
Pukhrem Sharatchandra Singh Vs Mairembam Prithviraj

Election Petition No. 1 of 2012

Court: MANIPUR HIGH COURT

Date of Decision: Feb. 29, 2016

Acts Referred:

Constitution of India, 1950 - Article 102, Article 141, Article 142, Article 145(3), Article 173, Article 19(1), Article 19(1)(a), Article 191, Article 32, Article 324, Article 84#Government of Union Territories Act, 1963 - Section 14, Section

Hon'ble Judges: N. Kotiswar Singh, J.

Bench: Single Bench

Advocate: N. Kumarjit, Sr. Adv., N. Surendrajit and P. Tamphamani, Advocates, for the Appellant; V. Giri, Senior Adv., H. Ishwarlal, Punam Kumari, Sapam Biswajit and Manav Vohra, Advocates, for the Respondent

Final Decision: Disposed Off

Judgement

N. Kotiswar Singh, J.

1. Heard Mr. N. Kumarjit, learned Senior counsel assisted by Mr. N. Surendrajit, Advocate and Mr. P.

Tamphamani, Advocate for the election petitioner. Heard Mr. V. Giri, learned Senior counsel assisted by Ms. Punam Kumari, Advocate, Mr.

Sapam Biswajit, Advocate, Mr. Manav Vohra, Advocate and heard also Mr. H. Ishwarlal, learned counsel appearing for the respondent/returned

candidate.

2. The petitioner who had contested as a Nationalist Congress Party (NCP) candidate from the 27th Moirang Assembly Constituency in the 10th

Assembly Election held in 2012 has challenged the election of the respondent who had successfully contested the election as an Indian National

Congress (INC) candidate and seeking declaration of his election as void under Section 100(1)(d)(i) of the Representation of the People Act,

1951 (hereinafter referred to as the "RP Act/Act").

3. The gravamen of the complaint of election petitioner as pleaded in the election petition is filing of false affidavit by the respondent at the time of

submission of nomination paper which according to the petitioner would entail in rejection of his nomination paper and, indulging in corrupt

practices and electoral malpractices inviting disqualification. Of the aforesaid 2 (two) grounds raised, the election petitioner has abandoned the

allegations of electoral malpractices and corrupt practices and has focussed his assailment on the filing of false affidavit which according to the

election petitioner would render the nomination paper materially defective and hence, though was liable to be rejected under Section 36(2)(b) of

the Act, was improperly accepted, thus, rendering it fit for declaring the election of the respondent as void under Section 100(1)(d)(i) of the RP

Act.

4. The 10th Assembly Election of the Manipur which was notified on 4.01.2012 was held on 28.01.2012. The scrutiny of the nomination papers

was held on 12.01.2012. The petitioner states that at the time of scrutiny of the nomination papers, the petitioner raised objections to the

nomination paper submitted by the respondent and sought for rejecting his nomination paper on 3 (three) grounds, viz.:--

(i) that the respondent failed to file proper affidavit prescribed under Article 173 of the Constitution of India;

(ii) that the affidavit filed by the respondent was a false one, as he had falsely deposed at para No. 9 of his affidavit dated 06.01.2012 submitted

along with the nomination paper that his highest educational qualification is ""MBA, 2004, Mysore University"" which according to the petitioner is

false and, that the respondent at para No. 5 had put the word ""Nil"" in respect of residential building and concealed parts of his homestead land and

structure;

(iii) that the affidavit was filed without subscribing oath or affirmation before the Returning Officer.

5. The petitioner claims that in view of the aforesaid defects and false information provided in the affidavit filed by the respondent along with the

nomination paper the petitioner requested the Returning Officer for rejecting the nomination paper of the respondent. On such objection being

raised, the Returning Officer directed the respondent to furnish/produce the documents in support of his affidavit pertaining to passing of MBA in

2004 from Mysore University on the next date of the scrutiny on 13.01.2012. On the next date fixed on 13.01.2012, the respondent failed to file

the relevant documents in support of his educational qualification mentioned. However, the Returning Officer illegally accepted the nomination

paper. The petitioner claims that he subsequently obtained necessary information from the University of Mysore about the aforesaid qualification

claimed by the respondent and came to know that the respondent was never a student of MBA from Mysore University in the year 2004-05.

6. The respondent was declared elected after the respondent got 14521 votes whereas the petitioner got only 13363 votes when the result was

declared on 06.03.2012.

7. The petitioner claims that he submitted representations on 02.04.2012 and 05.04.2012 before the Returning Officer, 27th Moirang Assembly

Constituency seeking for summary proceeding on the objection raised by him as mentioned above. However, as nothing materialised, the petitioner

preferred this election petition challenging the election of the respondent and seeking declaration of the election of the respondent as void.

8. The respondent/returned candidate filed his written statement contesting the averments and allegations made in the petition. In his written

statement, the respondent had stated that the entry made as regards the educational qualification was a clerical error. He states that he passed B.A.

(Honours) in History from Kirori Mal College, Delhi University in 2001 and PG Programme in Service Industry Management which is a 1 year

course from August, 2003 July, 2004 from the Institute of Tourism and Future Management Trends under NEC, Govt. of India Special

Employment Generation Employment Programme in Service Industry at ITFT, Chandigarh. Thereafter, he worked at Progeon and Infosys and

IBM till 2007. It has been stated in his written statement that the word Mysore used was a clerical mistake and it was a ""thought processing "" of

the respondent to obtain MBA degree from University of Mysore through correspondence course as the same was discussed amongst friends and

supporters that nowadays people should do MBA courses and there are colleges in Karnataka providing correspondence course facilities. And

this thought process emerged in the mind and continued in the wrong depiction of the word. As such it was contended that it was merely a clerical

mistake and there was no question of giving any false declaration in respect of any academic qualification as in any case he was neither going to

gain nor lose anything by it. Accordingly, when this was explained to the Returning Officer, the objection raised by the election petitioner before

Returning Officer was rejected as it was not of a substantial nature. It is provided under Section 36(4) of the RP Act, 1951 that the Returning

Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. It has been also pleaded that even

if the allegations of the petitioner are deemed correct, the same do not fall within the meaning of corrupt and malpractices as defined under the Act.

The respondent in his written statement counter charged that the election petition is defective being violative of Section 81(3) of the RP Act, 1951.

It has been stated that every page except the first page of the copy of the election petition furnished to the respondent bears only the signature of

the petitioner mentioning ""Attested"" though as per Section 81(3) of the Act each and every copy of the petition is to be attested by the petitioner

under his own signature to be a true copy of the petition. Hence, it has been contended that the election petition is liable to be dismissed as

violative of Section 81 of the RP Act, 1951.

The petitioner filed the rejoinder affidavit in which it has been claimed that filing of false affidavit amounts to filing of incomplete nomination paper

which will make it liable to be rejected under Section 36(2) of the RP Act, 1951. The election petitioner also denied that the error in stating the

educational qualification of the respondent was a clerical error.

9. On the basis of the pleadings, the following six (6) issues were framed:

i) Whether the Returning Officer of 27th -Moirang AC has illegally accepted the nomination paper of the respondent or not?

ii) Whether the election of the respondent had been materially affected by the acceptance of the nomination paper of the respondent by the R.O. of

27th -Moirang A/C or not?

iii) Whether the respondent had filed false affidavit in respect of the highest education qualification in the form, in which the respondent had

mentioned ""MBA Mysore University"" or whether it was merely a clerical error?

iv) Whether the petition lacks material facts or not?

v) Whether the election petition is liable to be dismissed for not putting the words ""attested to be true copy of the petition"" on each and every page

of the petition by the petitioner himself or not; or on any of the defects raised by the respondent in his written statement?

vi) Whether the petitioner is entitled to the relief claimed in the writ petition?

10. On examination of the aforesaid six issues framed, it is evident that the petitioner had abandoned his charge made against the respondent about

electoral malpractices or corrupt practices and ground of challenge is now confined to the issues as to whether the respondent had filed a false

affidavit in respect of his highest educational qualification at the time of filing the nomination paper and whether it was merely a clerical error or not

and its consequences and whether the election petition is liable to be dismissed on the ground of improper attestation of the copies of the petition.

11. The parties have adduced their respective evidences.

The election petitioner examined two (2) witnesses in support of his claim, the petitioner himself as PW 1 and his Election Agent, namely, Hemam

Boyai Singh as PW 2.

The respondent also adduced evidence and examined himself as DW 1, Sri Philem Shamu Singh, his Election Agent as DW 2 and Chakpram

Bimolchandra Singh, a lawyer as DW 3.

12. Of the six issues framed, Issue No. (v) above is to whether the election petition is liable to be dismissed for not putting the words ""attested to

be true copy of the petition"" on each and every page of the petition by the petitioner himself or of any of the defects raised by the respondent in his

written statement. Therefore, if the respondent is successful on this issue, there will be no necessity to examine the other issues. If the election

petition is dismissed on the ground of non-maintainability due to the alleged defects, the question of deciding the other issues does not arise. Hence,

this Court proposes to take up this Issue no. (v) at the first instance. This issue has been raised also in Civil Misc. Case No. 1 of 2012 filed by the

respondent. Before we proceed to deal with this issue it may be apposite to refer to relevant provisions of the Representation of People Act, 1951

and the Rules framed thereunder. Section 81(3) of the Representation of the People Act, 1951 reads as follows:--

81. Presentation of petitions.--(1)

...

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy

shall be attested by the petitioner under his own signature to be a true copy of the petition.

86. Trial of election petitions.--(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or

section 82 or section 117.

Explanation.--An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause

(a) of section 98.

(2)

.....

(7)

13. It has been contended by the respondents that the petitioner has not attested the copy of the petition to be the true copy of the original petition

as required under Section 81(3) of the Act, since only the front page of the copy bears the words ""attested to be true copy"", though, in respect of

other pages of the copy the election petitioner has put his signatures only with the word ""attested"". It has been contended that the fact that the

petitioner has mentioned ""attested to be a true copy"" in the front page of the copy of the petition shows that he was aware of the requirements of

law. However, since he has chosen not to comply with the aforesaid requirements in the subsequent pages, as he has not put his signatures with the

words ""attested to be true copy"" on each page, he must face the consequence of getting the petition dismissed. It has been contended that the said

defect is a vital and substantial one which would amount to non compliance with the provisions of Section 81(3) of the RP Act, 1951 which will

attract Section 86(1) of the RP Act inviting dismissal of the petition.

14. Though other allegations have been made in the said Civil Misc. Application No. 1 of 2012 contending that the signatures endorsed by the

petitioner in the election petition are doubtful as these are completely different from the signature of the petitioner available on official records, and

hence vital defects of substantial character, this has not been pursued by the Respondent.

15. It has been also alleged that the affidavit accompanying the election petition suffers from various material defects as the allegations relating to

corrupt practice have not been properly verified as to whether these are based on personal knowledge or information received. For example, the

contents of paragraphs No. 4.9 and 4.10 of the affidavit filed by the election petitioner are facts of official election process, yet these have been

referred to as instances of corrupt practices. Similarly, in respect of contents of paragraph No. 4.16(1) and 4.16(2) of the petition, though these

relate to something else, these have been referred to in the accompanying affidavit as instances of corrupt practices of furnishing false statement of

possessing higher educational qualifications and non disclosure of assets and properties. These paragraphs which ought to be verified as true to his

personal knowledge yet these have been verified as submissions of the petitioner. Thus, it has been contended by the respondent that these are

irregularities and defects of substantial nature which are found in the affidavit of the petitioner which are not in conformity with Form No. 25

prescribed under Rule 94-A and hence, the election petition is liable to be dismissed. These allegations, of course, had been denied by the election

petitioner contending that these defects are of no substantial nature.

16. With reference to this Issue no. (v), the parties have referred to an array of decisions to support their respective contentions.

17. The respondent has relied on the following, inter alia, decisions :

(1) Mukhtiar Singh v. The Chief Election Commissioner and Dharam Dev Solanki MLA, , AIR 1997 Delhi 116;

(2) Ved Prakash Gaur v. Sukhan & Ors., AIR 1984 Delhi 27th 6;

(3) Sharif-ud-Din v. Abdul Gani Lone, , AIR 1980 SC 303;

(4) Kushalchand v. Harlal and Ors., , AIR 1978 M.P. 174;

(5) Rajendra Singh v. Usha Rani, , AIR 1984 SC 956;

(6) Mithilesh Kumar Pandey v. Baidyanath Yadav & Ors., , AIR 1984 SC 305;

(7) Mrs. Vinod (Vinod Chadha) v. Kirpal Singh Dhillon & Anr., AIR 1987 P & H 110;

(8) Harcharan Singh Josh v. Hari Kishan, , (1997) 10 SCC 294;

(9) Purushottam v. Returning Officer, Amravati and Ors., , AIR 1992 Bombay 227th.

In Mukhtiar Singh (supra), it has been held that since there was no endorsement of the petitioner in the copy of the petition that it is an attested true

copy of the petition and there has been substantial variance between the election petition and copy thereof which has been furnished to the

respondent, the latter cannot be considered to be true copy of the former and hence, the election petition is liable to be dismissed for violating

Section 81(3).

In Ved Prakash Gaur (supra), the petitioner supplied photostat copy of the petition without requisite attestation and petition was held liable to be

dismissed since copies filed along with petition were not attested by the petitioner ""under his own signature"" to be true copy of the petition, holding

that provisions of Section 86 are mandatory.

In Sharif-ud-Din (supra), the Hon"ble Supreme Court held that requirement that copy of election petition for respondent should be attested by

petitioner is a mandatory one, non-compliance whereof would make the petition liable to be dismissed.

In Kushalchand (supra), the MP High Court held that failure to supply copy of annexure in election petition to the respondent is fatal.

The Hon"ble Supreme Court in Rajendra Singh (supra) held that furnishing of incorrect copy of the election petition filed to the respondent

amounts to non-compliance of Section 81(3) and is liable to be dismissed.

