courtkutchehry.com

Company : Sol Infotech Pvt. Ltd.

Website : www.courtkutchehry.com

Printed For :

Date : 24/08/2025

Arjunadada Dashrath Bhuse Vs Dadaji Dagadu Bhuse

Court: Bombay High Court

Date of Decision: Feb. 23, 2011

Acts Referred: Conduct of Elections Rules, 1961 â€" Rule 4A
Constitution of India, 1950 â€" Article 173, 19(1), 324, 324(1), 84
Representation of the People Act, 1951 â€" Section 100(1), 33(1), 33(A), 36(2), 80

Citation: (2011) 3 ALLMR 18 : (2011) 6 BomCR 586 : (2011) 3 MhLj 873

Hon'ble Judges: Roshan Dalvi, J

Bench: Single Bench

Advocate: P.N. Patil, for the Appellant; M.M. Vashi and S.M. Sabrad, for the Respondent

Judgement

Roshan Dalvi, J.
This petition has been filed u/s 80 of the Representation of the People Act, 1951 (RPA)challenging the election of the

Respondent from Malegaon (Outer) Assembly Constituency, Maharashtra Legislative Assembly General Elections, 2009,essentially on the ground

that the Respondent was disqualified from standing for such election u/s 100(1)(a) of the RPA and that thus the result of the election was materially

affected in so far as it concerned the returned candidate by improper acceptance of his nomination and by non-compliance of the provisions of the

Constitution as also the Conduct of Elections Rules, 1961, resulting in the Respondents selection being held void u/s 100(1)((d)(i) and (iv) of the

RPA. It is further contended on behalf of the Petitioner that the Respondent did not take oath in accordance with Article 173(a) of Constitution of

India before a person authorised for taking such oath by the Election Commission in accordance with ScheduleIII of the Constitution. It is argued

that the time of taking oath by the Respondent is shown to be incorrect, the oath has not been taken before the authorised officer and that it is

taken under Article 84(a) of the Constitution of India and not under Article 173(a) of the Constitution of India, as required.

2. It is also contended by the Petitioner that the nomination of the Respondent was incorrectly accepted without complying with the mandatory

provisions of Sections 33A of the RPA resulting in the right to information of the citizens as also the Petitioner being adversely affected and

consequently invalidating the nomination of the Respondent. It is the case of the Petitioner that consequently the acceptance of the nomination was

improper and such improper acceptance of the Respondent as the returned candidate rendered it void. The Petitioner, therefore, claims that

consequently the nomination is void u/s 100(1)(d)(i) and (iv) as it was improperly accepted without following the provisions of the Constitution,

RPA or any rules or orders made under the RPA. It is, therefore, contended that even if the result of the election of the Respondent would not

materially affect the Petitioner, it is required to be declared void u/s 100(1)(a) of the RPA as the improper acceptance of the nomination was of the

Respondent himself as the returned candidate.

3. It is contended on behalf of the Petitioner that pursuant to the newly added Section 33A of the RPA, consequent upon the amendment of 2002

of the RPA, a candidate standing for election was required to give the specified information set out in the said section in his nomination itself. This

relates to disclosing inter alia whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which

a charge has been framed or cognizance has been taken by a Court of competent jurisdiction, whether or not he has been convicted of any offence

there under and whether or not he has been sentenced to imprisonment for one year or more. Further, under the aforesaid section, the candidate

standing for election is required to swear an affidavit verifying the information given as required which the Returning Officer is required to display at

a conspicuous place in his office by affixing a copy of his affidavit there for information of the electors of that constituency. The Petitioner claims

that an order dated 27th March 2003 came to be issued inter alia in this behalf by the Election Commission of India being Election Commissions s

Order No. 3/ER/2003/JS-II, dated27th March 2003. Under the said order, the candidates standing for election were to furnish information in

respect of such offences under an affidavit. No furnishing of such information was to result in rejection of the nomination by the Returning Officer.

Similarly wrong and incomplete information or suppression of material information would also result in rejection as a defect of substantial character.

This was to be if the information was capable of easy verification in a summary inquiry at the time of scrutiny of information u/s 36(2) of the RPA.

This was inconsonance with the right to information provided by Parliament u/s 33-A inter alia with regard to pending criminal cases and past

involvement of the candidates standing for election so that the electorate would have recourse to the relevant information before they exercise an

informed choice to elect their representative.

4. It is the case of the Petitioner that the affidavit was required to be in prescribed form as annexed to the said order. The affidavit required inter

alia the description of the offences to be given by the candidate standing for election in his nomination paper.

