during the period 1993-2000; and, (iii) that in the year 2001, the College was having approval from Bar Council of India; similarly, it was having approval in the year 1999.

32. RW-1 Ranbir Singh Pawar deposed that, (a) he was one of the voters in the electoral list for the subject Assembly Constituency and had cast his vote in the elections of the year 2015; (b) that the candidate for AAP for the election of the year 2015 was respondent No.1; (c) that the respondent No.1

did not appeal to him or to the society for votes on account of being an Advocate; (d) that the respondent No.1 appealed to him and to the society for vote upon the agenda of AAP. In his cross-examination, he stated (i) that he was a voter in the subject Assembly Constituency since 1980; (ii) that he knew the respondent No.1 since eight years prior thereto and had come in contact with the respondent No.1 on account of civic problems like blockage of sewage and similar problems; (iii) that he was not aware that the respondent No.1 was an Advocate and learnt of the same only after the respondent No.1 had been elected; (iv) that he was not a member of AAP; (v) that there were meetings of Residents Welfare Association and it was resolved that AAP should be made to win and/or to vote for AAP; (vi) that he had not seen PW-1/9 to PW-1/15, being the pamphlets for the said election in support of respondent No.1; and, (vii) that he was a bachelor in Ayurveda Medical Sciences.

33. R1W2 Raman Kumar Sharma, in his affidavit by way of examination-in-chief deposed (a) that he was one of the voters in the electoral list of the subject Constituency; (b) that he had cast his vote for the subject election in the year 2015 at the subject Constituency; (c) that the candidate for AAP for the said election in the year 2015 was respondent No.1; (d) that the respondent No.1 did not appeal to him or to the society for votes on account of being an Advocate; and, (e) that the respondent No.1 appealed to him and to the society to vote upon the agenda of AAP. In his cross-examination, he deposed (i) that one Mr. Garg was a candidate from Bhartiya Janta Party (BJP) in the said election but he did not recollect his full name; another candidate was Mr. Anil from Congress but he did not remember his full name either; (ii) that he did not have any idea regarding the names of other

candidates like of Bahujan Samaj Party (BSP) etc.; (iii) that he had met respondent No.1 only for 2-3 minutes at the time of campaigning when the respondent No.1 had come to the society during elections and had not met him elsewhere; (iv) that he had never heard any of the speeches of the respondent No.1; and, (v) that he had never seen any election pamphlets of respondent No.1.

34. R1W3 Umesh Verma, Judicial Assistant, RKD Branch of this Court brought with him the electronic file of WP(C) No.1056/2015 along with Certificate under Section 65B of the Indian Evidence Act, 1872 and produced the affidavit of Bishwanath Singh Institute of Legal Studies College, Munger, Bihar as mark 'RA' and some other documents from the said file as mark 'RB', mark 'RC' and mark 'RD'.

35. R1W4 Dr. R.K. Mishra, Principal, Bishwanath Singh Institute of Legal Studies College, Munger, Bihar deposed, (i) that he was the Principal since 8th January, 2008 and the College of which he was the Principal was respondent No.4 in WP(C) No.1056/2015 of this Court and he had filed an affidavit in the said writ petition and the same was Ex.R1W4/A; (ii) that he had filed some other documents along with his affidavit and the same were mark RC and mark RD and on which then Ex.R1W4/B and mark R1W4/C were put; (iii) that he had filed attested copies of those documents along with his affidavit in the writ petition and had seen the originals before attesting the same; (iv) that the name of respondent No.1 was there in those documents; (v) that he could not produce the originals of those documents, as the same had been seized in FIR No.605/2015; (vi) that in the year 1994, the procedure for admission to LL.B. course was, that the applicant had to