In Mithilesh Kumar Pandey (supra), the Hon"ble Supreme Court held that while making allegations of corrupt practices, mistakes in copy of

petitions supplied to elected candidate as regards names of persons to whom corrupt practices were alleged to have been committed by him such

mistakes relating to omission of some names giving wrong names, etc. are fatal and the petitions are liable to be dismissed in limine.

In Mrs. Vinod (Vinod Chadha) (supra), the Punjab and Haryana High Court held that the Photostat copy supplied to the other party should be

certified by the petitioner to be a true copy in order to conform to the provisions of Section 81(3).

18. The respondent further relied on the decisions of Harcharan Singh Josh (supra) in which it was held that the copy of the affidavit supplied to the

respondent not containing the affirmation by the Oath Commissioner was held to be not curable defect and it was further held that the said

substantial compliance has no application in such a case, thus, upholding dismissal of election petition on that ground. However, in the later decision

in T. Phungzanthang v. Hangkhanlian & Others, , (2001) 8 SCC 358, this decision was held to be no longer a good law in view of the Constitution

Bench decision in T.M. Jacob v. C. Poullose and Others, , (1999) 4 SCC 1027.

The respondent also relied on the decision of Purushottam (supra) that absence of endorsement of Notary on the copy of affidavit accompanying

election petition is fatal. The respondent has also relied on other decisions of the Hon"ble Supreme Court relating to corrupt practice, lack of

material facts, lack of cause of action etc.. However, as the ground of challenge in the election petition insisted upon is based mainly on the issue

whether the petitioner has filed false affidavit or not, this Court is of the view that it may not be necessary to digress to other issues.

19. The election petitioner, on the other hand pressed into service the following decisions, inter alia, in support of his contention that the election

petition does not suffer from any defect as alleged by the respondent:--

1) Subbarao v. Member, Election Tribunal, Hyderabad, , AIR 1964 SC 1027th;

2) T.M. Jacob v. C. Poullose and Others, , (1999) 4 SCC 1027;

3) Bhagwan Rambhau Karankal v. Chandrakant Batesingh Raghuwanshi, 2001 (6) Supreme 101;

4) T. Phungzanthang v. Hangkhanlian & Others, , (2001) 8 SCC 358;

5) Ram Prasad Sarma v. Mani Kumar Subba and Others, , (2003) 1 SCC 289;

6) Chandrakant Uttam Chodankar v. Dayanand Rayu Mandrakar and Others, , (2005) 2 SCC 188;

7) Umesh Challyill v. K.P. Rajendran, , (2008) 11 SCC 740;

8) Ponnalal Lakshmaiah v. Kommuri Pratap Reddy and Others, , (2012) 7 SCC 788;

9) G.M. Siddeshwar v. Prasanna Kumar, , (2013) 4 SCC 776;

20. This Court proposes to refer to only those cases of both the parties which the Court considers to be directly relevant to the issue at hand.

21. As regards the objection raised by the respondent that the election petition is liable to be dismissed on the ground of non-conformity with

Section 81(3) of the RP Act, 1951, which is a procedural defect, there are overwhelming judicial pronouncements that the Court ought not to take

a hyper technical view and that it is only where there is total or near total non-compliance of the provisions of Section 81(3) that it may render such

election petition liable to be dismissed. However, if there is a substantial compliance with the requirements of Section 81(3), the election petition

cannot be dismissed. The Hon"ble Supreme Court as far back as in the year 1964 in Ch. Subbarao v. Member, Election Tribunal, Hyderabad and

Ors., , AIR 1964 SC 1027th had dealt with the case in which the election petition was typewritten and copies which accompanied the petition

were carbon copies of the typescript. The copies bore 2 (two) signatures in original of the election petitioner authenticating both the contents of the

petition as well as the verification thereof. The petitioner did not, however, insert the words ""true copy"" before or above his signatures. The High

Court dismissed the election petition on the ground of non-compliance of provisions of Section 81(3) of the Act. The Hon"ble Supreme Court held

that if the signature of the petitioner whose name is set out in the body of the petition is appended at the end, surely it authenticates the contents of

the document. The aforesaid decision in Ch. Subbarao (supra) was relied upon by another Constitution Bench in Dr. Anup Singh v. Shri Abdul

Ghani and Ors., , AIR 1965 SC 815. In Para No. 7, the Hon"ble Supreme Court held that:--

(7) An exactly similar matter came to be considered by this Court in Ch. Subba Rao v. Member, Election Tribunal, , AIR 1964 SC 1027th. In

that case also the copies were signed by the petitioner but there was no attestation in the sense that the words ""true copy"" were omitted above the

signature of the petitioner. This Court held that as the signature in original was there in the copy, the presence of such original signature in the copy

was sufficient to indicate that the copy was attested as a true copy, even though the words ""true copy"" were not written above the signature in the

copies. This Court further held that there was substantial compliance with S. 81(3) of the Act and the petition could not be dismissed under S.

90(3). That case applies with full force to the facts of the present case, and it must therefore be held that there was substantial compliance with S.

81(3) and the petitions could not therefore be dismissed under S. 90(3).

22. In the present case at hand, even if the election petitioner did not write the words ""attested to be true copy of the petition"", along with his

signatures, the election petitioner wrote the words ""attested"" before his signatures in his own hand writing on each page, thus, in conformity with the

aforesaid 2 (two) decisions of the Hon"ble Supreme Court. This Court is of the view that since the election petitioner had put his signatures on the

copies furnished to the respondent and also had written the word ""attested"" on each page, he has substantially complied with the requirements of

Section 81(3) of the RP Act, 1951. Hence, it cannot be said that the election petitioner has not complied with the provisions of Section 81(3) and

cannot, therefore, be dismissed under Section 86(1) of the Act as sought by the respondent in view of the above Constitution Bench decisions in

Ch. Subbarao (supra) and Dr. Anup Singh (supra). This Court is of the view that it may not be necessary to deal with the other case laws relied

upon by the respondent as these are not applicable to the present case.

23. Accordingly, the Issue no. (v) as to whether the election petition is liable to be dismissed for not putting the words ""attested to be true copy of

the petition"" on each and every page of the petition by the petitioner himself; or on any of the defects raised by the respondent in his written

statement, is decided against the respondent and in favour of the petitioner.

24. As regards the other Issue No. (iv) as to whether the petition lacks material facts or not, since the election petitioner has more or less given up

his grounds of challenge based on electoral malpractices or corrupt practices, this Court would confine to the issue as to whether there are

sufficient materials as regards the allegation that the respondent had filed a false affidavit or not and need not burden this judgment with the judicial

pronouncements relating to material facts.

As regards this allegation that the respondent had filed a false affidavit regarding his educational qualifications, this Court is of the opinion that the

election petitioner has pleaded with sufficient materials as mentioned in paragraphs No. 4.4, 4.5, 4.6, 4.8, 4.19, 4.20 of the election petition.

Accordingly, it cannot be said that the petition lacks material facts as regards this allegation.

Mr. Kumarjit, Learned Senior counsel submits that with regard the issue as to whether the pleadings lack material facts, it has been submitted that

the petitioner has abandoned all the pleas about corrupt practices. Thus, this plea of the respondent that the election petition lacks material

particulars is without any substance. He submits that as far as the allegation of giving false affidavit is concerned, the petitioner has given all the

material facts and particulars. He submits that as regards the allegation of the respondent that the affidavit of the petitioner in the election petition

suffers from material defect is without any substance as these allegations relate to the method of corrupt practices. Since, he has already

abandoned the claim regarding corrupt practices of the respondent, this defect appearing in his affidavit does not matter. It has been submitted that,

in any event, as regards the allegation of filing of false affidavit at the time of submission of nomination, such allegation does not require to be

supported by any affidavit as is required in the case of allegation of corrupt practice. Referring to proviso to sub-section (1) of Section 83 of the

RP Act, the Learned Senior counsel submits that only when the challenge to the election is based on corrupt practice of the returned candidate, the

petition is to be accompanied by an affidavit in the prescribed form, otherwise not.

Hence, this Issue No. (iv) as to whether the petition lacks material facts is decided against the respondent.

25. Regarding Issues No. (i), (ii) and (iii), Issues No. (i) and (ii) are dependant upon the finding in Issue No. (iii). Accordingly, we proceed to first

deal with the Issue no. (iii) as to whether the respondent had filed false affidavit in respect of highest educational qualification in Form no. 26 in

which the respondent had mentioned ""MBA, 2004, Mysore University"" or whether it was merely a clerical error.

26. The case of the election petitioner as regards this Issue No. (iii) is that the respondent while filing his nomination paper submitted an affidavit in

Form No. 26 as required under Section 33 of the Act read with Rule 4A of the Conduct of Elections Rules, 1961 in which the respondent had

mentioned in para 9 of the said affidavit that his highest qualification is ""MBA, 2004, Mysore University"" though he did not possess MBA from

Mysore University. Accordingly, it has been contended by the election petitioner that the respondent had filed a false affidavit as regards his

educational qualification. The plea of the respondent is that he did not give any false declaration in respect of his academic qualification but what

was stated in the affidavit was merely a clerical error. It was his plea in the written statement that it was his thought process to obtain MBA degree

from Mysore University through correspondence course as the same was discussed amongst friends and supporters that nowadays people should

have MBA course and there are colleges in Karnataka providing correspondence course facilities. This thought process emerged in his mind and

continued in wrong depiction of the word. He thus contends that this is a clerical mistake from which he was neither going to gain or lose anything.

Thus, when the mistake was explained to the Returning Officer at the time of scrutiny of nomination paper, Returning Officer decided not to reject

the nomination paper as the same was not of substantial nature.

27. As we proceed, we may briefly refer to the grounds under which an election could be declared void by the High Court which are provided

under Section 100 of the RP Act.

Clauses (a), (b), (c) and (d) of Sub-section (1) of Section 100 specify the grounds under which the election of the Returned candidate can be

declared void.

Section 100(2) clarifies the conditions in which the election of the Returned candidate may not be declared void. The present case does not fall

under this category.

Clause (a) of Section 100(1) provides the situation where a returned candidate was not qualified on the date of his election or was disqualified, to

be chosen to fill the seat under the Constitution or this Act. It is not the case of the election petitioner that the respondent was not qualified or was

disqualified, to be chosen to fill the seat under the Constitution or this Act. Hence, clause (a) of Section 100(1) is not attracted in the present case.

Clause (b) of Section 100(1) provides that an election can be declared void if the Court finds 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. In the present case,

though corrupt practice was one of the grounds pleaded in the election petition, the election petitioner has abandoned this ground, hence no issue

was framed in this regard and he has not led any evidence in this regard. Hence, the ground provided under clause (b) of Section 100(1) is not

attracted in the present case.

Clause (c) of Section 100(1) provides for declaring the election void if any nomination is improperly rejected. Since in the present case there is no

such case of improper rejection of any nomination, this ground is also not applicable.

This leaves the last ground for declaring the election to be void as provided under clause (d) of Section 100(1) of the Act which provides that if the

High Court is of opinion that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

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

(ii) by any corrupt practice committed in the interests of the returned candidate or 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 election of the returned candidate shall be declared void.

As mentioned above, the allegations of corrupt practice has been already abandoned by election petitioner. Similarly, there is also no case of

improper reception, refusal or rejection of any vote or the reception of any vote which is void in the present case. Thus, the only grounds left are of

the improper acceptance of any nomination as provided under clause (d)(i) of Section 100(1) and of non-compliance with the provisions of the

Constitution or of this Act or of any rules or orders made under this Act as provided under clause (d)(iv) of Section 100(1) of the RP Act, 1951.

28. It is the case of the election petitioner that the nomination paper of the respondent had been improperly accepted, which was otherwise liable

to be rejected as the respondent had filed a false affidavit giving false information about his highest educational qualification. Hence, the election of

the respondent is liable to be dismissed under Section 100(1)(d)(i).

It would be pertinent here to refer to the relevant provisions of the RP Act, 1951 which deal with the filing of nomination paper and the grounds for

rejection thereof.

Section 33 of the Act deals with presentation of nomination paper and stipulates the requirements for a valid nomination. It, inter-alia, provides that

the nomination paper must be completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer.

Though Section 33 of the Act does not specifically mention filing of any affidavit along with nomination paper, it is so provided under Rule 4A of

the Conduct of Elections Rules, 1961. Rule 4A provides that the candidate or his proposer, as the case may be, shall, at the time of delivering to

the returning officer the nomination paper under sub-section (1) of Section 33 of the Act, also deliver to him an affidavit sworn by the candidate

before a Magistrate of the first class or a Notary in Form 26 as contained in the Rules furnishing detailed particulars relating to the antecedents

criminal or otherwise of the candidate, assets and liabilities of the candidate, and also the educational qualification. There is another provision under

the RP Act which requires a candidate to furnish information at the time of submission of nomination paper under Section 33A of the Act.

29. Section 36 of the RP Act, 1951 which deals with the scrutiny of nomination papers and provides the grounds under which nomination can be

rejected reads as follows:--

36. Scrutiny of nominations.--(1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one

proposer of each candidate, and one other person duly authorized in writing by each candidate, but no other person, may attend at such time and

place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all

candidates which have been delivered within the time and in the manner laid down in section 33.

(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may,

either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the

following grounds:--

[(a) that on the date fixed for the scrutiny of nominations the candidate] either is not qualified or is disqualified for being chosen to fill the seat under

any of the following provisions that may be applicable, namely:--

Articles 84, 102, 173 and 191,

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

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

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

(3) Nothing contained in clause (b) or clause (c)] of subsection (2) shall be deemed to authorize the rejection of the nomination of any candidate on

the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in

respect of which no irregularity has been committed.

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

(5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any

adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his

control:

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

to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to

which the proceedings have been adjourned.

(6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is

rejected, shall record in writing a brief statement of his reasons for such rejection.

(7) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive

evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a

disqualification mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950).