5. It is his case that the Respondent was accused of various offences and various criminal cases, several of which were punishable with

imprisonment for two years or more. The Respondent enumerated various criminal cases registered against him showing him as an accused therein

and which were pending in a Court of law. The Respondent showed the sections of the Indian Penal Code(IPC) under which he was shown as an

accused and of which the relevant Court took cognizance. The Petitioner ,however, contends that aside from the crime registration number, the

Police Station and the section of the IPC, no description of the offence was set out by the Respondent in the affidavit filed by him which was to be

filed with his nomination before the Returning Officer. It is contended on his behalf that a look at the affidavit of the Respondent annexed to the

nomination paper itself shows that the description of the offence was not given as mandatorily required under the aforesaid order framed u/s 33-A

of the RPA. It is contended on behalf of the Petitioner that various cases listed by the Respondent were pending in Criminal Courts in which the

competent Courts had taken cognizance. It is, therefore, contended that the affidavit filed by the Respondent does not comply with the provisions

of Rule 4-A of the Conduct of Elections Rules, 1961 and the aforesaid order. The Respondents affidavit enumerates 21 criminal cases pending

against him in which the competent Courts had taken cognizance and had framed charges.

6. It is a further case of the Petitioner that the Respondent has been shown to be sponsored by the registered political party as also shown as an

independent candidate showing his symbol in Part III of his nomination. The Petitioner contends that such contradictory claims must render the

nomination void. It is argued that if the Respondent was sponsored by apolitical party as is shown in his nomination, he would require only to show

the symbol of the party. If he is an independent candidate, he is not required to show his own symbol but the fact that he is sponsored by at least

ten persons, which is not shown. It may be mentioned straightway that the photo copy of the application annexed to the Petition itself shows in the

later portion of Part III Clause B(ii) that the Respondent has struck off the print that he is the independent candidate. The Respondent has shown

the correct symbol of the party sponsoring him.

7. The Petitioner has also claimed that the Respondent is a defaulter of the Government of Maharashtra inasmuch as he was an employee of the

State of Maharashtra working as a Junior Engineer in the Irrigation Department of the State of Maharashtra and has not deposited a fine of Rs.

6938.40 awarded against him under order dated 12th June 2007 in a departmental enquiry initiated against him and other officers upon the charge

of misconduct in which he and some other officers were found guilty. The Petitioner claims that the total of Rs. 7178.40 was the fine recoverable

from the Respondent by the State. That was a material fact to be disclosed in his nomination form. The Respondent has failed to disclose the same.

The Petitioner contends that the non-disclosure of the said dues renders the nomination incomplete and due to such suppression, renders it liable

for rejection u/s 36(2)(b) of the RPA.

8. It is upon such a case that the Petitioner has sought declaration that the election of the Respondent as member of the Maharashtra Legislative

Assembly from 1st January 2005, Malegaon (Outer) Assembly Constituency in the General Elections of 2009 held in September/October2009 is

void and has prayed for setting aside the said election.

9. The Respondent has essentially denied that the nomination form was incomplete or defective, or that it was in prescribed form and did not

comply with the mandatory rules. He has contended that the form of the affidavit under Form 26 did not require him to furnish the name of the

District or the State in which the offence was registered against him and hence the nomination form is in compliance with the rules.

10. The Respondent has further claimed that he has subscribed his oath under Article 173(a) read with Schedule III of the Constitution and not

under Article 84(a).

11. The Respondent has also contended that in his nomination paper he has scored off the part relating to the independent candidate and

consequently has shown that he was sponsored by the recognized political party whose symbol was described in the nomination form.

12. The Respondent has produced the evidence of the deposit by him of Rs. 7179/-with the Government of Maharashtra by producing a receipt

issued by the Executive Engineer, Quality Control Division, Dhule, for the said amount on 15th June 2009 prior to the filing of the nomination. The

Respondent has thus sought to show that there was no suppression of the said fact and non-disclosure on that count and consequently, the

Respondent is not a defaulter under the Government of Maharashtra and his nomination paper does not suffer from any substantial defect on that

score as he was liable to pay any dues to the Government of Maharashtra on the date of the nomination. The Respondent has, therefore,

contended that his nomination paper was not improperly accepted u/s 100(1)(d)(i) of the RPA.

13. On these defences, the Respondent claims that his election as a returned candidate is not void and cannot be set aside.