bring his original documents along with photocopies to the admission counter and the Clerk on the counter would examine and compare the photocopy with the originals and after being satisfied, issue admission form and which, after filling up by the applicant, was again to be submitted at the admission counter; (vii) that in 1994, the admission could be given without Migration Certificate; (viii) that it was correct that Migration Certificate was to be issued by Avadh University; (ix) that a final result was given to respondent No.1, after submission of Migration Certificate; (x) that he could not say, whether respondent No.1 had filled in any admission form at the time of taking admission in LL.B. course; and, (xi) that he submitted the admission register to the Police and had not kept any photocopy. In his cross-examination he deposed (a) that he was not the author of Ex.R1W6/A, Ex.R1W6/B, Ex.R1W6/C, Ex.R1W6/D and Ex.R1W6/E and had no personal role qua the entries therein; (b) that he was deposing on the basis of record; (c) that as per Ex.R1W6/E, the respondent No.1 was declared 'Failed'; (d) that he did not know when the Migration Certificate was issued to respondent No.1; (e) that he did not know, whether at all any Migration Certificate was issued to respondent No.1; (f) that he did not know if no counterfoil of the provisional certification with respect to respondent No.1 existed in the University; (g) that the University prepared three sets for tabulation registers; (h) that he had no knowledge who prepared the admission registers; (i) that he had filed affidavit in WP(C) No.1056/2015 on the basis of records of the College and had otherwise not made any effort to verify the authenticity of the records; and, (j) that no document was submitted by the respondent No.1 in the college during his tenure.

36. R1W5, being the Election Officer, deposed, (a) that he was the Returning Officer of the subject constituency in the election of the year 2015; (b) the date for scrutiny of nomination was 22nd January, 2015; and, (c) that none had filed objection to the candidature of respondent No.1 for the subject election. In cross-examination however, on being shown the document he admitted that objection was filed, and deposed (i) that no enquiry on the said objection was carried since the objection was received after the date of scrutiny; and, (ii) that he made a note in this regard and sent the same to the Election Commission and had received back counter noting from Election Commission to the effect that the objector may file Election Petition.

37. R1W6 Inderjeet Dabas, Ahlmad from the Court of ACMM where prosecution of the respondent No.1 was/is pending, deposed (i) that the seizure memo was Ex.R1W6/A; (ii) that the admission form seized was Ex.R1W6/B; (iii) that he brought the original admission registers for the years 1995, 1996 and 1999 and copy thereof was Ex.R1W6/C; (iv) that he also brought tabulation registers for the years 1995, 1996 and 1999 and the copies thereof were Ex.R1W6/D. In cross-examination, he deposed that he had no personal knowledge and has denied the suggestion that the documents were not seized in his presence.

38. R1W7 Srimanto Sen, Secretary, Bar Council of India deposed that Biswanath Singh Institute of Legal Studies, Munger, Bihar was till then approved by Bar Council of India for imparting legal education. In his cross-examination, he deposed that he was not the author of any of the documents brought by him and had no personal knowledge of the contents

thereof and that he had not brought the record of affiliation of the said College.

39. Significantly, the respondent no.1 did not choose to appear as a witness and has hesitated from deposing on oath, of having graduated from Avadh University and from being subjected to cross-examination on his written statement. The respondent no.1 has also not examined any other witness from Avadh University to rebut the unequivocal evidence of PW2 and PW5.

40. Though the counsel for the petitioner has contended that on the evidence led, the respondent no.1 is not found to have done 3 years' LL.B. programme from TMBU, inasmuch as the said university did not have the requisite affiliation from the Bar Council of India during the years when the respondent no.1 studied therein but on a reading of the entire evidence analyzed here-in-above, I am unable to find in favour of the petitioner in this respect. The Secretary, Bar Council of India examined by the respondent no.1 as R1W7 in this regard, deposed that the Biswanath Singh Institute of Legal Studies, Munger, Bihar was inspected on 14th September, 1996 and recommended for approval for affiliation and the said report was considered and approved by the Legal Education Committee of Bar Council of India in its meeting held on 18th and 19th April, 1997 and duly approved by General Council of Bar Council of India in its meeting held on 10th, 11th and 14th May, 1997 and the approval communicated to the college on 14th May, 1997. In his cross-examination, it further emerged that the Bar Council of India vide letter dated 10th July, 1992 communicated grant of permission of affiliation to Biswanath Singh Institute of Legal Studies, Munger, Bihar for a

period of two years and that the request of the said college for continuation of the affiliation from 1994 was pending consideration.