(8) Immediately after all the nomination papers have been scrutinized and decisions accepting or rejecting the same have been recorded, the

returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it

to his notice board.

(emphasis added)

30. Therefore, the issue whether a nomination paper of a candidate has been improperly accepted or not has to be examined with reference to the

above provisions of Section 36 of the RP Act and related law governing the field. We will, therefore, examine the relevant laws relating to the

requirements of a valid nomination paper, filing scrutiny, etc.

31. As we proceed to examine the requirements of a valid nomination paper, more particularly, in the context of the present controversy which

revolves around the issue of the educational qualification of the respondent in his nomination paper which the election petitioner charges to be false

though the respondent claims to be a mere clerical error, we may revisit the relevant judicial pronouncements.

32. While dealing with various shortcomings plaguing the Indian electoral system and to stem the tide of criminalisation of Indian politics, very

important issues arose before the Courts about the right of the voters to know of the relevant particulars of the candidates, as ultimately it is the

voters who decide the fate of the candidates who will periodically exercise the political power. These issues had also engaged the Law

Commission of India which in its 178th Report had proposed certain changes under Rule 4 of the Conduct of Election Rules, 1961 for providing

certain information. The matter was first considered before the High Court of Delhi which took the view that the changes proposed for providing

information by amending the relevant provisions of the Conduct of Electoral Rules, 1961 was within the domain of the legislature and it was for the

Parliament to make necessary amendments in the RP Act, 1951 and the relevant Rules. However, the High Court also made a very significant

direction holding that a citizen of this country has a fundamental right to receive information regarding the criminal activities of a candidate of the

Parliament or the Lok Sabha or the Legislative Assemblies so as to make his choice effective and meaningful and accordingly directed the Election

Commission of India to secure to voters the following information of each of the candidates :

1. Whether the candidate is accused of any offence(s) punishable with imprisonment. If so, the details thereof.

2. Assets possessed by a candidate, his or her spouse and dependent relations.

3. Facts giving insight into the candidate's competence, capacity and suitability for acting as a parliamentarian or a legislator including details of

his/her educational qualifications.

4. Information which the Election Commission considers necessary for judging the capacity and capability of the political party fielding the

candidate for election to Parliament or the State Legislature.

The aforesaid directions were challenged by the Union of India before the Hon^{ble} Supreme Court. The Hon^{ble} Supreme Court in Union of India

v. Assn. for Democratic Reforms, , (2002) 5 SCC 294 elaborately discussed the various issues including the right of the citizen to know about the

candidates contesting election and observed in paragraph no. 46 as follows:

46. To sum up the legal and constitutional position which emerges from the aforesaid discussion, it can be stated that:

1.....

2.....

3.....

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.

5. The right to get information in democracy is recognised all throughout and it is a natural right flowing from the concept of democracy. At this

stage, we would refer to Article 19(1) and (2) of the International Covenant on Civil and Political Rights, which is as under:

(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all

kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

6. On cumulative reading of a plethora of decisions of this Court as referred to, it is clear that if the field meant for legislature and executive is left

unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Articles 141 and 142 of the

Constitution to issue necessary directions to the executive to subserve public interest.

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 law-makers.

Thereafter, the Hon'ble Supreme Court issued the following directions as mentioned in paragraph Nos. 47, 48 and 49 of the judgment which are

reproduced hereinbelow:--

47. In this view of the matter, it cannot be said that the directions issued by the High Court are unjustified or beyond its jurisdiction. However,

considering the submissions made by the learned counsel for the parties at the time of hearing of this matter, the said directions are modified as

stated below.

48. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of

the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper,

furnishing therein, information on the following aspects in relation to his/her candidature:

(1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past - if any, whether he is punished with imprisonment

or fine.

(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment

for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.

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

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

(5) The educational qualifications of the candidate.

49. It is to be stated that the Election Commission has from time to time issued instructions/orders to meet with the situation where the field is

unoccupied by the legislation. Hence, the norms and modalities to carry out and give effect to the aforesaid directions should be drawn up properly

by the Election Commission as early as possible and in any case within two months.

Though the Hon^{ble} Court was primarily concerned with the criminalisation and misuse of money and muscle power in the politics, thus requiring

the candidates to disclose their assets and criminal antecedents, if any, also brought in the requirement for disclosing the educational qualification as

a concomitant requirement.

33. After the aforesaid judgment of the Supreme Court, an Ordinance which was promulgated by the President of India on 24.08.2002 by which

Sections 33A and 33B were inserted in the RP Act, 1951. Later the said Ordinance was repealed and the Representation of People (3rd

Amendment) Act of 2002 was notified inserting Sections 33A and 33B in the RP Act, 1951. Section 33A requires the candidate to furnish

additional information as to -

(i) whether he is accused of any offence punishable with imprisonment for 2 (two) years or more in a pending case in which a charge has been

framed by the Court of competent jurisdiction.

(ii) whether he has been convicted of an offence other than any offence referred to in sub-section (1) or subsection (2), or covered in sub-section

(3), of section 8 and sentenced to imprisonment for one year or more.

Section 33B provided that notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other

instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election,

which is not required to be disclosed or furnished under this Act or the rules made there under.

The aforesaid Section 33A did not provide for furnishing of the information as directed by the Supreme Court in Assn. for Democratic Reforms

(supra) and sought to whittle down the scope of the directions by incorporating Section 33B.

34. The aforesaid Section 33B inserted by the 3rd Amendment Act of 2002 was challenged before the Court in People's Union for Civil Liberties

(PUCL) and Another v. Union of India and Another, , (2003) 4 SCC 399. The Hon^{ble} Supreme Court while dealing with this issue touched

upon various aspects of the directions issued by the Hon^{ble} Supreme Court in the earlier case of Association for Democratic Reforms" case

(supra) and reaffirmed the said decision which required furnishing of information by the candidates as regards the antecedents relating to criminal

cases/offences, assets, liabilities and debts of the candidates and their spouses and children and lastly the educational qualification of the

candidates. The aforesaid direction by the Hon^{ble} Supreme Court for furnishing information was based on the broader interpretation of Article

19(1)(a) which guarantees freedom of speech and expression to the citizen of this country. The aforesaid information were held to be an important

ingredients of Article 19(1)(a) and accordingly, the Hon"ble Supreme Court made the following observations :

18. So, the foundation of a healthy democracy is to have well-informed citizens-voters. The reason to have right of information with regard to the

antecedents of the candidate is that voter can judge and decide in whose favour he should cast his vote. It is the voter"s discretion whether to vote

in favour of an illiterate or literate candidate. It is his choice whether to elect a candidate against whom criminal cases for serious or non-serious

charges were filed but is acquitted or discharged. He is to consider whether his candidate may or may not have sufficient assets so that he may not

be tempted to indulge in unjustified means for accumulating wealth. For assets or liability, the voter may exercise his discretion in favour of a

candidate whose liability is minimum and/or there are no overdues of public financial institution or government dues. From this information, it would

be, to some extent, easy to verify whether unaccounted money is utilized for contesting election and whether a candidate is contesting election for

getting rich or after being elected to what extent he became richer. Exposure to public scrutiny is one of the known means for getting clean and less

polluted persons to govern the country. A little man - a citizen - a voter is the master of his vote. He must have necessary information so that he

can intelligently decide in favour of a candidate who satisfies his criterion of being elected as an MP or MLA. On occasions, it is stated that we are

not having such intelligent voters. This is no excuse. This would be belittling a little citizen/voter. He himself may be illiterate but still he would have

the guts to decide in whose favour he should cast his vote. In any case, for having free and fair election and not to convert democracy into a

mobocracy and mockery or a farce, information to voters is a necessity.

35. Hon"ble M.B. Shah, J in his elaborate judgment in the aforesaid case of PUCL summarised the issues as mentioned in para 78 of the

judgment, relevant portions of which is reproduced hereinbelow :

78. What emerges from the above discussion can be summarised thus:

(A).....

.....

(B) Section 33-B which provides that notwithstanding anything contained in the judgment of any court or directions issued by the Election

Commission, no candidate shall be liable to disclose or furnish any such information in respect of his election which is not required to be disclosed

or furnished under the Act or the rules made thereunder, is on the face of it beyond the legislative competence, as this Court has held that the voter

has a fundamental right under Article 19(1)(a) to know the antecedents of a candidate for various reasons recorded in the earlier judgment as well

as in this judgment.

The Amended Act does not wholly cover the directions issued by this Court. On the contrary, it provides that a candidate would not be bound to

furnish certain information as directed by this Court.

(C) The judgment rendered by this Court in Assn. for Democratic Reforms has attained finality, therefore, there is no question of interpreting

constitutional provision which calls for reference under Article 145(3).

(D) The contention that as there is no specific fundamental right conferred on a voter by any statutory provision to know the antecedents of a

candidate, the directions given by this Court are against the statutory provisions is, on the face of it, without any substance. In an election petition

challenging the validity of an election of a particular candidate, the statutory provisions would govern respective rights of the parties. However,

voters' fundamental right to know the antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of

this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should

be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be

meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and

scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures.

(E).....

.....

Section 33B was accordingly declared as null and void.

36. Hon'ble V. Venkatarama Reddi, J. though endorsed the view as regards unconstitutionality of Section 33B, however, expressed disagreement

in certain areas, inter alia, holding that the failure to provide for disclosure of educational qualification, does not, in practical terms, infringe the

freedom of expression as summarised by His Lordship in para 123 of the judgment which is reproduced herein below :

123. Finally, the summary of my conclusions:

(1) Securing information on the basic details concerning the candidates contesting for elections to Parliament or the State Legislature promotes

freedom of expression and therefore the right to information forms an integral part of Article 19(1)(a). This right to information is, however,

qualitatively different from the right to get information about public affairs or the right to receive information through the press and electronic media,

though, to a certain extent, there may be overlapping.

(2) The right to vote at the elections to the House of the People or Legislative Assembly is a constitutional right but not merely a statutory right;

freedom of voting as distinct from right to vote is a facet of the fundamental right enshrined in Article 19(1)(a). The casting of vote in favour of one

or the other candidate marks the accomplishment of freedom of expression of the voter.

(3) The directives given by this Court in *Union of India v. Assn. for Democratic Reforms*, (2002) 5 SCC 294 were intended to operate only till

the law was made by the legislature and in that sense ""pro tempore"" in nature. Once legislation is made, the Court has to make an independent

assessment in order to evaluate whether the items of information statutorily ordained are reasonably adequate to secure the right of information

available to the voter/citizen. In embarking on this exercise, the points of disclosure indicated by this Court, even if they be tentative or ad hoc in

nature, should be given due weight and substantial departure therefrom cannot be countenanced.

(4) The Court has to take a holistic view and adopt a balanced approach in examining the legislation providing for right to information and laying

down the parameters of that right.

(5) Section 33-B inserted by the Representation of the People (Third Amendment) Act, 2002 does not pass the test of constitutionality, firstly, for

the reason that it imposes a blanket ban on dissemination of information other than that spelt out in the enactment irrespective of the need of the

hour and the future exigencies and expedients and secondly, for the reason that the ban operates despite the fact that the disclosure of information

now provided for is deficient and inadequate.

(6) The right to information provided for by Parliament under Section 33-A in regard to the pending criminal cases and past involvement in such

cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. However, there is no good reason for excluding the

pending cases in which cognizance has been taken by the Court from the ambit of disclosure.

(7) The provision made in Section 75-A regarding declaration of assets and liabilities of the elected candidates to the Speaker or the Chairman of

the House has failed to effectuate the right to information and the freedom of expression of the voters/citizens. Having accepted the need to insist

on disclosure of assets and liabilities of the elected candidate together with those of the spouse or dependent children, Parliament ought to have

made a provision for furnishing this information at the time of filing the nomination. Failure to do so has resulted in the violation of guarantee under

Article 19(1)(a).

(8) The failure to provide for disclosure of educational qualification does not, in practical terms, infringe the freedom of expression.

(9) The Election Commission has to issue revised instructions to ensure implementation of Section 33-A subject to what is laid down in this

judgment regarding the cases in which cognizance has been taken. The Election Commission's orders related to disclosure of assets and liabilities

will still hold good and continue to be operative. However, Direction 4 of para 14 insofar as verification of assets and liabilities by means of

summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not

be enforced.

(emphasis added)

37. Hon"ble Dharmadhikari, J. while by and large agreeing with the views of the two Hon"ble Judges, clarified that His Lordship agreed with

Sections (a) to (e) in the opinion of Hon"ble M.B. Shah, J and the Conclusions (1), (2), (4), (5), (6) (7) and (9) in the opinion of the Hon"ble P.

Venkatarama Reddi, J. However, His Lordship expressed his inability to agree with Conclusions (3) and (8) in the opinion of Hon"ble P.

Venkatarama Reddy, J. and on those aspects expressed his agreement with views of the Hon"ble M.B. Shah J. as mentioned in para 131 and 132

which are quoted hereinbelow :

131. With these words, I agree with Conclusions (A) to (E) in the opinion of Brother Shah, J. and Conclusions (1), (2), (4), (5), (6), (7) and (9)

in the opinion of Brother P.V. Reddi, J.

132. With utmost respect, I am unable to agree with Conclusions (3) and (8) in the opinion of

Brother P.V. Reddi, J., as on those aspects, I have expressed my respectful agreement with Brother Shah, J.

Thus, Hon"ble Dharmadhikari J. did not agree with the view of Hon"ble P. Venkatarama Reddi J. that failure to provide for disclosure of

educational qualification does not in practical terms infringe the freedom of expression.

38. From the above decisions what transpires is that as regards the disclosure of educational qualification by the candidate, the majority view in the

aforesaid decision in PUCL is that it cannot be said that it is not an important facet of the freedom of expression and non disclosure of educational

qualification will infringe the freedom of expression. In other words, it is necessary to disclose information about educational qualification as part of

the right of the voter under Article 19(1)(a).