14. Based upon the pleadings between the parties, this Court framed the following issues which are answered as follows:

ISSUES

(1)Whether the Respondent was disqualified from being chosen to fill the seat of the Member of Maharashtra Legislative Assembly at the

Maharashtra Legislative General Elections 2009. ... ... Yes

(2)Whether the Respondents s nomination is defective and liable to be rejected. ... ... Yes

(3)Whether the Respondent furnished all the statutory information required under the Representation of the People Act and Rules. ... ... No

(4)Whether the Respondent was liable to pay dues to the Government on the date of his nomination and has suppressed the said fact. ... ... No

(5)Whether the Respondent has complied with the provisions of Article 173(a) of the Constitution of India. ... ... Yes

(6)What relief, if any, is the Petitioner entitled to?

15. It can be seen and it is fairly conceded by Counsel on behalf of both the parties that the essential dispute between the parties relates to the

nomination form of the Respondent. The nomination form is itself admitted. Copy of the nomination form is annexed to the Petition. It can be read

and interpreted. It can be seen whether it complies with the statutory requirements. Consequently, Counsel on behalf of both the parties agree that

no oral evidence would be required in this case. However, there was a dispute with regard to the receipt obtained from the Government of

Maharashtra by the Respondent to show the fine levied upon him being paid up to the Government of Maharashtra before the Respondent stood

for election. Consequently, the oral evidence in that behalf has only been led. However, upon the production of the certified copy of the receipt

from the relevant Government record by the competent Government Officer, who has deposed as a witness on behalf of the Respondent and

produced the document kept in the normal course of the conduct of that office, being the Irrigation Department in which the inquiry against the

Respondent was held, Counsel on behalf of the Petitioner has fairly accepted the document on record.

16. The respective contentions of the parties are, therefore, only required to be considered upon the admitted documents relied upon by both the

parties and interpreted by their Counsel.

17. Issue Nos. 1 to 3:

The history of the requirement of the disclosure of the criminal prosecution against the candidate must be seen.

(i) Pursuant to the directions passed by the Supreme Court in the case of Union of India (UOI) Vs. Association for Democratic Reforms and

Another, , Section 33-A of the RPA came to be incorporated under the Amendment Act 1972 of 2002 which came in effect on 24th August

2002.

18. Section 33-A of the RPA requires the candidate standing for election to furnish information in his nomination paper inter alia relating to whether

he is accused of any offence punishable with imprisonment for two years or more in a pending casein which a charge has been framed by the Court

of competent jurisdiction and whether he has been convicted and sentenced to imprisonment for one year or more. The candidate is required to

deliver the nomination paper along with the affidavit in the prescribed form verifying the aforesaid information. The Returning Officer is required to

display the said information by way of the copy of the affidavit at a conspicuous place in his office for information to the electorate of that

constituency. Section 33-A runs thus :

33-A. Right to information.-(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made there

under, in his nomination paper delivered under Sub-section (1) of Section 33, also furnish the information as to whetherÃ¯Â¿Â½

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

Court of competent jurisdiction;

(ii) he has been convicted of an offence other than any offence referred to in Sub-section (1) or Sub-section (2), or covered in subsection (3), of

Section 8 and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under Sub-

section (1) of Section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in Sub-

section (1).

(3) The returning officer shall, as soon as may be after the furnishing of information to him under Sub-section (1), display the aforesaid information

by affixing a copy of the affidavit, delivered under Sub-section(2), at a conspicuous place at his office for the information of the electors relating to

a constituency for which the nomination paper is deliverer"s.

(ii)Under Section 33-A(1)(i), the disclosure which was to be made was of the charge which had been framed by a Court of competent jurisdiction

in a case pending against the candidate which related to an offence punishable with imprisonment for two years or more.

19. Rule 4-A of the Conduct of Elections Rules, 1961sets out the form of the affidavit required to be filed along with nomination papers by a

candidate standing for election sworn before the Magistrate of the First-Class or Notary in Form 26 of the said Rules. Section 4A runs thus:

4-A. Form of affidavit to be filed at the time of delivering nomination papers.-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.?

20. Form 26 under Rule 4-A requires the candidate to state whether he is or is not accused of any offence punishable with imprisonment for two

years or more in a pending case in which a charge has been framed by the Court of competent jurisdiction. Under the said form, there are six

requisites to be filled in which are enumerated from Form 26 as follows:

(i) Case/First Information Report No. /Nos. ....

(ii)Police station(s).... District(s) ....

State(s)....

(iii)Section(s) of the concerned Act(s) and short description of the offence(s)of the concerned Act(s) and short descriptionof the offence(s) for

which the candidate has been charged....

(iv)Court(s) which framed the charge(s)....

(v) Date(s) on which the charges(s)was/were framed....