41. However, the falsity of the claim of the respondent no.1, including in this Election Petition, of having graduated from Avadh University and on the basis of graduation wherefrom, the respondent no.1 got admission into the three years' LL.B. programme has been unequivocally established.

42. The position which thus emerges is, that the respondent no. 1 did not have the requisite qualification for admission to the three years LL.B. programme, though was admitted therefor and obtained an LL.B. degree and on the basis whereof was enrolled with the Bar Council of Delhi as an Advocate. The question which arises is, whether the respondent no.1, having obtained admission in LL.B. programme, the basis of which in fact did not exist and as would have been known to the respondent no.1, and by so getting enrolled as an Advocate and claiming himself in the nomination filed for subject election, to be an Advocate, committed a corrupt election practice within the meaning of Section 123(4) of the Representation of People Act.

43. On first principles, without adverting to law, I, as an elector, would feel cheated if the candidate I vote for and who is elected, is ultimately found to have made a false representation while canvassing his candidature and particularly qua his / her educational qualification and profession / vocation.

44. Educational qualification and vocation / profession is a significant part of one's persona. A person is assessed by others, in the initial interaction, by his / her educational, qualification and vocation and only after making an initial break through, may in the course of subsequent interactions, be assessed by other facets of his / her persona. However without the initial

breakthrough there would be no opportunity to interact, to be judged on other parameters. In an election, a candidate cannot possibly have long interactions with electors/voters, and initial breakthrough is of utmost importance.

45. The respondent no.1, who from 1983 onwards, was satisfied and resting with his highest educational qualification of Senior Secondary School Pass, has not given any explanation for his desire, after eleven years, in 1994, to acquire qualification of LL.B.. It can safely be assumed that respondent no.1 in those 11 years realized the relevance of educational qualification and respectability of vocation / profession, in the society of which he was a part. With respect to the legal profession, in *In re Sanjiv Datta* (1995) 3 SCC 619 it was held that it is a solemn and serious occupation and a noble calling and those who belong to it are honorable members; the legal profession is different from other professions in that what the lawyers do, affects not only the individual but the administration of justice which is the foundation of civilized society. It was further held that the legal profession has always been held in high esteem and its members have played an enviable role in public life.

46. On first principles thus, as a citizen and elector, I would want the election of the candidate who had lied qua his / her educational qualification and vocation, to be set aside.

47. I now proceed to determine the petition in law i.e. the status of the LL.B. degree of the respondent no.1.

48. In *Maharishi Dayanand Vs. Surjeet Kaur* (2010) 11 SCC 159, a student was erroneously allowed to appear for a B.Ed. examination, while

simultaneously pursuing her Masters degree, which was barred as per the notified Rules of Examination of the University. The Court held that (i) there can be no estoppel against a statute and no public authority can be debarred from enforcing a statutory provision; (ii) promissory estoppel, being an equitable doctrine, must yield when equity so requires; and, (iii) the mistake on the part of the University to allow the student to appear in an examination cannot be, by any logic treated to be the conduct of the University which confers any rights on the student to keep on pursuing the course. In ***Mahatma Gandhi University Vs. Gis Jose*** (2008) 17 SCC 611, a student who had acquired 53.3% marks in the qualifying examination, was admitted to M. Sc. Computer Science course inspite of the minimum required of 55%. The University, on detecting the error, sought to rectify the error. The High Court, on a petition by the student held that disrobing the student of her effort, would be a harsh result and granted relief to the student. The Supreme Court held that such a course of action could not have been taken by the High Court and owing to the irregular admission of the student, another deserving candidate had been denied admission. It was further held that misplaced sympathy should not have been shown in total breach of the Rules and the judgment of the High Court was set aside. In ***Devendra Kumar Vs. State of Uttaranchal*** (2013) 9 SCC 363, the appellant passed the physical test, thereafter the written test and ultimately was found fit in the medical examination and secured employment, by filing an affidavit that he had never been involved in a criminal case. However subsequently it was discovered that the appellant was in fact involved in a criminal case and was thus removed from employment. It was held that the issue of obtaining appointment by misrepresentation was no longer *res integra*. The question