39. The inference which can be drawn is that failure to furnish information as regards the educational qualification by a candidate would be a

serious lapse on the part of the candidate as it would violate the right of the voters under Article 19(1)(a).

40. It is to be noted that pursuant to the decision of the Hon"ble Supreme Court in Association for Democratic Reforms (supra), Rule 4A was

inserted by S.O. 935(E) dated 3rd September, 2002 which reads as follows:--

4A. Form of affidavit to be filed at the time of delivering nomination paper.--The candidate or his proposer, as the case may be, shall, at the time

of delivering to the returning officer the nomination paper under sub-section (1) of section 33 of the Act, also deliver to him an affidavit sworn by

the candidate before a Magistrate of the first class or a Notary in Form 26.

41. In terms of the aforesaid Rule 4A, a candidate is to submit an affidavit with detailed particulars as provided in Form 26. Para No. 8 and 9(9)

of the aforesaid Form 26 as then applicable required giving information about the educational qualification/highest educational qualification. It is in

the Form 26 submitted by the respondent that, the respondent had given his educational qualification/highest educational qualification as ""MBA,

2004, Mysore University"" which is at the heart of the dispute between the parties in this election petition. Before we proceed further, this Court

would like to refer to other subsequent decisions of the Hon"ble Supreme Court which will have a bearing on this issue.

42. The Hon"ble Supreme Court in *Resurgence India v. Election Commission of India and Another*, , (2014) 14 SCC 189 had re-examined the

issue of the decisions rendered in *Association for Democratic Reforms (supra)* and *PUCL v. Union of India (supra)* when a writ petition was filed

under Article 32 of the Constitution for issuance of directions for meaningful implementation of the direction issued in the aforesaid two judgements.

The Hon"ble Supreme Court in *Resurgence India (supra)* revisited the relevant laws and issued the following directions clarifying certain issues as

mentioned in para no.29 of the judgment.

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 case1* will not come in the way of the Returning Officer to reject

the nomination paper when the affidavit is filed with blank particulars.

29.6. The candidate must take the minimum effort to explicitly remark as ""NIL"" or ""Not Applicable"" or ""Not known"" in the columns and not to

leave the particulars blank.

29.7. Filing of affidavit with blanks will be directly hit by Section 125-A(i) of the RP Act. However, as the nomination paper itself is rejected by

the Returning Officer, we find no reason why the candidate must be again penalised for the same act by prosecuting him/her.

(emphasis added)

43. Thus, from the aforesaid directions of the Hon"ble Supreme Court, the right to know full particulars of a candidate which includes information

about the educational qualifications as a vital part of the Article 19(1)(a) of the Constitution of India was reiterated. It was emphasised in

Resurgence India (supra) that filing of an affidavit with blanks on the particulars on the affidavit would make it liable to be rejected by the Returning

Officer.

44. In the background of the aforesaid legal position we shall examine the present case at hand.

45. The election petitioner has focussed his challenge mainly on the ground that the respondent by showing his highest educational qualification as

having obtained MBA degree from Mysore University in 2004 in his affidavit filed under Rule 4A of the Conduct of Election Rules, 1961 has filed

a false affidavit which had rendered his nomination paper liable to be rejected by Returning Officer under Section 36(2) as there has been a failure

on the part of the respondent to comply with the provisions of Section 33. However, since the nomination paper of the respondent was not

rejected but instead was improperly accepted by the Returning Officer, it constitutes a valid ground for declaring the result of the respondent void

under Section 100(1)(d)(i) of the RP Act, 1951.

46. Mr. N. Kumarjit, learned Senior counsel submits that the petitioner had specifically pleaded in his election petition in para 4.4. thereof that the

petitioner had objected to the nomination of the respondent on the ground that the respondent failed to file a proper affidavit and that the affidavit is

a false one as the respondent had falsely deposed at para No. 9 of the affidavit dated 6.01.2012 that his educational qualification is ""MBA, 2004,

Mysore University"", which is a false statement. It was further pleaded that the aforesaid affidavit dated 6.01.2012 filed by the respondent was also

not made by subscribing oath before the Returning Officer or any competent authority as prescribed by the Election Commission of India.

47. Mr. Kumarjit, learned Senior counsel submits that the petitioner had requested the Returning Officer for rejecting the nomination paper of the

respondent as the respondent filed a false affidavit and upon hearing the objection raised by the petitioner for rejecting the improper nomination of

the respondent, the Returning Officer directed the respondent to furnish/produce the documents in support of his affidavit about the educational

qualification. It has been stated that in spite of such objection and failure on the part of the respondent to produce the relevant documents, the

Returning Officer illegally accepted the nomination filed by the respondent.

48. It has been contended by Mr. Kumarjit, learned Senior counsel that the respondent never obtained MBA degree from Mysore University in

the year 2004. Mr. Kumarjit further submits that these assertions and pleadings in the election petition were never denied by the respondent in his

written statement filed. He submits that the respondent in his written statement had made an evasive reply by claiming that the aforesaid entry

regarding the educational qualification of the respondent was only a clerical error. Mr. Kumarjit further submits that the aforesaid educational

qualification was falsely mentioned in the affidavit of the respondent in order to impersonate himself to be at par with the petitioner who is a retired

IAS officer of the Manipur-Tripura Cadre and to mislead the voters. Mr. Kumarjit submits that it has been specifically so pleaded in para 4.17 of

the election petition but the aforesaid averment has remained uncontroverted by the respondent.

49. Accordingly, Ld. Senior Counsel submits that as the respondent has not specifically denied that he had obtained his educational qualification of

MBA from Mysore University in the year 2004 and as he had intentionally given the said educational qualification to mislead the voters, the

nomination paper was liable to be rejected, which the Returning Officer did not do so and as such it is a clear case of improper acceptance of the

nomination of the respondent.

50. Mr. Kumarjit, Ld. Senior Counsel relying on the decision of the Hon"ble Supreme Court in Kisan Shankar Kathore v. Arun Dattatray Sawant

and Others, , (2014) 14 SCC 162 submits that filing of such false affidavit would lead to rejection of the nomination paper and the effect would be

that such a candidate was not entitled to contest the election and the election is liable to be declared as void. It has been submitted by Mr.

Kumarjit that in the case of Kisan Shankar Kathore (supra), the Bombay High Court held that non disclosure of a bungalow in the name of the

spouse of the returned candidate and the outstanding taxes thereof, non disclosure of a vehicle owned by the returned candidate"s wife, non

disclosure of property purchased in the name of the partnership firm of the returned candidate would render the affidavit nugatory as the affidavit

filed by the candidate suffers from substantive defect and hence, the nomination of the returned candidate was held to be improperly accepted

within the meaning of Section 100(1)(d)(i) of the Act. It was also held that it also amounts to non compliance with the order passed by the Election

Commission under Article 324 of the Constitution of India which is founded on the law declared by the Apex Court under Article 141 of the

Constitution within the meaning of Section 100(1)(d)(iv) of the Act.

51. Mr. Kumarjit, Ld. Senior Counsel submits that the Hon"ble Supreme Court upheld the finding of the Bombay High Court as regards non-

disclosure of the bungalow in the name of the returned candidate"s wife, the vehicle in the name of his wife, his interest/share in the partnership firm,

which were held to be substantial lapses and the Hon"ble Supreme Court was held therein that it cannot be said that the information contained in

the affidavit are to be treated as substantial compliance. The Hon"ble Supreme Court accordingly upheld the decision of the Bombay declaring the

election of the returned candidate as void. The Hon"ble Supreme Court held in para 43 as follows :

43. When the information is given by a candidate in the affidavit filed along with the nomination paper and objections are raised thereto

questioning the correctness of the information or alleging that there is non-disclosure of certain important information, it may not be possible for the

Returning Officer at that time to conduct a detailed examination. Summary enquiry may not suffice. The present case is itself an example which

loudly demonstrates this. At the same time, it would not be possible for the Returning Officer to reject the nomination for want of verification about

the allegations made by the objector. In such a case, when ultimately it is proved that it was a case of non-disclosure and either the affidavit was

false or it did not contain complete information leading to suppression, it can be held at that stage that the nomination was improperly accepted. Ms

Meenakshi Arora, learned Senior Counsel appearing for the Election Commission, rightly argued that such an enquiry can be only at a later stage

and the appropriate stage would be in an election petition as in the instant case, when the election is challenged. The grounds stated in Section

36(2) are those which can be examined there and then and on that basis the Returning Officer would be in a position to reject the nomination.

Likewise, where the blanks are left in an affidavit, nomination can be rejected there and then. In other cases where detailed enquiry is needed, it

would depend upon the outcome thereof, in an election petition, as to whether the nomination was properly accepted or it was a case of improper

acceptance. Once it is found that it was a case of improper acceptance, as there was misinformation or suppression of material information, one

can state that question of rejection in such a case was only deferred to a later date. When the Court gives such a finding, which would have

resulted in rejection, the effect would be same, namely, such a candidate was not entitled to contest and the election is void. 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.

(emphasis added)

Accordingly, Mr. Kumarjit, Learned Senior counsel for the petitioner submits that since the respondent has been found to have given false affidavit

regarding his educational qualification in the Form 26 as required under Rule 4A of the Conduct of Election Rules, 1961, his nomination paper was

liable to be rejected and since it was a case of improper acceptance, the election of the respondent is also liable to be declared void under Section

100(1)(d)(i) of the RP Act, 1951.

52. In response, Mr. V. Giri, Learned Senior counsel for the respondent, contends that the election petition is not to be equated to an action at law

or inequity but the rights are purely the creature of statute. Hence, if the election petition has to succeed he has to succeed within the parameters of

the laws of Representation of People Act, 1951 and has to fulfil the requirements of law laid down under various provisions of the Act. He

contends that Section 100(1)(d) postulates voidance of election only when not only the conditions enumerated in sub-clauses (i), (ii), (iii) and (iv)

of clause (d) of Sub-section (1) of Section 100 are satisfied but also when it is shown that because of that, the result of the returned candidate has

been materially affected. In other words, in respect of challenge under Section 100(1)(d) the election petitioner has to prove not only that there

was improper acceptance of any nomination, as in this case, and also that such improper acceptance has materially affected the result of the

election in so far as it concerns the returned candidate. Similarly, if the election is sought to be declared void under Section 100(1)(d)(iv) the

election petitioner has to prove not only non compliance with the provisions of the Constitution or of the Act or of any rules or orders made under

the Act by the respondent but also that such non compliance has materially affected the result of the election in so far as it concerns the returned

candidate.

Mr. V. Giri, Learned Senior counsel submits that the sum and substance of the allegation of the petitioner against the respondent is the filing of

incorrect or false affidavit by the respondent under Form 26. This allegation, thus, in essence is about non compliance with the provisions of the

Constitution or of the RP Act or rules or orders made under the Act, hence, comes under Section 100(1)(d)(iv) of the Act. He submits that co-

relating this with the power of the Returning Officer to reject nomination which is subject to Section 36(4), it must therefore, be first demonstrated

that such a defect is of substantial character to prompt the Returning Officer to reject the nomination paper under Section 36(2) of the Act. He

submits that power of the High Court under Section 100(1)(d) of the Act is obviously much larger and higher in scope than the limited and

summary jurisdiction available to the Returning Officer under Section 36(2). Therefore, unless such non compliance is of a substantial nature, this

Court would not invoke the power under Section 100(1)(d)(i) or (iv) to declare the election void. Mr. V. Giri, Learned Senior counsel submits that

in the present case the election petitioner has not at all pleaded, not to speak of proving that the improper acceptance of the nomination of the

respondent or any non compliance with the provisions of the Constitution or of the Act or of the rules by the respondent has materially affected the

result of the election, in so far as it concerns the returned candidate, i.e. of the respondent. In order to press home this point he relies on the

decision of the Hon^{ble} Supreme Court in Mangani Lal Mandal v. Bishnu Deo Bhandari, (2012) 3 SCC 314. The Hon^{ble} Supreme Court in the

said case of Mangani Lal Mandal (supra) held at para 10 and 11 as follows :

10. 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 with 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 or 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 with 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.

11. A mere non-compliance or breach of the Constitution or the statutory provisions noticed above, by itself, does not result in invalidating the

election of a returned candidate under Section 100(1)(d)(iv). The sine qua non for declaring the election of a returned candidate to be void on the

ground under clause (iv) of Section 100(1)(d) is further proof of the fact that such breach or non-observance has resulted in materially affecting the

result of the returned candidate. In other words, the violation or breach or non-observation or non-compliance with the provisions of the

Constitution or the 1951 Act or the rules or the orders made thereunder, by itself, does not render the election of a returned candidate void

Section 100(1)(d)(iv). For the election petitioner to succeed on such ground viz. Section 100(1)(d)(iv), he has not only to plead and prove the

ground but also that the result of the election insofar as it concerned the returned candidate has been materially affected. The view that we have

taken finds support from the three decisions of this Court in: (1) Jabar Singh v. Genda Lal , AIR 1964 SC 1200 : (1964) 6 SCR 54 (2) L.R.

Shivaramagowda v. T.M. Chandrashekar , (1999) 1 SCC 666; and (3) Uma Ballav Rath v. Maheshwar Mohanty , (1999) 3 SCC 357.

53. He also has relied on the decision in Surendra Nath Khosla v. S. Dalip Singh, , AIR 1957 SC 242 to the same effect.

54. He submits that this requirement of pleading and proving that the result of the election of the returned candidate had been materially affected,

has been inserted by the Parliament as far as the grounds for challenge are based on the sub-clauses (i) to (iv) of subsection (d) of Section 100(1).

Hence, this statutory requirement cannot be given a go by. He submits that such statutory requirement of proving that the result of the returned

candidate has been materially affected is not required to be pleaded nor to be proved in respect of the rejection of nomination as provided under

Section 100(1)(c). Under Section 100(1)(c) if any nomination has been improperly rejected, once the same has been proved, the result of the

election has to be declared void by the High Court. There is no need to prove any further that because of the improper rejection of nomination the

election of the returned candidate had been materially affected. According to Learned Senior counsel for the respondent, there is not even a

whisper in the pleadings that the result of the election has been materially affected by the improper acceptance of the nomination of the respondent.