(vi) whether all or any of the proceeding(s) have been stayed by any Court(s) of competent jurisdiction ....

(Emphasis supplied)

Consequently, the entire description of the offence, the CR No. /FIR No. , Police Stations in the District or the State, sections of the legislations

under which the CR is registered, description of the offence, the Court which framed the charge, date thereof and whether there has been a stay of

the proceedings, would have to be mentioned by each candidate.

21.(iii) Consequently, in Form 26 u/s 4-A of the Conduct of Elections Rules, 1961, the candidate had to inter alia disclose whether he was

accused of any offence so punishable in which a charge had been framed by any Court.

22.(iv) The Supreme Court in the case of People"s Union for civil Liberties (PUCL) and Others Vs. Union of India (UOI) and Another,

commented upon the said amendment whilst considering its constitutional validity. In paragraph 115 of the judgment at page 470, the Supreme

Court considered the requirement of disclosure of offences for which the charge is framed as it falls short of the avowed goal to effectuate the right

of information on a vital aspects. The Supreme Court observed that it was common knowledge that for various reasons such as delaying tactics of

the accused and inadequacies of the prosecuting machinery, framing of formal charges gets delayed considerably, especially in serious cases. It

considered that that was not the case that the citizens were to be denied information regarding the cognizance taken by the Court for an offence

punishable with imprisonment for two years or more. Considering the citizens'' right to information recognised as a fundamental right under Article

19(1)(a) of the Constitution which could not be truncated, the Supreme Court observed that in addition to the requirement of disclosure for

offences against the candidate in which charges have been framed the cases in which cognizance had been taken also were to be brought within the

framework of the disclosure. The said judgment was delivered on 13th March 2003.

23.(v)Consequent upon that judgment, the Election Commission of India, by its order dated 27th March2003, bearing No. 3/ER/2003/JS-II

passed under Article 324(1) of the Constitution of India, set out the format of the affidavit to be furnished by the candidate along with the

nomination paper.

24. The requisites to be incorporated in the affidavit annexed to the said order dated 27th March 2003 are:

(i)Section of the Act and description of the offence for which cognizance taken:

(ii) The Court which has taken cognizance:

(iii) Case No. :

(iv) Date of order of the Court taking cognizance:

(v) Details of appeal(s)/application(s) for revision ,etc., if any, filed against above order taking cognizance.

25. Hence that affidavit required disclosure of the information relating to offences against the candidate punishable with imprisonment for two years

or more in which cognizance was taken by the Court. It did not deal with the requirement of disclosure only after the charges framed by the Court.

For those offences for which cognizance was taken, the candidate was to disclose the section of the Act, description of the offences for which the

cognizance was taken, the Court which took cognizance, the case number, the date of the order of the Court taking cognizance and the details of

appeal, revision, etc. filed there from (though not the relevant District and the State).

26. This would constitute a full substantial disclosure of the candidate''s s conduct and character. The fact that cognizance was taken implies that

some prima facie case was noticed by the Court. The name of the Court and thecae number shown ensured that the person interested may inspect

the record and proceedings of the case to see the order taking cognizance. The further information relating to appeals and revisions would enable

the candidate to show the voters the exception, if any, taken by him to the cognizance being taken and its details would provide the reasons upon

which the orders, if any, were passed there from. A full and complete disclosure of the aforesaid five aspects would, therefore, show the voters the

precise conduct of the candidate and enable the candidate to show the voters his say to the cognizance.

27. It has been the case of the Petitioner that the requirement of showing the State and the District in the affidavit to be filed by the candidate

standing for election such as the Respondent is under Form 26 of Rule 4-A. It is the case of the Respondent that in view of the format of the

affidavit given by the Election Commission of India under its last order dated27th March 2003 that disclosure is not a requirement. To this end, the

Respondents s contention appears to be correct. The Respondent has shown the Police Stations in which the complaints have been filed. Even the

Police Stations are not required to be shown in the affidavit, the format of which is given in the order dated 27th March 2003. The Respondent has

nevertheless given the name of the Police Stations. However, it is accepted that the District and the State need not be mentioned and may be

usually known or inferred, if the other details are provided.

28. It is the description of the offence which is the most material aspect for disclosure. The description of that offence must not be in numerical

terms by giving the numbers of the sections of the IPC which is the general substantive law enumerating various offences with which a citizen could

be charged or accused of. It requires the description to be given in words which is under the sub-title of the respective sections dealing with those

offences. The description in words would be more intelligible to the discerning, though not an educated, voter.