was not whether the appellant was suitable for the post but whether the appellant had secured employment by suppressing material information that what where something is secured by misrepresenting facts or by playing fraud, such an order cannot be sustained in the eyes of law, as fraud voids all judicial acts ecclesiastical or temporal. It was further held that if the initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same. The maxim of *sublato fundamento cadit opus*—on a foundation being removed, the superstructure falls was invoked. It was reasoned that a person having done wrong, cannot take advantage of his own wrong and plead bar of any law and that a person violating law cannot claim any right arising out of his own wrong doing.

49. Speaking for the Division Bench of this Court, I have in ***Bidisa Chakraborty Vs. Indira Gandhi National Open University*** MANU/DE/2287/2014 held that once a student is found to have applied in violation of the rule, he/she is equally guilty and the principle of estoppel cannot be invoked as the object thereof is to prevent fraud and secure justice between the parties by permission of honesty and good faith; but a student in the know of rule, cannot be said to have acted honestly. Similarly, in ***Birender Singh Vs. Union of India*** MANU/DE/1101/2014 it was held that applying the principle of law, a direction contrary to law cannot be issued and the Court cannot direct an authority to act in contravention of statutory provision and a student, even if wrongly admitted, without being eligible, is not entitled to continue and misplaced sympathy should not be shown in total breach of rules.

50. This Court in judgment dated 19th July, 2011 in W.P.(C) No.3620/2011 titled *Ritu Aggarwal Vs. Indian Institute of Foreign Trade* has held that an erroneous admission, even if owing to the mistake of a staff of an educational institution cannot be sustained on the principle of estoppel.

51. The respondent No.1, even if not aware of the eligibility requirement of TMBU, of three years graduation, for admission to three years LL.B. programme, was certainly aware of being not a graduate at all from Avadh University and, of the graduation degree in B.Sc. relied upon by him for seeking admission and for seeking enrollment with the Bar Council of Delhi, being non-existent and fabricated.

52. It thus follows, that owing to the respondent No.1 being not a graduate and being not eligible for three years LL.B. programme of TMBU, the LL.B. degree obtained by the respondent No.1 also cannot exist and axiomatically the enrollment with the Bar Council of Delhi obtained by the respondent No.1 on the basis thereof, is null and void.

53. Though there was / is no minimum educational qualification prescribed for contesting an election under the Representation of People Act but still, the Supreme Court in *Association for Democratic Reform* supra deemed it necessary for the contestants in an election to disclose their educational qualification and vocation and consequent where to the Act was amended and Form 26 supra prescribed.

54. The statutory requirement of disclosing the highest school/university education and vocation in the Nomination Form cannot be complied with pedantically. It is not open to a person, who under the relevant statutes was not eligible for admission to the highest educational qualification and who

got admission thereto by fabricating documents of eligibility, to contend that he has indeed obtained the qualification disclosed by him, inasmuch as the qualification so obtained is null and void. It has thus but to be held that the respondent No.1 made a wrongful disclosure in the Nomination Form of the election and as reasoned in the order dated 21st September, 2016, the acceptance of his nomination with false particulars and to which objection was raised by respondent no.4 Mohd. Saleem at the contemporaneous time and inspite whereof the respondent no.1 contested the election and his nomination was accepted, was invalid.

55. As also held in the order dated 21st September, 2016 relying on ***Kishan Shankar Kathore*** supra once the nomination is found to have been wrongly accepted, the election necessarily has to be set aside.