He further submits that there is nothing in the evidence also to show that the result of the election has been materially affected by the improper

acceptance of the nomination of the respondent. Accordingly, he submits that on this ground alone this petition is liable to be dismissed.

55. Coming to the issue as to whether the nomination of the respondent was improperly accepted or not, Mr. V. Giri, Learned Senior counsel

submits that there was no improper acceptance of the nomination of the respondent inasmuch as the defect in the affidavit filed by the respondent

was not of a substantial character but a minor one. He submits that the error in giving educational qualification cannot be said to be of a substantial

character. He draws attention of this Court to Section 33A of the Act which requires furnishing of certain information but it does not mention the

requirement for furnishing educational qualification. He also draws the attention of this Court to Form No. 26 which is the format of the affidavit to

be filed by the candidate along with the nomination paper before the Returning Officer as required under Rule 4A of the Conduct of Elections

Rules, 1961. In the aforesaid form under the heading ""Verification"" it is clearly mentioned that the deponent is required to make further declarations

about the criminal cases or convictions, etc. and also about the assets and liabilities of the candidate, the spouse and dependants. Yet, there is no

mention of the educational qualifications in the said portion of verification.

He further submits that perusal of the Form 26 would clearly reveal that while there are elaborate and detailed columns as regards the criminal

antecedents and assets and liabilities there is only a simple paragraph for the educational qualification. Thus, the statutes as well as the judicial

pronouncements have been giving more emphasis on the criminal antecedents and assets and liabilities of the candidates, and same high degree of

importance is not given when it comes to educational qualification. He, therefore, submits that the provision for furnishing information regarding the

educational qualification is to make the voter know as to whether the candidate is literate or not and nothing more. Hence, nothing more should be

read into the requirement of information about educational qualification.

He submits that the authorities or rule making authorities have put these two categories of information regarding the criminal antecedents and assets

and liabilities at the higher pedestal than the information about educational qualification for obvious reasons. He submits that in fact, the entire

history and background leading to the rendering of the judgment in Association for Democratic Reforms (supra), clearly indicate that not only the

Parliament but the Hon"ble Supreme Court were deeply concerned with the criminalisation of politics because of large scale participation of people

with criminal track records and also misuse of money, etc. He submits that no such importance was given to the requirement of furnishing

information about educational qualification except for the fact that the said requirement was only for the purpose of making the electorates aware of

the educational qualification of the candidates. The question of any misuse of authority is not related with the educational qualification, which

persons with criminal background or from propertied class may have. He, therefore, submits that wrong information regarding education

qualification cannot be considered to be of any vital importance or of substantive nature.

Mr. V. Giri, learned Senior counsel has drawn attention of this Court to the observation made by Mr. Hon^{ble} Shah, J in para 18 of the judgment

in PUCL v. Union of India (2003) (supra) to show the concern of the Courts relating to candidates with criminal background and also about the

financial background where the educational qualification has not been discussed at all, which is reproduced herein below :

18. So, the foundation of a healthy democracy is to have well-informed citizens-voters. The reason to have right of information with regard to the

antecedents of the candidate is that voter can judge and decide in whose favour he should cast his vote. It is the voter's discretion whether to vote

in favour of an illiterate or literate candidate. It is his choice whether to elect a candidate against whom criminal cases for serious or non-serious

charges were filed but is acquitted or discharged. He is to consider whether his candidate may or may not have sufficient assets so that he may not

be tempted to indulge in unjustified means for accumulating wealth. For assets or liability, the voter may exercise his discretion in favour of a

candidate whose liability is minimum and/or there are no overdues of public financial institution or government dues. From this information, it would

be, to some extent, easy to verify whether unaccounted money is utilized for contesting election and whether a candidate is contesting election for

getting rich or after being elected to what extent he became richer. Exposure to public scrutiny is one of the known means for getting clean and less

polluted persons to govern the country. A little man - a citizen - a voter is the master of his vote. He must have necessary information so that he

can intelligently decide in favour of a candidate who satisfies his criterion of being elected as an MP or MLA. On occasions, it is stated that we are

not having such intelligent voters. This is no excuse. This would be belittling a little citizen/voter. He himself may be illiterate but still he would have

the guts to decide in whose favour he should cast his vote. In any case, for having free and fair election and not to convert democracy into a

mobocracy and mockery or a farce, information to voters is a necessity.

Thus, the right to information of the electorates with regards the criminal antecedents and assets and liabilities of the candidate has been placed at a

higher pedestal and hence also been given specific statutory recognition by inserting Section 33A in the Representation of People Act, 1951.

He submits that possession of any particular educational qualification is not an essential qualification/requirement for contesting elections as even an

illiterate person also could contest. He submits that it is not really a matter of educational qualification of the candidate which matters to the voters

so long as he is perceived to have the potential of being a good public servant after being elected. Therefore, though the law requires furnishing of

educational qualification, error in giving such information cannot be said to be of substantial character so as to entail rejection of the nomination. He

submits that what the law requires is the highest educational qualification and law does not contemplate giving a detailed educational qualification

from the lowest level to the highest. Hence, other lower educational qualifications were not given by the respondent. It is also not the case that the

petitioner is illiterate and yet he claims to be a very well educated person having an MBA degree. He had already completed his graduation from

Delhi University and also had undertaken post graduation course in Service Industry Management. Therefore, it is not a case of total lack of

educational qualification which would make such error in furnishing wrong qualification in the affidavit to be of a substantial nature. It is also not a

case that because of the educational qualification given as MBA, it had swayed the decision of the electorates. The election petitioner has not led

any evidence to show that because of the educational qualification given as MBA it led to swaying of votes in favour of the respondent. In fact,

there is nothing to show that the votes garnered by the respondent had anything to do with the educational qualification of the respondent. He had

nothing to gain nor lose by the aforesaid incorrect information given in the affidavit. He submits that the election petitioner and his agent were

examined as witnesses. But not a single electorate was examined to show that the educational qualification of the petitioner had any impact on the

result of the election. Accordingly, he submits that mistake or wrong furnishing of educational qualification in the affidavit is not of a substantial

character and hence, acceptance of the nomination of the respondent was not a case of improper acceptance. He submits that when an election of

a returned candidate is challenged before the Hon"ble High Court, Hon"ble High Court has to decide the case by taking into consideration the

entire facts and circumstances emerging before the Court. He, accordingly, submits that if the entire facts and circumstances as emerged in the

present case are considered, no case has been made out by the election petitioner for declaring the election of the respondent as void.

56. He submits that each and every wrong information furnished in the affidavit will not entail rejection of the nomination paper. It is only when such

defect is found to be a substantial or material lapse that the returning officer could reject the nomination paper. In this regard, he has relied on the

decision of the Hon"ble Supreme Court in Shambhu Prasad Sharma v. Charandas Mahant, , (2012) 11 SCC 390 wherein it was held that the

form of the nomination papers is not sacrosanct. What is to be seen is whether there is substantial compliance with the requirement as to form.

Every departure from the prescribed format cannot, therefore, be made a ground for rejection of the nomination paper. He further draws attention

of this Court to decision of the Hon"ble Supreme Court in Kisan Shankar Kathore (supra), in which the Hon"ble Supreme Court in para 38 therein

took the view that some of the non disclosures or disclosures in the affidavit were considered not to be serious lapse and the Hon"ble Supreme

Court held that such lapses which are not serious in nature cannot be taken into consideration for declaring election void under Section 100(1)(d)

(i) and (iv). The Hon"ble Supreme Court further clarified in para 38 that whether a defect is a serious material lapse or not, would depend on the

facts and circumstances of each case. Therefore, he contends that each and every lapse will not constitute a ground for rejection of nomination.

Each and every lapse has to be examined in the context of the facts and circumstances whether to treat the said as a material lapse or not. He

submits that in the said case only non disclosure of bungalow in the name of the returned candidate's wife and vehicle in the name of returned

candidate's wife were considered to be serious and major lapses to invite voidation of the election of the returned candidate.

57. Learned senior counsel submits that every wrong information or failure to furnish information by a candidate will not attract provisions of

Section 125A of the Act. It is only such information which the candidate has reason to believe to be false or concealment of any self-information

which was done with the intent to be elected in the election. Therefore, the information so furnished which has no direct bearing with the intent to

be elected nor which did not lead to any influencing of the voters, such information cannot be deemed to be a material information and hence, it

cannot be clothed with the attribute of substantial character. In the present case it had been submitted that the furnishing of information as regards

the educational qualification was as per requirements of the rules but it had not been proved by the election petitioner that the said information was

given with the intent to be elected in the election. Accordingly, the wrong information given in the affidavit cannot be said to be of a substantial

character.

Learned Senior counsel submits that it cannot be said that the respondent had filed falsely in respect of the highest educational qualification. It could

be at best said that the respondent in giving his highest educational qualification has committed an error but he has offered the explanation both in

pleading and by way of evidence led before this Court which deserves to be accepted by this Court. This is so in the context of total absence of

any gain the respondent would have stood to derive by giving his highest educational qualification as ""MBA, 2004, Mysore University"" instead of a

Post Graduate Diploma from an Institute in Chandigarh, which is also relevant.

58. Mr. Kumarjit, Learned Senior counsel appearing for the petitioner, however, submits that furnishing of the information as regards the

educational qualification by the respondent if it is found to be not correct would mean that the respondent had not furnished any information at all.

He submits that if the information is found to be incorrect it would be no affidavit at all as filing of such affidavit with false information will render the

requirement of filing of an affidavit a mandatory information in terms of the direction issued by the ECI as well as the requirement of Rule 4A

nugatory rendering such nomination paper to suffer from defect of substantial character and as such, the nomination paper is liable to be rejected.

59. As regards the contention of the respondent that in terms of provision of Section 100(1)(d)(i) it has to be proved that the result of the returned

candidate has been materially affected by the improper acceptance of the nomination of the respondent, it has been submitted that in the present

case, the same is not required. He submits relying on the decision of the Hon"ble Supreme Court in *Durai Muthuswami v. N. Nachiappan & Ors*, ,

(1973) 2 SCC 45 in which the Hon"ble Supreme Court held that where it is a case of only one seat to be filled and there are only two candidates

and if the nomination paper of the returned candidate is found to be invalid, there is no further need to prove that the result of the election of the

returned candidate had been materially affected, in which event the only option left before the Court is to declare the other candidate with valid

nomination paper to be elected. He submits that the question whether the result of the election of the candidate is materially affected by the

improper acceptance of a candidate would arise only when there are more than two candidates in an election. However, in the present case, it is

not so as only the petitioner and the respondent had contested the election and in the event the respondent"s nomination paper is found to be liable

to be rejected, the petitioner is to be declared elected. He submits that this has been so held by the Hon"ble Supreme Court in *Kisan Shankar*

Kathore (supra).

60. Accordingly, Mr. Kumarjit, learned Senior counsel submits that when there is no need to prove that the election of the respondent has been

materially affected by the improper acceptance of the nomination of the respondent, non pleading on this aspect is not fatal as there is no need to

plead so.

Mr. V. Giri, however, tried to distinguish the aforesaid judgment in *Durai Muthuswami* (supra) by contending that the said case related to the case

where the elected returned candidate incurred disqualification under Section 9A of the Act. Thus, it comes under Section 100(1)(a) which does

not require to plead or prove that the election has been materially affected as in the case of Section 100(1)(d) of the Act.

61. Mr. Kumarjit, learned Senior counsel submits that from the evidence it is clear that the respondent has not denied specifically that he does not

possess the MBA degree from Mysore University and since he has not denied this entry in the affidavit, it is clear that he had filed a false affidavit.

He submits that it amounts to a substantial lapse, and hence, the nomination of the respondent was liable to be rejected. He submits that from the

evidence on record it is clearly seen that he did not execute the affidavit submitted along with the nomination papers by taking oath before the Oath

Commissioner or the competent authority and as such, the affidavit cannot be said to be a valid affidavit and hence on this ground also the

nomination of the respondent was liable to be rejected.

62. From the rival contentions, the issue boils down to the finding as to whether filing of the affidavit by the respondent with the entry ""MBA, 2004,

Mysore University"" amounts to filing of false affidavit and whether such defect is of substantial character which would entail rejection of the

nomination paper of the respondent. If it is held that filing of such affidavit does not amount to a defect of substantial character there is no further

need to proceed with the petition and the election petition will be liable to be dismissed. On the other hand, if it is found that filing of such affidavits

by the respondent amounts to lapse of a substantial nature, it was incumbent on the returning officer not to have accepted the nomination of the

respondent and if accepted, would be a case of improper acceptance of the nomination of the respondent.

While deciding this issue it may be necessary to examine the scope and parameters for deciding such issue by this Court. Whether the nomination

paper is to be accepted or rejected at the time of scrutiny is plainly within the domain of the returning officer. The returning officer has to decide

within the confines of Section 36 of the RP Act and relevant laws holding the field. This Court is called upon to examine whether the acceptance of

the nomination paper by returning officer was proper or not. For doing this Court has to assume the role of the returning officer to decide whether

to accept the nomination of the respondent or to reject it. This Court is of the view that while undertaking this exercise it may not be necessary to

examine or take into consideration facts and circumstances which may arise after the scrutiny. The circumstances which may arise after the election

may come into relevance only at the time of deciding whether the improper acceptance of the respondent ultimately materially affected the result of

the returned candidate as provided under Section 100(1)(d) of the RP Act, 1951. Therefore, this Court is of the view that it may not be necessary

to take into consideration facts and circumstances which are post scrutiny of the nomination paper as well as post election, which could be

considered only at the second stage of the consideration required under Section 100(1)(b) i.e. as to whether such improper acceptance of the

nomination had materially affected the result of the returned candidate.