29. The Respondent has filed two affidavits. These are shown annexed to the application for nomination of the Respondent, Exhibit-D to the

Petition. In the first affidavit, the Respondent has disclosed all the pending cases against him in which cognizance has been taken. He has shown 21

such cases. He has enumerated the case numbers, the Police Stations, the names of the Courts and the sections of the IPC without any reference

to the IPC. He has also shown the dates of the orders of the Court taking cognizance and the fact that there have been no revision or appeal

against the order of taking cognizance. This has complied with most of the requirements of Form 26 as also the form of the affidavit annexed to the

order dated 27th March 2005. The most material omission is the description of the offences the Respondent was accused of.

30. In the other affidavit filed by the Respondent also annexed to his nomination, Exhibit-D to the Petition, he has shown particulars of the same

offences under the same case numbers where he has been accused of an offence punishable with imprisonment of two years or more where

charges are framed. He has also shown the Police Stations. Even in this affidavit, he has not disclosed the description of the offences, for which the

charges have been framed against him.

31. The Respondents s affidavits do not show the description of any of the offences that he is accused of. They do not show even the sub-titles of

the offence to reflect the kind of offence that the Respondent is accused of. It does show the Courts which have taken cognizance therein, the case

numbers and the dates of the order taking cognizance. It further shows that there has been no revision or appeal against taking cognizance by the

Courts.

32. It is contended on behalf of the Petitioner that the information disclosed in the affidavit is not complete. That incomplete information tantamount

to suppression of the material facts and the material facts are the actual offences which were committed, the short description of which was

mandatorily required to be given under Clause 1(iii) recited above. It is argued that this is a substantial and material irregularity which would vitiate

the nomination form. It is also argued that non-disclosure of the short description of the offence results in the voters and the electorate not being

informed of the kind of candidate that the Respondent was, to be able to make an informed choice of such candidate.

33. It may be mentioned that the electorate in India is largely uneducated, if not wholly literate. Notice of the facts required to be mentioned is

given by the Returning Officer by affixing copies of the affidavits in his office. The voters are required to see those affidavits. An affidavit of the kind

given by the Respondent would not give the voters, who are laypersons in law, the necessary information or idea about the character and conduct

of the Respondent as the candidate standing for election. By reading the numbers of the sections, they would not know which offences are alleged

to have been committed by him. They would not be in a position to exercise their choice in accepting or rejecting the Respondent as their

candidate.

34. The Petitioner has set out a short description of the offences at least by the sub-title of the offences in paragraph 22 of the Petition itself. The

offences punishable with imprisonment of two years or more being rioting, rioting with deadly weapons, voluntarily causing hurt with dangerous

weapons, voluntarily causing hurt to deter a public servant from his duty, assaulting a public servant in discharge of his duties and intentionally

insulting with intention to provoke breach of peace are the offences sought to be shown to have been committed by the Respondent by virtue of

stating only section numbers, without even mentioning that they are of the IPC. The mention of the sections without the short description

mandatorily required to be stated gives a wholly different, incomplete and distorted version of the reflected impression of the character and

conduct of the Respondent. The voters maybe able to comprehend the kind of person that the Respondent is by seeing the short description of the

offences. But the voters would be none the wiser and completely at sea with regard to the character and conduct of the Respondent as a candidate

standing for election by merely reading certain numbers. They may not even be able to understand that these are the offences under the IPC which

reflect the criminal conduct of the Respondent. Consequently, they would not even be able to decide from mere section numbers that they even

relate to certain offences and crimes alleged to have been committed by the Respondent. Consequently, the factum of taking cognizance by the

Courts would not be impacted upon the minds of the voters who might go through the nomination forms.

35. The purpose of disclosure is hence not served. Infact, the intention of the Respondent not to disclose the various offences, of which he is

accused and of which cognizance is taken by the Courts, is reflected in the fact of non-disclosure. The intention is, therefore, seen to be deliberate

as the disclosure of this aspect is the most material part of the information which is required to be given to the voters. It is of little use to the voters

to know, in the short period of time that is available to them between the affixation of the copy of the affidavit of candidate in his nomination papers

and the election date itself, what the FIR number, CR number or even the case number is. They would be interested in knowing the type of offence

alone. Non-disclosure of that information is, therefore, substantial, material and reflecting the mala fides of the Respondent.