56. In order dated 21st September, 2016, relying on ***Association for Democratic Reforms, Krishnamoorthy*** and ***Mairembam*** supra, it has also been held that once the Nomination Form is found to be making false disclosure to the knowledge of the person seeking election, it is not open to such person to contend that the result of the election has not been influenced thereby. Unless the respondent No.1 felt that he would be able to influence the electors to vote in his favour by representing himself to be an Advocate, there was no need for him to say so and he could have very well claimed to be having the qualification of the Senior Secondary School Certificate and which qualification alone he held, in view of the aforesaid. The factum of the respondent No.1 making a false declaration on oath in the Nomination Form, *res ipsa loquitur* speaks of the same affecting the outcome of the litigation. The respondent No.1 has not led any evidence to disprove what

was already held in the order dated 21st September, 2016 and appeal whereagainst was withdrawn. It was held in *Sri Mairembam Prithviraj* supra that once it was found that the candidate had not studied MBA, the information provided by him in the affidavit filed in Form-26 would amount to a false declaration and the said false declaration cannot be said to be a defect which would not be of a substantial character and that having made a false declaration relating to educational qualification, the candidate cannot be permitted to contend that the declaration is not of a substantial character and there is no necessity to prove that the election has been materially effected as the returned candidate would not have been able to contest the election if his nomination was not accepted – in such a case, it is not necessary to prove that the result of the election insofar as it concerns the returned candidate, has been materially affected by the improper acceptance of his nomination.

57. In *Karan Singh Tanwar Vs. Surender Singh* (2017) 239 DLT 570, the returned candidate, in his Nomination Form, with respect to his educational qualification had claimed that he was a Bachelor in Arts of the year 2012 from Sikkim University and which was admittedly a misrepresentation. Dismissal of the Election Petition prior to trial was sought on the ground that the same did not amount to unduly influencing the voters as the defect in disclosure was not of substantial character that could have materially prejudiced the prospects of the election, for it to be termed as a corrupt practice within the meaning of Section 123 of the Representation of People Act. The Election Petition was held to be not eligible to be dismissed summarily, reasoning, (a) that if a voter is denied of the acquaintance to the information and deprived of the information required to be disclosed, he/she

would not be exercising his franchise with an informed mind and the fundamental right to know will get nullified; (b) that the attempt of the candidate in this regard has to be perceived as creating impediment in the mind of the voter; (c) that non-furnishing of the required information would amount to falsehood/suppression/non-disclosure and furnishing incomplete information or making a misrepresentation or suppression of material information on any of the aspects would be treated as a defect of a substantial character; (d) that any act which is calculated to interfere with the free exercise of electoral right will make a candidate guilty of using undue influence; (e) that any attempt to deprive the voters of material information relating to a candidate would taint the election results and infringe upon the fundamental right of a citizen to know, thus nullifying the very foundation of the voter's exercise of choice and polluting the purity of the election process.

58. In *Azhar Hussain Vs. Rajiv Gandhi* 1986 Supp. SCC 315, it was held (i) that the result of election is subject to judicial scrutiny and control to ascertain that the 'true' will of the people is reflected in the results and to secure that only the persons who are eligible and qualified under the Constitution obtain the representation; (ii) that in order that the "true will" is ascertained, the Court will step in to protect and safeguard the purity of elections, for, if corrupt practices have influenced the result, or the electorate has been a victim of fraud or deception, the will of the people as recorded in their votes is not the 'free and true' will exercised intelligently by deliberate choice and is not in the true sense at all, the will of the people. The respondent No.1 by indulging in such practice has contaminated the stream of the election.

59. Though the counsel for the respondent no.1 has not argued, but I may at this stage deal with some of the defences raised in the written statement of the respondent no.1.

60. Merely because the petitioner, in the general election to the Legislative Assembly of NCT of Delhi held in the year 2013 and / or in response to the nomination filed by the respondent no.1 in the subject election did not raise any objection to the educational qualification disclosed by the respondent no.1 would not estop the petitioner from filing this Election Petition. It is the settled principle of law that there can be no estoppel against a statute. The requirement of correctly disclosing the educational qualification is in the statute concerning the elections i.e. Representation of People Act and it is the settled principle of law that there can be no estoppel against statute. I may also record that in *Sri Mairembam Prithviraj* supra also the candidate in the earlier election also had declared the same educational qualification as declared in the subsequent election and which was found to be a false declaration. Election, as also is well settled in law, is pure and simple a statutory right and once the respondent no.1 is found to have been elected in violation of the statute, he cannot be permitted to remain elected. Moreover, need to maintain the purity of the stream of elections is the need/right, not only of the petitioner, but of the other citizens as well and once it is found that the respondent no.1 has secured his election by violating the statute, the election cannot be permitted to stand, irrespective of whether the petitioner who has challenged the election is estopped from doing so.