The contention of Sri V. Giri, Ld. Senior Counsel that whether by this information the electorates had been influenced or not needs to be taken into

account, may not be correct in as much as the fundamental idea for requiring furnishing these information about character, assets and educational

qualifications is to enable the voters to make their choice effectively and in the manner they want while casting their votes. These requirements, may

not on their own, per se, prevent criminalisation and other ills of electoral politics but certainly make the voters aware to make their choice more

meaningful. The reason for this requirement to furnish these information is the fundamental right of the electorate citizens under Art. 19(1)(a) to

know the backgrounds of the candidates for an effective choice. Therefore, the issue whether this incorrect information about the educational

qualification had indeed swayed the voters is really not relevant. Of course, what may be relevant is whether such suppression of fact or misleading

or wrong information has the potential to influence votes. Whether it actually influenced or not is immaterial as this Court is to examine whether the

acceptance of nomination by the Returning Officer was proper or improper and the Court is only undertaking the exercise by way of

postponement of the exercise of adjudicating the acceptance or rejection irrespective of the result of the election. The result of the election will

become relevant only at the second stage of the exercise contemplated under Section 100(1)(d), whether such improper acceptance of nomination

materially affected the result of the election of the returned candidate.

63. Thus positing in the place of the returning officer, this Court has to examine as to the factors to be considered and criteria to be adopted while

deciding whether such a defect is of substantial character or not. In the present case, before we examine it, it may be first determined as to whether

there was any defect at all. Only when it is found that there is a defect, the second consideration, whether such a defect is of substantial character

or not, will arise. The election petitioner has claimed that the respondent had falsely stated his educational qualification as ""MBA, 2004, Mysore

University"" which the election petitioner contends to be a false statement. The respondent, however, has not categorically denied the averment of

the election petitioner about the factum of the aforesaid entry about the educational qualification in his Form 26 affidavit. He, however, claims that it

was a clerical error and he assigned certain reasons for it which have been already mentioned above. The fact remains, as established in course of

the trial, that the respondent did not possess MBA from Mysore University. He neither underwent MBA degree nor studied in Mysore University.

What had been claimed by the respondent is that it was a clerical one. If the educational qualification of the respondent is ""MBA, 2004, Mysore

University"" is held to be an error, the next question arise is whether it was a clerical error as claimed by the respondent. Clerical error as in the

normal parlance would mean a mistake which may have crept in inadvertently and unintentionally, due to certain typographical or mechanical

mistake. Such a clerical error, therefore, would be a mistake which was unintended, but purely due to inadvertence which could be corrected

without making any fundamental changes in the instrument or the document. ""Clerical error"" has been defined in Black's Law Dictionary, 10th

Edition as

An error resulting from a minor mistake or inadvertence and not from judicial reasoning or determination; esp., a drafter's or typist's technical

error that can be rectified without serious doubt about the correct reading. Among the numberless possible examples of clerical errors are omitting

an appendix from a document; typing an incorrect number; mis-transcribing or omitting an obviously needed word; and failing to log a call. A court

can correct a clerical error in the record at any time, even after judgment has been entered.

This expression has been also interpreted by the Hon^{ble} Supreme Court in Sooraj Devi v. Pyare Lal, , (1981) 1 SCC 500 as follows :

4.A clerical or arithmetical error is an error occasioned by an accidental slip or omission of the court. It represents that which the

court never intended to say. It is an error apparent on the face of the record and does not depend for its discovery on argument or disputation. An

arithmetical error is a mistake of calculation, and a clerical error is a mistake in writing or typing. Master Construction Co. (P) Ltd. v. State of

Orissa , AIR 1966 SC 1047 : (1966) 3 SCR 99 : (1966) 17 STC 360.

The question, therefore, which arises in this particular case is whether the aforesaid entry regarding educational qualification can be deemed to be

clerical error or not. In his written statement, the respondent claimed that the said entry was made as a result of ""thought process"" on the ground

that it was discussed amongst friends that it is nowadays desirable to have MBA degree from Mysore University. In other words, it was claimed to

be reflection of the thought process of the respondent. However, though he had pleaded in his written statement, this explanation has not come out

clearly, cogently and unambiguously in the testimonies of his witnesses. The respondent in his evidence before the Court during the cross

examination claims that he does not remember what had been instructed to his agents or the lawyer who filled up the form. The respondent claims

that he did not fill up the form in his own handwriting but it was filled up by the lawyer on his behalf. However, in his statement he does not

remember whether the entry was made in his affidavit by his counsel or not or by himself. He also claims to have no remembrance as to the

mentioning of the highest educational qualification at the time of filing of nomination paper in the affidavit. In the election petition, it is the onus of the

petitioner to prove his case and as a corollary to prove all material facts which are pleaded in the election petition failing which the petition would

be liable to be dismissed, as not proved. However, in the present case, the election petitioner has specifically pleaded that the respondent had put

his educational qualification in the affidavit as ""MBA, 2004, Mysore University"". The respondent has not specifically denied that he has not put

MBA, 2004, Mysore University"" in his affidavit but he has merely stated that the said mistake was a clerical one. Admittedly, the aforesaid

qualification written in his affidavit is not correct. In that event, the onus shifts to the respondent to prove that such a mistake was a clerical mistake,

hence, a genuine and not intentional. However, the respondent had not been able to discharge this onus to show that it was a clerical mistake. The

respondent (DW 1) in his testimony had stated that his nomination papers and enclosed affidavits were prepared and filled up by his counsel (DW

3) on the instructions of his agent (DW 2). However, his agent DW 2 states in his testimony that though the respondent had given him the details of

the educational qualification in writing with necessary copies of testimonies, these were lost enroute to the chamber of his lawyer, DW 3, because

of which his agent DW 2 who was under impression that the Respondent (DW 1) had passed MBA from Mysore University instructed the lawyer

(DW 3) to fill up the particular column no. 9 in the affidavit. His agent DW 2 further states that later, the Respondent put his signature on the

affidavit before the Oath Commissioner without seeing the contents of the affidavit. Assuming this narration by his agent DW 2 to be correct, yet it

cannot detract from the fact that, even the information or assumption of the agent DW 2 that the respondent had done MBA from Mysore

University was mistaken, yet that information was consciously relayed on to the lawyer DW 3 as the correct educational qualification of the

Respondent (DW1) while filling up the affidavit. Since, giving particulars in an affidavit for the purpose of nomination in an election is a solemn and

serious business, the agent DW 2 ought to have reconfirmed about the educational qualification of the Respondent (DW 1) at the time of filling up

or at least before it was signed and executed by the DW 1 from the respondent, which does not seem to have been done. Therefore, this Court is

of the view that the qualities and attributes which would make an error ""clerical"" seem to be missing in the present case. Giving wrong information

about the educational qualification by the Election Agent (DW 2) to the lawyer (DW 3) at the time of filling up the affidavit by DW 3 can not be

construed to be a clerical error. It clearly amounts to a negligent act on the part of the DW 2 who is the election agent of the DW1. In any event,

even if it is clerical error, till it is not rectified remains an error. That apart, the deponent of an affidavit shall be responsible for the entry made in or

the contents of the affidavit. It was the responsibility of the respondent to have checked the contents before executing the same.

64. The Hon"ble Supreme Court while dealing with the issue of a defect which was held to be a technical one and not of substantial character, in

Harikrishna Lal v. Babu Lal Marandi, , (2003) 8 SCC 613, referred to the maxim ""falsa demonstratio non nocet, cum de corpore constat"" to show

that if part of a description of an instrument is correct, and which correct part describes the subject with sufficient legal clarity, the untrue part will

not vitiate the instrument as held in para 13 thereof which is reproduced hereinbelow:

13. A reference may usefully be made to the maxim ""falsa demonstratio non nocet, cum de corpore constat"" which means mere false description

does not vitiate, if there be sufficient certainty as to the object. "Falsa demonstratio" means an erroneous description of a person or a thing in a

written instrument; and the above rule respecting it signifies that where the description is made up of more than one part, and one part is true, but

the other false, there, if the part which is true describes the subject with sufficient legal certainty, the untrue part will be rejected and will not vitiate

the device; the characteristic of cases within the rule being that the description, so far as it is false, applies to no subject at all, and, so far as it is

true, applies to one only. (See Broom's Legal Maxims, 10th Edn., pp. 426-27th.) Broom quotes (at p. 438) an example that an error in the

proper name or in the surname of the legatee should not make the legacy void, provided it could be understood from the Will what person was

intended to be benefited thereby.

Applying the aforesaid maxim and principle, we may try to examine if any part of the description of his educational qualification in the affidavit

would describe his educational qualification with sufficient clarity. Unfortunately, none of the parts, viz., "MBA" or "Mysore University", (the year

2004" being relevant only with reference to either the degree or the University) is true nor has any nexus or indication towards his real and

admitted educational qualification that he did his graduation from Kirori Mal College, Delhi University or that he did PG Programme in Service

Industry Management from Chandigarh. If he had merely written "MBA" without the other words "Mysore University" and claimed that he had

mentioned MBA under the bonafide impression that PG Programme in Service Industry Management is equivalent to "MBA", the matter could

have been otherwise. Also, if he had mentioned in the affidavit about his graduation from Kirori Mal College, Post-graduate Programme in Service

Industry Management, along with the present entry, the matter could have otherwise also, as it would have indicated with sufficient clarity his

educational qualification. In the present case, the evidence is on record that he neither underwent "MBA" course nor studied in Mysore University

at any point of time. Both the entries are incorrect. In other words, the entire entry is incorrect.

Hence, this Court finds it difficult to accept the plea of the respondent that the said defect is a "clerical error".

65. This takes us to the next stage of consideration. Even if the educational qualification mentioned by the respondent in his affidavit is held to be

not a clerical mistake, yet it needs to be decided as to whether such a mistake is of substantial character. It is only when such defect or mistake is

found to be of substantial character that the Returning Officer is under legal obligation to reject the nomination and not otherwise, vide Section

36(4) of the RP Act.

The election petitioner contends that it is a defect of substantial character which the respondent contends to the contrary.

As already discussed above, it is the contention of the petitioner that this information regarding educational qualification is required to be given in

terms of the decision of the Hon"ble Supreme Court in Union of India v. Association for Democratic Reforms and Another (supra) and reiterated

in PUCL case (supra) in which it has been observed that suppression or non furnishing of information would make the defect substantial in nature.

He submits that as per instructions issued by the Election Commission of India in 2002 as well as the decision in Resurgence India (supra) it has

been stated that non furnishing of the affidavit by the candidate or furnishing of any wrong or incomplete information or suppression of any material

information will result in rejection of nomination paper.

On the other hand, the respondent"s plea is that requirement of putting the educational qualification is not of such importance as in the case of

information relating to criminal antecedents and assets. Hence, that mistake in giving correct educational qualifications cannot be considered to be

of substantial nature to invite rejection of nomination. His plea is that requirement of giving information about educational qualification cannot be

equated with the requirement of giving information regarding criminal antecedents and assets as these two sets of information rest at a higher

pedestal requiring a higher standard of scrutiny. In case of educational qualification, it has been pleaded that it must be subjected to lesser rigour at

the time of scrutiny. It has been submitted that it deserves more leniency in scrutiny. Stringent standards ought not apply as in the case of criminal

antecedents and assets. The requirements of furnishing information about criminal antecedents and assets are admittedly for serving an important

public interest of cleansing the politics of criminal elements and to prevent misuse of money and corruption. However, information relating to

educational qualification has nothing to do with any of the electoral evils plaguing the Indian political system as even an illiterate can stand for

election and can hold public offices. Mr. Giri, Ld. Senior Counsel has strenuously argued that information relating to educational qualification has

not been really considered critical and crucial as in the case of educational qualification by the Courts as well in the statutes.

The arguments advanced by Sri V. Giri, Ld. Senior Counsel is quite attractive and the plea of the respondent that wrong information about

educational qualification is not of a substantial nature as to invite rejection of nomination could have been upheld but for the decision in PUCL v.

Union of India, , (2003) 4 SCC 399. In fact the very persuasive argument advanced by Sri V. Giri, Ld. Senior Counsel finds echo in the view

expressed by Hon"ble P. Venkatarama Reddi J. as regards the not so important aspect of the educational qualification of the candidate, which

however, did not find favour with the majority in the said case.

The Hon"ble Supreme Court in the case of Association for Democratic Reforms (supra) had issued directions to the Election Commission to call

for information by way of 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

criminal antecedents, if any, assets and liabilities and also of the educational qualification of the candidate. Pursuant to the aforesaid directive, the

Election Commission issued directions under its Order dated 28.06.2002 which also contains the stipulation that furnishing of any wrong or

incomplete information or suppression of any material information by any candidate in or from the said affidavit may also result in the rejection of

the nomination paper where such wrong or incomplete information or suppression of material information is considered by the Returning Officer to

be a defect of substantial character, apart from inviting penal consequence under the Indian Penal Code for furnishing wrong information. The

Hon"ble Supreme Court, however, clarified in PUCL case that the rejection of the nomination paper for furnishing wrong information or concealing

material information at the time of scrutiny by a summary enquiry will not be permissible as in many cases, the candidate may not be able to furnish

clinching proof or evidences at that stage, but only at a later stage. However, the basis for rejection, viz., wrong, incomplete information or lack of

information, was not interfered with and the Hon"ble Supreme Court reiterated the earlier directions issued in the Association for Democratic

Reforms (supra). In the said decision in PUCL, Hon"ble Venkatarama Reddi J., in a slight departure from the view of Hon"ble M.B. Shah J.,

expressed the opinion that disclosure of information regarding educational qualifications of a candidate is not an essential component of the right to

information flowing from Article 19(1)(a). Hon"ble P. Venkatarama Reddi J. took the view that such information is not a vital and useful piece of

information to the voters, in the ultimate analysis. If the aforesaid view of Hon"ble Venkatarama Reddi J. had prevailed, which also was canvassed

by Sri V. Giri Ld. Senior Counsel for the respondent, it could always be claimed that information regarding educational qualification not being a

vital or essential component of Article 19(1)(a), any such defect in such information, as a corollary, would not be a defect of a substantial

character. However, it is not to be so. Hon"ble Dharmadhikari J, in his third opinion disagreed with the aforesaid view of the Hon"ble P.