36. In this regard, the observations of the Supreme Court in the case of PULC (supra) extracted from the case of Secretary, Ministry of

Information and Broadcasting, Govt. of India v. Cricket Association of Bengal relating to the right of freedom of speech and expression as

including the right to be educated, informed and entertained are worth a note. Paragraph 82at page 432 of the said judgment extracted in the case

of PULC (supra)followed by the observations of the Supreme Court in the case of PULC (supra) itself in paragraph 26 thereof runs thus:

82. ... True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in

the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to

express their views. One-sided information, disinformation, misinformation and no information all equally create an uninformed citizenry which

makes democracy a farce when medium of information is monopolized either bay partisan central authority or by private individuals or oligarchic

organisations. This is particularly so in a country like ours where about 65 per cent of the population is illiterate and hardly 1 1/2 per cent of the

population has an access to the print media which is not subject to pre-censorship.

(emphasis supplied)

37. The aforesaid passage leaves no doubt that to participate by casting vote at the time of election would be meaningless unless the voters are

well-informed about all sides of the issues, in respect of which they are called upon to express their views by casting their votes, Disinformation,

misinformation, on-information, all equally create an uninformed citizenry which would finally make democracy monocracy and farce. On this

aspect, no further discussion is required. However, we would narrate some observations made by Bhagwati, J. (as he then was) in S.P. Gupta v.

Union of India (SCC p.274, para66)while dealing with the contention of right to secrecy that: (SCC p.274, para66) ? There can be little doubt that

exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration.

It need hardly be mentioned that the elected representative of the people leads the nation. Just as the freedom fighters, as the leaders of the nation,

brought to fruition the dreams of the people of India and led them from imperialism to democracy and republicanism, the elected representatives of

India are expected to lead the people forward. The best way to lead is by example. The people would follow their example. They are the ?

freedom preservers" , as having taken off from the ? freedom fighters" . It is the exemplary conduct and character of a candidate, which is reflected

in the disclosure made by him on oath as a truthful disclosure, that would bring out the hitherto unknown, intrinsic qualities of the candidate. It is a

kind of self-appraisal which is popularly understood as the Caveat Vitae (CV) of a person. Considering the quality of the candidates of free India,

the Hon"ble Supreme Court laid down the guidelines relating to the facts which are mandatorily required to be disclosed to the citizens of India

under their fundamental right of speech and expression which takes within its ambit the right to information. The information statutorily required to

be disclosed as mandatory information is, therefore, analogous to and goes ahead of the right of a voter to obtain information about the life of the

candidate he chooses as his leader.

38. He would otherwise be entitled to such information under the Right to Information Act as an incident of his fundamental right to be informed.

Since the voter would not be able to obtain information with regard to the three main aspects:

(1) relating to the assets made by his leader either in his own name or in the name of spouse or dependent,

(2) the criminal background of such leader and

(3) his educational qualifications that RPA u/s 33-A and the rules framed there under and orders issued there under have made it clear that the

candidate himself should give such important and relevant information without even being asked. Needless to say that it should be truthful

information made on oath. Such information should consist not only of truthful material but should not suppress any part of the truth. The

requirement of stating the truth on oath under the Oaths Act, 1912 and the Oaths Act, 1969 is the truth, the whole truth and nothing but the truth.

The whole truth implies that no part of the truth, which is required to be stated, is withheld even unintentionally or erroneously. Consequently, the

six items of disclosure set out in Form 26 under Rule 4-A of the Conduct of Elections Rules, 1961 as also in the aforesaid order dated 27th March

2003 of the Election Commission of India are the mandatory fields which cannot be left out of the affidavit required to be filed by the candidate

before the Returning Officer for his election. Non-disclosure of any such fact would, therefore, tantamount to non-information which would result in

non-disclosure of material and substantial facts.

39. It would have to be seen whether such non-disclosure would render the Respondent disqualified to be chosen to fill the seat that he contested

for.

40. The Petitioner has contended that such a nomination form, which contained such a patent non-disclosure should have been rejected by the

Returning Officer u/s 36(2)(b) of the RPA and was improperly accepted by the Returning Officer.

41. It is true that the very look at the affidavit of the Respondent filed along with his nomination would show the defect by non-disclosure of the

material fact. The most preliminary inquiry by merely going through the nomination form must make the Returning Officer aware and bound to

reject such nomination which is incomplete in that material particular. That has not been done. The nomination of the Respondent has been

accepted and the Respondent has been later declared elected. It must, therefore, be seen whether the election of the Respondent is required to be

declared void. That could be declared void u/s 100(1)(a), if he became disqualified to fill the seat. It can also be declared void u/s 100(1)(d)(i) by

improper acceptance of his nomination. Indeed the nomination was improperly accepted. It must, therefore, be seen whether the nomination,

improperly accepted, per se rendered the election of the Respondent void, if it could ever have been accepted at all u/s 100(1)(a) of the RPA,

which does not even require the need for seeing whether the election was materially affected, or if only the nomination was improperly accepted u/s

100(1)(d) of the RPA so that the result of the election, in so far as it concerns the Petitioner, was materially affected.