61. No merit is found also in the plea of the respondent no.1 that his LL.B. degree declared by him in the nomination form as his highest educational

qualification having been conferred by TMBU, having not been declared null and void till the date of filing of the nomination or till the date of the election or even till now and the Bar Council having not cancelled his enrolment till the date of nomination or till the date of election or till now, there was no false declaration in the nomination form. It has now been established after recording evidence that the respondent no.1 secured admission to the LL.B. programme without being a graduate, as was the eligibility required for admission thereto and by fabricating his marksheets and degree of Avadh University of graduation. Axiomatically, the respondent no.1 was not entitled to pursue LL.B. programme of TMBU and not entitled to enroll as an Advocate. The admission of the respondent no.1 to TMBU and the degree of LL.B. and the consequent enrolment with the Bar Council are thus void *ab initio*. What is void *ab initio* is non-existent and does not require any declaration to be made thereof and does not become void from the date of the declaration. In ***Prem Singh Vs. Birbal*** (2006) 5 SCC 353, it was held that when a document is valid, no question arises of its cancellation; when a document is void *ab initio*, a decree for setting aside the same would not be necessary as the same is *non-est* in the eye of the law; as it would be a nullity. I have also in ***Aishani Chandna Mehra Vs. Rajesh Chandna*** 2019 SCC OnLine Del 6718 (FAO(OS) No.51/2019 preferred whereagainst was dismissed vide order dated 19th March, 2019) relying on Black's Law Dictionary 8th Edition, ***State of Maharashtra Vs. Pravin Jethalal Kamdar*** (2000) 3 SCC 460, ***Sanjay Kaushish Vs. D.C. Kaushish*** AIR 1992 Delhi 118, ***Ranganayakamma Vs. K.S. Prakash*** (2008) 15 SCC 673, ***The Rajasthan State Industrial Development Vs. Subhash Sindhi Cooperative Housing Society Jaipur*** (2013) 5 SCC 427, additionally held that (i) void is

defined as “of no legal effect; null; of no effect whatsoever; thus i.e. an absolute nullity”; (ii) once there is a prohibition in law to do something, the thing is deemed to have been not done and/or not had any effect; (iii) when in pursuance to an order which is without jurisdiction and nullity, a sale deed is executed, the sale deed is also a nullity and it is not necessary to seek a declaration about the validity of the sale deed and ignoring the said document, a suit for a substantive relief can be filed contending the document to be a nullity; (iv) if a particular document or decree is void, the person affected by the said document or decree can very well ignore the same and file a suit seeking substantive relief which may be available to him without seeking any declaration that the said decree or document is void or any consequential relief of cancellation of the same; (v) it is a well settled principle of law that a void document is not required to be avoided and only a voidable document must be avoided; (vi) void means non-existent from its very inception; the word, "void" has been defined as: ineffectual; nugatory; having no legal force or legal effect; unable in law to support the purpose for which it was intended; it also means merely a nullity, invalid; null; worthless; sipher; useless and ineffectual and may be ignored even in collateral proceeding as if it never were; and, (vii) a thing which is *non-est* is not required to be set aside and there is no need for an order to quash it.

62. No merit is also found in the plea of the respondent no.1 of the veracity of declaration required to be made in Form 26, to be filled in by the candidate at the time of seeking election, being not in the domain of an Election Petition. Once the statute concerning the elections i.e. the Representation of People Act has required certain declarations to be made by

a candidate desirous of contesting election, the challenge to such declarations made, necessarily has to be adjudicated in an Election Petition.