Venkatarama Reddi J. as clearly mentioned in para no. 132 of the judgment in PUCL. In that view of the matter, it cannot be held that information

regarding educational qualification is not a vital component of right to information of the voter under Article 19(1)(a). If it is a vital component,

which requires to be disclosed, such a defect in not correctly disclosing the educational qualification cannot be said to be of not substantial nature.

In the present case, the information furnished has been established to be incorrect, not even partially, even by applying the maxim ""falsa

demonstratio non nocet, cum de corpore constat"". Thus, this Court is not persuaded to accept the plea of the respondent that it was a clerical

error. The clear inference that can be drawn is that the respondent by furnishing information which is wholly incorrect has not furnished any

substantive information as regards his educational qualification. The entire entry is incorrect. It does not in any way indicate the correct educational

qualification of the respondent except that he is not illiterate. The information furnished by him is no information in the eye of law which is not

different, in practical terms, from leaving the column blank, which would entail rejection of the nomination in terms of the decision in *Resurgence*

India (supra). The direction of the Hon"ble Supreme Court for furnishing information regarding educational qualification which has been held to be

a vital component of Article 19(1)(a) has not been substantially complied with by the respondent rendering such defect, a defect of substantial

character. The entirely wrong information was no information at all as far as the voter is concerned. Whether it was unintentional or due to

inadvertence would not matter so long as the said incorrect entry remains. Though it has not been proved that it actually swayed the votes in his

favour, the fact that it had the potential to do so cannot be wholly ignored. Therefore, this Court would hold that the defect in furnishing information

of the educational qualification by the respondent is substantial in nature. In that event, the nomination of the respondent was liable to be rejected.

Since, it was not rejected though it was liable to be rejected, it is a case of improper acceptance.

Reliance by Sri V. Giri, Learned Senior Counsel on the decision of Shambhu Prasad Sharma (supra) is also misplaced. The Hon"ble Supreme

Court in that case was dealing with defect in the format and not a case of concealment of information of outstanding liabilities as observed in

paragraph no. 19 of the said judgment, which is reproduced herein below.

19. In the case at hand, the appellant alleges that the affidavit did not in the prescribed format state whether the candidates had any outstanding

liabilities qua financial institutions or the Government. Now a departure from the format may assume some importance if the appellant alleged that

there were such outstanding liabilities which were concealed by the candidates. That, however, is not the case of the appellant. Any departure from

the prescribed format for disclosure of information about the dues, if any, payable to the financial institutions or the Government will not be of much

significance, especially when the declaration made by the returned candidate in his affidavit clearly stated that no such dues were recoverable from

the deponent. The departure from the format was not, in the circumstances, of a substantial character on which the nomination papers of the

returned candidate could be lawfully rejected by the Returning Officer.

Hence, the factual situation being different, the aforesaid decision will not be applicable in the present case.

In view of the above, Issue no. (iii) as to whether the respondent had filed false affidavit in respect of the highest education qualification in the form,

in which the respondent had mentioned ""MBA Mysore University"" is decided in favour of the petitioner and against the respondent and the issue

whether it was merely a clerical error is decided against the respondent.

And Issue no. (i) as to whether the Returning Officer of the 27th Moirang AC had illegally accepted the nomination paper of the respondent is

decided in favour of the petitioner and against the respondent.

66. This leads us to the next stage of consideration. If the nomination has been improperly accepted, what is the legal consequence? Section

100(1)(d) mandates that, in such an event, if it materially affects the result of the election, in so far as it concerns the returned candidate, the

election of the returned candidate is to be declared void.

67. There has been much debate as to the meaning and scope of the expression ""materially affected"".

Suffice to say that it is a mandatory requirement, this condition must be also fulfilled before the election of the returned candidate can be declared

void.

In the present case, there is only one assembly seat and two candidates to deal with. Thus, in the event, the nomination of the returned candidate is

found to be improperly accepted on the ground that it ought to have been rejected or is liable to be rejected, the legal consequence as far as the

returned candidate is concerned is that he could not have contested the elections. In which event, he would be presumed to have obtained no votes

at all. In such a case, the question of considering whether the improper acceptance of the returned candidate materially affected the result of the

returned candidate does not arise as it already stood materially affected the moment his nomination is rejected or held to have been improperly

accepted. Since, by virtue of the finding that the nomination of the returned candidate was improperly accepted, he cannot be reckoned with other

candidates with valid nominations. He will remain out of the contest. He could not have contested. His successful contest will not be counted.

Hence, when the aforesaid mandatory statutory requirement, i.e., whether such improper acceptance materially affected the result of the returned

candidate is applied, the effect would be that it would be applying to a candidate who has been already debarred from contesting and who will be

deemed to be not entitled to contest the election. By virtue of being debarred from contesting due to rejection of nomination of the returned

candidate, his result stands materially affected. The end result and legal effect of such improper acceptance of the nomination of the returned

candidate is the same. As the returned candidate whose nomination is found to be improperly accepted will be deemed to be out of electoral

contest, it matters little, even if the petitioner has not really pleaded that by improper acceptance of the nomination of the respondent, the result of

the election of the respondent has been materially affected. There is no need for any proof of this requirement at this stage as the returned

candidate stands automatically eliminated from the electoral fray. If no such proof is required, absence of such pleading to prove such a self evident

fact hardly matters.

One may look this aspect from another perspective. If the very basis of the election of the returned candidate, i.e., the nomination of the candidate

which is stated to be valid, is later on found to be not valid, as in the present case, the very basis and foundation for sustaining the election of the

returned candidate goes. In other words, once the foundation is taken away, the election will have no basis to stand and thus will be rendered

otiose. He cannot be treated to have been elected at all. Hence, the moment there is a finding that the nomination of the returned candidate has

been improperly accepted, it immediately materially affects the result of the returned candidate. Accordingly, if there be any burden on the

petitioner to prove that the result of the election of the returned candidate has been materially affected by improper acceptance of the nomination of

the returned candidate, such a burden also gets discharged immediately. Thus, there will not be any need to prove further on the part of the

petitioner that the improper acceptance of the nomination of the returned candidate has materially affected the result of the election of the returned

candidate.

In this regard we may refer to the decision of the Hon"ble Supreme Court in Vashist Narain Sharma v. Dev Chandra and Others, , (1955) 1 SCR

509, in which the Hon"ble Court also contemplated a situation where the person whose nomination has been improperly accepted is the returned

candidate himself, as mentioned in para no. 9 thereof as follows :

9. The learned counsel for the respondents concedes that the burden of proving that the improper acceptance of a nomination has materially

affected the result of the election lies upon the petitioner but he argues that the question can arise in one of three ways:

(1) where the candidate whose nomination was improperly accepted had secured less votes than the difference between the returned candidate

and the candidate securing the next highest number of votes,

(2) where the person referred to above secured more votes, and

(3) where the person whose nomination has been improperly accepted is the returned candidate himself.

It is agreed that in the first case the result of the election is not materially affected because if all the wasted votes are added to the votes of the

candidate securing the highest votes, it will make no difference to the result and the returned candidate will retain the seat. In the other two cases it

is contended that the result is materially affected. So far as the third case is concerned it may be readily conceded that such would be the

conclusion. But we are not prepared to hold that the mere fact that the wasted votes are greater than the margin of votes between the returned

candidate and the candidate securing the next highest number of votes must lead to the necessary inference that the result of the election has been

materially affected. That is a matter which has to be proved and the onus of proving it lies upon the petitioner. It will not do merely to say that all or

a majority of the wasted votes might have gone to the next highest candidate. The casting of votes at an election depends upon a variety of factors

and it is not possible for any one to predicate how many or which proportion of the votes will go to one or the other of the candidates. While it

must be recognised that the petitioner in such a case is confronted with a difficult situation, it is not possible to relieve him of the duty imposed upon

him by Section 100(1)(c) and hold without evidence that the duty has been discharged. Should the petitioner fail to adduce satisfactory evidence to

enable the Court to find in his favour on this point, the inevitable result would be that the Tribunal would not interfere in his favour and would allow

the election to stand.

In the said case, the Hon"ble Supreme Court was dealing with Section 100 as it stood then in which in both the cases of improper acceptance and

improper rejection of nomination, it was required to show that it materially affected the election as mentioned in para no.4 thereof as follows:

4..... Section 100 gives the grounds for declaring an election to be void. The material portion is as follows:

(1) If the Tribunal is of opinion-

(a)-(b) * * *

(c) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination, the Tribunal shall declare

the election to be wholly void. It is under this sub-section that the election was sought to be set aside.

5. Before an election can be declared to be wholly void under Section 100(1)(c), the Tribunal must find that ""the result of the election has been

materially affected."" These words have been the subject of much controversy before the Election Tribunals and it is agreed that the opinions

expressed have not always been uniform or consistent. These words seem to us to indicate that the result should not be judged by the mere

increase or decrease in the total number of votes secured by the returned candidate but by proof of the fact that the wasted votes would have been

distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate.....

Further, in *Durai Muthuswami v. N. Nachiappan*, (1973) 2 SCC 45, this aspect was also considered where the Supreme Court also dealt with a

situation where one seat was to be filled and there were only two contestants. In the said case, the Hon"ble Supreme Court held that,

3. Before dealing with the question whether the learned Judge was right in holding that he could not go into the question whether the 1st

respondent's nomination has been improperly accepted because there was no allegation in the election petition that the election had been materially

affected as a result of such improper acceptance, we may look into the relevant provisions of law. Under Section 81 of the Representation of the

People Act, 1951 an election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1)

of Section 100 and Section 101. It is not necessary to refer to the rest of the section. Under Section 83(1) (a), insofar as it is necessary for the

purpose of this case, an election petition shall contain a concise statement of the material facts on which the petitioner relies. Under Section 100(1)

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

(b)-(c) * * *

(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected-

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

(ii)-(iii) * * *

the High Court shall declare the election of the returned candidate to be void. Therefore, what Section 100 requires is that the High Court before it

declares the election of a returned candidate is void should be of opinion that the result of the election insofar as it concerns a returned candidate

has been materially affected by the improper acceptance of any nomination. Under Section 83 all that was necessary was a concise statement of

the material facts on which the petitioner relies. That the appellant in this case has done. He has also stated that the election is void because of the

improper acceptance of the 1st respondent's nomination and the facts given showed that the 1st respondent was suffering from a disqualification

which will fall under Section 9-A. That was why it was called improper acceptance. We do not consider that in the circumstances of this case it

was necessary for the petitioner to have also further alleged that the result of the election insofar as it concerns the returned candidate has been

materially affected by the improper acceptance of the 1st respondent's nomination. That is the obvious conclusion to be drawn from the

circumstances of this case. There was only one seat to be filled and there were only two contesting candidates. If the allegation that the 1st

respondent's nomination has been improperly accepted is accepted the conclusion that would follow is that the appellant would have been elected

as he was the only candidate validly nominated. There can be, therefore, no dispute that the result of the election insofar as it concerns the returned

candidate has been materially affected by the improper acceptance of his nomination because but for such improper acceptance he would not have

been able to stand for the election or be declared to be elected. The petitioner had also alleged that the election was void because of the improper

acceptance of the 1st respondent's nomination. In the case of election to a single-member constituency if there are more than two candidates and

the nomination of one of the defeated candidates had been improperly accepted the question might arise as to whether the result of the election of

the returned candidate had been materially affected by such improper reception. In such a case the question would arise as to what would have

happened to the votes which had been cast in favour of the defeated candidate whose nomination had been improperly accepted if it had not been

accepted. In that case it would be necessary for the person challenging the election not merely to allege but also to prove that the result of the

election had been materially affected by the improper acceptance of the nomination of the other defeated candidate. Unless he succeeds in proving

that if the votes cast in favour of the candidate whose nomination had been improperly accepted would have gone in the petitioner's favour and he

would have got a majority he cannot succeed in his election petition. Section 100(1)(d)(i) deals with such a contingency. It is not intended to

provide a convenient technical plea in a case like this where there can be no dispute at all about the election being materially affected by the

acceptance of the improper nomination. "Materially affected" is not a formula that has got to be specified but it is an essential requirement that is

contemplated in this section. Law does not contemplate a mere repetition of a formula. The learned Judge has failed to notice the distinction

between a ground on which an election can be declared to be void and the allegations that are necessary in an election petition in respect of such a

ground. The petitioner had stated the ground on which the 1st respondent's election should be declared to be void. He had also given the material

facts as required under Section 83(1)(a). We are, therefore, of opinion that the learned Judge erred in holding that it was not competent for him to

go into the question whether the 1st respondent's nomination had been improperly accepted.

68. In the light of the aforesaid two decisions of the Hon'ble Supreme Court, even though it is a statutory requirement that in the event of improper

acceptance of nomination paper, the election petitioner has still to show that it materially affected the result of the returned candidate, in case of

only two contesting candidates, if the nomination of the returned candidate has been found to be improperly accepted, the material effect it has on

the result on the returned candidate is self evident, and hence, need not be proved separately. The objection by Sri V. Giri, Learned Senior

Counsel for the respondent that in the case of Durai Muthuswami (supra), the Hon'ble Supreme Court was dealing with Section 9A which

disqualifies any candidate from contesting from the very beginning cannot be sustained as the Hon'ble Supreme Court also specifically dealt with

this requirement in the light of Section 100(1)(d)(i) that such improper acceptance of nomination materially affected the result of the returned

candidate.