42. The Petitioner has not led oral evidence to show how the election of the Petitioner was materially affected by the votes received by the

Respondent which could have been received by the Petitioner or any other candidate. It must, therefore, be seen whether such evidence was

imperative to be led.

43. It is argued on behalf of the Petitioner that the Returning Officer is required to examine the nomination papers of all the candidates either upon

the objections which may be made to the nomination or on his own motion. After such summary inquiry, as he thinks necessary, the Returning

Officer is required to reject the nomination, inter alia, if the candidate is found not qualified or disqualified u/s 36(2) of the RPA. It is argued that in

the glaring case such as this the Returning Officer should have rejected the nomination of the Respondent because the Respondent failed to make

the required statutory, mandatory disclosure.

44. It is further argued on behalf of the Petitioner that because this relates to the nomination of the returned candidate himself, the returned

candidate becomes disqualified upon such non-disclosure u/s 100(1)(a) of the RPA. Consequently, the improper acceptance of the nomination of

the returned candidate itself does not fall within the mischief of Section 100(1)(d)(i) requiring the Petitioner to show that the result of the election, in

so far as it concerns the returned candidate, came to be materially affected by the improper acceptance of any nomination. Similarly non-

compliance of the provisions of the Constitution or the RPA or rules or orders made hereunder, which includes the affidavit of disclosure to be filed

as contemplated under order dated 27th March 2003 made u/s 33-A of the RPA under the powers of the Election Commission under Article 324

of the Constitution of India, does not require the Petitioner or any objector to show how the result of the election came to be materially affected.

45. This argument is made on the premise that if there was an improper acceptance of the nomination of any other candidate and it affected the

returned candidate, how it so affected the result of the election to the returned candidate would have to be shown by oral evidence depending on

the facts of each case. But if the acceptance of the nomination of the returned candidate himself was improperly made, the nomination becomes

void. When that nomination becomes void the result of the election is always affected and need not be shown how it is affected. If the returned

candidate is not to be considered, the election result would be wholly different. When that returned candidate"s nomination is considered which

results in his election, the material effect thereof is not required to be separately shown.

46. This is set out in the case of Amrit Lal Ambalal Patel Vs. Himathbhai Gomanbhai Patel and Another, . In that case there were three candidates

for election. The returned candidate did not qualify with regard to his age. Considering Section 100(1)(a) with regard to the disqualification of the

candidate on the ground of his age, the Supreme Court observed that election of the returned candidate was to be held void. In the penultimate

paragraph of the judgment, the Supreme Court observed that the nomination paper of such returned candidate was liable to be rejected u/s 36(2)

(a) of the RPA. Since it was liable to be rejected, it must be held that his nomination had been improperly accepted. His election was, therefore, to

be held void u/s 100(1)(d), if the result of the election, insofar it concerned the returned candidate, was found to be materially affected. The

Supreme Court observed that consequent upon the improper acceptance of nomination of the elected candidate, the result of the election was

materially affected because he was declared duly elected when he was not entitled to the right on the ground that his nomination paper should have

been rejected u/s 36(2)(a) of the RPA. The Supreme Court, therefore, held that the election of such a candidate was to be declared void not u/s

100(1)(a) but u/s 100(1)(d)(i) of the RPA. Setting aside the election was, therefore, held to be in accordance with law without showing any

material affectation.

The reasoning of the Supreme Court was that if the nomination paper was void, the nomination could not be considered. If the nomination is not

considered, such a candidate whose nomination is void, can neither stand for election nor get elected. If he is elected, the election is ipso facto

materially affected. If he was not to be elected because his nomination was void and he could not stand for election, the other candidates could

have been elected. It is not for them to show who would then have been voted for such candidature and how many votes each of the other

candidates would have secured. Whatever that be, the result was materially affected without the requirement of showing that fact and

consequently, his nomination is void and if accepted, it would be improperly accepted. Hence the election of the candidate is void not u/s 100(1)

(a) but u/s 100(1)(d)(i) of the RPA.