63. No credence can be given to the self-serving testimonies of R1W1 and R1W2 examined by the respondent no.1. It has been held in relation to law of trademarks that testimonies of self-serving witnesses do not serve any purpose and it is the Court which has to determine whether there is similarity between the two marks. Similarly here, mere statements of electors/voters of the respondent no.1 that they were not influenced by the declaration made by the respondent no.1 qua his educational qualification or vocation and the statements of any witnesses by the petitioner, though not examined, that they were so influenced, would not be determinative. It is the Court which has to determine whether the result of the election insofar as it concerns a returned candidate has been materially affected by any corrupt practice committed by the returned candidate, within the meaning of Section 100(1)(d)(i) and whether false declaration by the returned candidate as to his educational qualification and vocation directly or indirectly interfered with the free exercise of electoral right within the meaning of Section 123(2) of the Representation of People Act. It has already been held in the judgments referred to above that the same does amount to undue influence and is a corrupt practice.

64. On the basis of the discussions above, now I proceed to answer the issues framed on 14th December, 2016:

- Issue no.(i) is answered in favour of the petitioner and against the respondent no.1. It is held that the respondent no.1 furnished

false information of his educational qualification in the affidavit filed with his nomination form.

- Issue no.(ii) is decided against the respondent no.1 and in favour of the petitioner. It is held that the respondent no.1 has not lawfully obtained LL.B. degree and was not duly enrolled as an Advocate at the time of filing his nomination.
- Issue no.(iii) is decided in favour of the petitioner and against the respondent no.1. It is held that the nomination of the respondent no.1 was improperly accepted.
- Issue no.(iv) is decided in favour of the petitioner and against the respondent no.1. It is held that the respondent no.1 published statements of fact which were false and which he did not believe to be true in relation to his educational qualifications and to unduly influence the voters/electors in his election and which act of the respondent no.1 amounts to a corrupt practice.
- Issue no.(v) is answered in favour of the petitioner and against the respondent no.1. It is held that the false declaration by the respondent no.1 of his educational qualification and vocation has resulted in inducement and thwarted free exercise of electoral right of the voter.

65. As aforesaid, the counsel for the respondent no.1, at the time of hearing had merely drawn attention to the application filed by the respondent no.1 under Section 340 of the CrPC and which was disposed of giving liberty to the respondent no.1 to agitate the matter raised therein at the time

of final hearing. It was the plea of respondent no.1 in the Election Petition that the respondent no.4 filed an objection affidavit before the Returning Officer to the effect that the information given by the respondent no.1 with respect to his educational qualification is false and incorrect but the respondent no.1 was allowed to contest the election without taking any action on the objection. It was the case of the respondent no.1 in the application under Section 340 of CrPC that the said plea of the petitioner in the Election Petition was false. However though R1W5 i.e the Election Officer examined by the respondent no.1, in his examination-in-chief deposed that none had filed objection to the candidature of respondent no.1 to the subject election but in cross-examination admitted that objection was filed and further stated that no inquiry on the said objection was carried out since the objection was received after the date of scrutiny and that he merely made a note qua the said objection and forwarded to the Election Commission which responded to the effect that the objection may be considered in the Election Petition. This it cannot be said that the plea of the petitioner in this respect in the Election Petition, was false.

66. Resultantly, in my opinion, the result of the election of the respondent No.1 to the Legislative Assembly of NCT of Delhi from AC 16, Tri Nagar Constituency, in the General Elections to the Legislative Assembly of NCT of Delhi held in the year 2015 has been materially affected by improper acceptance of the nomination of the respondent No.1 and by a corrupt practice aforesaid committed in the interest of the respondent No.1 by the respondent No.1 and the election of the respondent No.1 is thus void.

67. Issue no.(vi) is accordingly answered in favour of the petitioner and against the respondent no.1.

68. I accordingly declare so and allow the Election Petition.

RAJIV SAHAI ENDLAW, J.

JANUARY 17, 2020

‘ak/bs/gsr’

HIGH COURT OF DELHI



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