The decision in Shambhu Prasad Sharma (supra) relied upon by Sri V. Giri, Ld. Senior Counsel was decided in a different context. The election of

the returned candidate was challenged on the ground of suppression of facts relating to the assets of the second wife of the returned candidate by

invoking the provisions of Section 100(1)(d)(iv) of the Act. Section 100(1)(d)(i) relating to improper acceptance of the nomination of the returned

candidate was not involved nor was an issue in the said case. Finding against the returned candidate under sub-clause (iv) of clause (d) of sub

section 1 of Section 100 does not automatically oust the returned candidate from the electoral fray as in the case of a returned candidate whose

nomination will be deemed to be rejected because of improper acceptance. If Section 100(1)(d)(i) had been also involved in the said case, the

matter would have been otherwise. Though sub-clauses (i) and (iv) are placed under the same clause (d) under Section 100(1), when it concerns

the returned candidate, operation of law seems to be different as discussed above. Once it is proved that the acceptance of the nomination of the

returned candidate was improper, he is deemed to have been eliminated from the first round of the contest itself, viz., scrutiny stage. Hence, his

participating in the second round does not arise, where the Court is to consider whether the improper nomination of a candidate will materially

affect the election of the returned candidate. When the returned candidate is not more in the fray having been eliminated by virtue of finding of

improper acceptance of nomination, nay, rejection which was merely ""deferred"", in the expression of the Hon"ble Supreme Court in paragraph no.

43 in Kishan Shankar Kathore"s case (supra), the question of examining whether such improper acceptance has materially affected the election of

the returned candidate does not arise. Therefore, this Court is of the view that the said decision in Shambhu Prasad Sharma (supra) will not be

applicable in the present case.

Similarly, in Mangani Lal Mandal (supra) relied upon by Sri V. Giri, Learned Senior Counsel for respondent, the Hon"ble Supreme Court was

dealing with a case where the challenge was based on Section 100(1)(d)(iv) and the issue of improper acceptance of nomination under Section

100(1)(d)(i) was not involved. Hence, for the same reasons as discussed above, this decision will be of no avail to the respondent.

As regards the decision in Surendra Nath Khosla (supra) relied upon by Sri V. Giri, Learned Senior Counsel, the matter relates to improper

rejection of nomination of a candidate. As the principle governing improper rejection of nomination of a candidate stands on a different footing, the

said judgment will also not be applicable.

Accordingly, the Issue No. (ii) as to whether the election of the respondent had been materially affected by the acceptance of the nomination paper

of the respondent by the R.O. of 27th - Moirang A/C is decided in favour of the petitioner and against the respondent.

69. In view of the findings recorded in respect of the Issues No. (i), (ii), (iii), (iv) and (v), the obvious conclusion is that the respondent is to suffer

the legal consequence under Section 100(1)(d)(i) for having not given the correct information about his educational qualification in his affidavit in

Form 26 at the time of filing nomination paper, which had been held to be a defect of substantial character, and hence would be covered by the

decision of the Hon"ble Supreme Court in Kisan Shankar Kathore (supra). The submission of Sri V. Giri, Ld. Senior Counsel for the respondent

that the said decision was rendered in the context of misinformation regarding the assets and not about educational qualifications will not make any

difference as it is the similar issue of wrong/incomplete information in the affidavit of a material fact.

The contention of Mr. V. Giri that the Hon"ble Supreme Court had not really decided on the issue which itself framed para 36.2 of the judgment as

to whether non-disclosure of the information has materially affected the result of the election, is really not material in view of the fact that in the

present case we are dealing with only two candidates and out of which one, the respondent and returned candidate, has been found to be not

entitled to contest the election for the reasons discussed above. The Bombay High Court had considered this aspect of which the Hon"ble

Supreme Court took note as evident from paragraph no. 32 of the judgment which is reproduced herein below:

32. Issue 8 pertains to the question as to whether the election result was materially affected because of non-disclosure of the aforesaid

information. The High Court took note of the provisions of Sections 100(1)(d)(i) and (iv) and discussed the same. Thereafter, some judgments

cited by the appellant were distinguished and deciding this issue against the appellant, the High Court concluded as under:

137. In my opinion, it is not necessary to elaborate on this matter beyond a point, except to observe that when it is a case of improper acceptance

of nomination on account of invalid affidavit or no affidavit filed therewith, which affidavit is necessarily an integral part of the nomination form; and

when that challenge concerns the returned candidate and if upheld, it is not necessary for the petitioner to further plead or prove that the result of

the returned candidate has been materially affected by such improper acceptance.

138. The avowed purpose of filing the affidavit is to make truthful disclosure of all the relevant matters regarding assets (movable and immovable)

and liabilities as well as criminal actions (registered, pending or in respect of which cognizance has been taken by the court of competent

jurisdiction or in relation to conviction in respect of specified offences). Those are matters which are fundamental to the accomplishment of free and

fair election. It is the fundamental right of the voters to be informed about all matters in relation to such details for electing candidate of their choice.

Filing of complete information and to make truthful disclosure in respect of such matters is the duty of the candidate who offers himself or who is

nominated for election to represent the voters from that constituency. As the candidate has to disclose this information on affidavit, the solemnity of

the affidavit cannot be allowed to be ridiculed by the candidates by offering incomplete information or suppressing material information, resulting in

disinformation and misinformation to the voters. The sanctity of disclosure to be made by the candidate flows from the constitutional obligation.

70. The respondent has to suffer this consequence not because he has indulged in any corrupt practice or that such information had influenced the

voters. In fact, it has not been proved that he had indulged in any corrupt practice or that because of this wrong information he had gained any

undue advantage during the elections. This error in giving information of educational qualification cannot be considered in the same degree of

culpability for giving wrong information about the character and assets of the candidates as pleaded by the respondent. But the fact remains that

information regarding educational qualification is a very vital piece of information from the perspective the voter as reiterated by the Hon"ble

Supreme Court, failure to furnish which would amount to be a material lapse. Of course, it has not been also proved that he had deliberately gave

this wrong information to gain any undue advantage. At most it can be said to be negligence on the part of the respondent. Yet, the consequence of

furnishing substantially wrong information about educational qualification, which the Hon"ble Supreme Court has held to be a vital piece of

information cannot be avoided, as the law mandates that for such lapses of substantial character at the time of filing nomination would entail

rejection of nomination. Since the information furnished by the respondent as regards the educational qualification has been found to be wholly

incorrect, it has to be considered as a defect of substantial character. Hence, the nomination of the respondent suffered from a defect of substantial

character.

71. In the result, for the reasons discussed above, the election of the respondent is declared void under Section 100(1)(d)(i) of the Representation

of People Act, 1951.

72. Having declared the election of the respondent as void, the natural consequence in the present case would have been to declare the only other

remaining candidate with valid nomination in the election for the 27th Moirang Assembly Constituency, to be elected, by default, in terms of

Section 53(2) of the Representation of People Act, 1951. However, this is not be so.

73. The election petitioner had submitted his nomination as a candidate of the Nationalist Congress Party (NCP) Manipur State for contesting the

election in the 27th Moirang Assembly Constituency in the last election to the 10th Legislative Assembly held on 28.01.2012 in which the

respondent was declared elected. However, after filing the present election petition on 18.04.2012, the petitioner resigned from the Nationalist

Congress Party (NCP) and joined the Bharatiya Janata Party (BJP), Manipur. When he appeared as a witness as PW 1 and when asked by the

Court as to whether he still remains a member of the NCP, he candidly stated before this Court that he is no longer a member of the NCP. When

asked by the Court as to whether he had resigned from the NCP, he answered that he had tendered resignation from the NCP in the later part of

2013. Further, to the query of the Court as to whether he is a member of any other political party, he replied that he joined the BJP in the

concluding part of 2013 and he has been a member of the BJP since then. Therefore, in his testimony before this Court he clearly stated that he

had resigned from the NCP in 2013 and joined the BJP in 2013 and he continues to remain a member of the BJP. After the recording of evidence

of the witnesses on the part of the petitioner was concluded on 28.01.2016, the matter was fixed for examination of the witnesses of the

respondent on 01.02.2016 on which date, the learned Senior Counsel for the petitioner submitted that he had filed two (2) Misc. applications, one

with the prayer to place on record a video recording of the scrutiny of nomination paper for the General Election of 2012 for the purpose of

confronting the witnesses during cross-examination and another application seeking amendment of the election petition. Accordingly, these

applications were directed to be listed on 8.02.2016 for consideration. The application which was registered as MC (EP) No. 2 of 2016 sought

for amendment of the election petition by inserting new paragraphs to bring on record that during the pendency of the election petition, the election

petitioner was expelled from the NCP by an order dated 23.12.2013 issued by the President, NCP, Manipur State on the ground that he failed to

submit explanation on the show cause notice. It is stated that that in response to the said order, the petitioner submitted a representation dated

21.12.2013 to the President, NCP, Manipur State praying for cancellation/vacation of the expulsion order, but the matter was kept pending

without any reply. It has been also stated that the petitioner submitted an enrolment application to the BJP, Manipur State during the year 2015

which, however, was rejected and turned down by the BJP, Manipur State vide order dated 18.01.2016. It has been further stated that the NCP,

Manipur State considered the representation dated 21.12.2013 of the petitioner and issued an order only on 21.01.2016 to the effect that the

earlier order dated 13.12.2013 regarding expulsion of P. Saratchandra Singh (the petitioner) from the NCP stands revoked and his membership of

the NCP was restored with immediate effect. This application was objected to by the respondent on the ground that the same has been filed to

rectify his statement made before this Court and such proposed amendment will cause prejudice to the respondent. When the matter was taken up

on 8.02.2016, the said applications were not moved and the respondent was examined as DW 1 and cross examined. As the cross examination of

DW 1 could not be concluded the matter was further deferred to 16.02.2016. Thereafter, recording of evidence on the part of the respondent was

concluded on 19.02.2016 on which date counsel for both the parties prayed that hearing/final argument may be fixed on 22.02.2016. Accordingly,

the parties were heard on 22.02.2016, 23.02.2016, 24.02.2016 and 25.02.2016 when the arguments from both the sides were concluded. At the

time of conclusion of the argument, learned counsel for both the parties submitted that all the Misc. applications pending before this Court may be

disposed of on the basis of the existing materials and submissions made. Therefore, the evidence on record remains that the petitioner had resigned

from the NCP in the later part of 2013 and joined BJP and he continues to be a member of the BJP since then. The aforesaid application filed by

the election petitioner to show that he has now been readmitted to NCP has been pooh-poohed by the respondent contending that it was a

desperate attempt by the petitioner as an afterthought to change his version regarding his status of the membership of the political party at present.

Since the respondent had categorically objected to this application, the question of considering the proposed amendment and also considering

documents annexed thereto will not be permissible at this stage, for allowing amendment of the election petition at this stage after conclusion of the

hearing will not only delay the whole proceeding but also entail further recording of evidence for proving the documents annexed thereto inasmuch

as none of the documents sought to be relied are certified copies of public documents and these are all private documents which would require to

be proved unless admitted by the other party. It may be also noted that there is substantial variation on the nature of relinquishment of membership

of the NCP. In the documents sought to be relied upon by the petitioner it has been mentioned that the petitioner had been earlier expelled from

the NCP whereas in the testimony of the petitioner before the Court he had stated that he had resigned from the NCP. Expulsion and resignation

are two altogether different method of cessation of membership of a party. Be that as it may, this Court is not considering these documents for the

reasons stated. Further, there is already a direction from the Hon'ble Supreme Court to conclude the trial by the end of February, 2016.

Therefore, this Court is not inclined to consider the documents filed along with the application for amendment of the election petition. Accordingly,

this Court would hold, on the basis of the evidence on record, that the election petitioner had voluntarily given up his membership from the NCP by

resigning sometime in the later part of 2013 and joined the BJP in the concluding part of 2013 and he continues to be a member of the BJP. If that

is so, a person who is no more in the NCP, which had nominated him to contest election cannot be declared elected as a NCP candidate. If the

prayer of the petitioner for declaring him elected as a NCP candidate is to be allowed on the ground that the election of the respondent is void, it

would effectively mean that the petitioner would be declared the elected candidate from the 27th Moirang Constituency as a candidate from the

NCP which he cannot represent now as he had already resigned from the said party and is presently a member of the BJP Manipur State. Thus, if

the petitioner is to be declared elected now, he would be elected as a member of the BJP, though he was nominated by the NCP as its candidate.

Therefore, grant of such a relief would lead to an anomalous situation which would be against the spirit of law as expressed in Paragraph No. 2 of

the 10th Schedule to the Constitution of India. Even through the aforesaid Paragraph No. 2 of the 10th Schedule to the Constitution of India may

not be strictly applicable in the present case, the underlying principle behind it to prevent defection and to ensure political fidelity cannot be ignored

at the time of considering this relief when the petitioner had voluntarily given up membership by resigning from a party (NCP) which had nominated

him to contest the election. He will remain a member of BJP yet get elected as a NCP candidate if this relief claimed under Prayer (b) is granted.

Such a situation is never contemplated under the law.

Accordingly, this Court declines to grant the relief claimed under Prayer (b) of the petition.

74. Accordingly, the petition is disposed of by granting the relief claimed under Prayer (a) and declining the relief under Prayer (b).

As regards Prayer (c) since this Court has already declared the election of the respondent as void, keeping into consideration the entire facts and

circumstances of the case and also keeping in mind the Paragraph/Direction No. 29.7 of the Hon"ble Supreme Court in *Resurgence India* (supra),

this Court is of the view that it may not be necessary to issue any direction for initiating any proceeding against the respondent under Section 125-

A of the Representation of People Act, 1951, and in so far as charge under Section 127 of the Act is concerned, no case is made out for any

direction.

Parties are to bear their own costs.

In the result, Issue No. (vi) as regards the reliefs which the petitioner is claiming, are accordingly answered.

75. All the pending miscellaneous applications stand disposed of accordingly in terms of this judgment and order.

76. A copy of this judgment be forwarded to the Election Commission of India for necessary action.

1 *People's Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399.