47. In this case, the Respondent, as the returned candidate, secured approximately 19,000 votes. His nomination was void for want of disclosure

of most material aspect required to be disclosed and which fact could have been seen by the Returning Officer on the face of the affidavit of the

Respondent itself upon a reading of the affidavit to see that it failed to contain, (if not willfully suppressed) material mandatory information required

to be disclosed. Those19, 000 votes could have been cast in favour of candidates other than the Respondent. Each of the other candidates, who

stood for election, could have got some of those votes. No evidence can be produced about how19,000 voters would have cast the votes. It is

sufficient to note that those 19,000 votes, which were cast in favour of the Respondent, were wasted over a candidate whose nomination itself was

void. There need hardly be any further evidence to show material effect of how those 19,000 votes, wrongly cast, would have been.

48. To understand this anomaly, the result of improper acceptance of any nomination must be considered. If the nomination of a candidate other

than the returned candidate is improperly accepted, the number of votes, which would have been cast in favour of such a candidate, would have

enured for the benefit of the returned candidate as also the other candidates. If such votes made any difference, it would come up for

consideration. In such a case whether it materially affected the result of the election would have to be seen. It would materially affect the result of

the election of the returned candidate as also the other candidates standing for election. Consequently, evidence in that behalf depending upon the

facts of that case would have to be considered. This would not be the case for a returned candidate. His nomination being void; the votes that he

secured would be wasted. All those votes would make a difference to the other candidates. It matters not that some of those votes would be cast

in favor of one or the other of the remaining candidates. What is material is that no votes would have been cast in favor of the returned candidate if

his nomination, which was void, was not accepted.

49. In the case of Durai Muthuswami Vs. N. Nachiappan and Others, , when material affectation has to be shown is set out. That was also the

case in which the Election Petition challenging the Respondents nomination was improperly accepted which rendered his election void. There was

no allegation that the election of the Petitioner had been materially affected as a result of the improper acceptance of the Respondent''s nomination.

It was held that if the nomination of the defeated candidate was improperly accepted, the question might arise whether the result of the returned

candidate was materially affected by the improper acceptance. In that case, the Court would have to see as to what would have happened if the

votes, which had been cast in favour of the defeated candidate, had not been accepted. Consequently, the person challenging the election would

have had to allege and prove that the result of the election had been materially affected by the improper acceptance of the nomination of the

defeated candidate. He would have to show that those votes, which were cast in favour of the candidate whose nomination was improperly

accepted, would have gone in his favour and he would have got a majority to succeed in the Election Petition.

This analogy would not apply for the returned candidate himself because if a returned candidate''s s nomination is improperly accepted, all those

votes would be wasted. It does not matter who would have got those votes.

It is argued by Mr. Vashi that that was a case where one seat had to be filled upon two contesting candidates only. In this case, there have been

more than two contesting candidates. That, however, would not make any difference to the analogy. Hence the contention of Mr. Patil, that since

the Respondent is the returned candidate ,material affectation of the votes, if they were not cast in his favour is not required to be seen, stands to

reason.

50. Mr. Vashi on behalf of the Respondent drew my attention to the case of Harsh Kumar Vs. Bhagwan Sahai Rawat and Others, . In that case, it

was held that improper acceptance of the nomination paper would result in setting aside the election of that candidate only when it was further

established that as a consequence of such improper acceptance, the result of the election had been materially affected. It was observed as held in

the case of Vashit Narain Sharma Vs. Dev Chandra and Others, that mere increase or decrease in the total number of votes secured by the

returned candidate would not be the factor to judge the result of the election but the 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(whose

nomination was improperly accepted) would be.

That was the case of improper acceptance of the candidate other than the returned candidate. Hence in that case if his nomination, which was void,

was not accepted, the votes that he got and which were accordingly wasted could have been seen to have been obtained by other candidates.

Which votes and how many of them would have been obtained by which other candidate is a matter of oral evidence. If there was an evidence that

all those votes were to be distributed amongst the other candidates, which would have brought about the defeat of the returned candidate, that

would-be the material effect in the election. How that material effect would take place would have to be shown. The same analogy cannot apply to

the returned candidate whose own nomination is invalid. It matters not then how the votes which he secured improperly would have been

distributed amongst other candidates. The fact remains that he could not have secured a single vote because his nomination was void. That is all

that is to consider. Hence it is contended on behalf of the Petitioner that once the candidate is elected what is materially affected is not needed to

be looked into at all.

51. The case of D.K. Sharma Vs. Ram Sharma Yadav and others, , to which my attention has been drawn by Counsel on behalf of the

Respondent, was the case in which the candidate who was disqualified was allowed to stand for election had the votes cast in his favour being

rendered wasted. If all the votes cast in favour of the candidate who was elected were to be ignored, the candidate who secured second highest

votes, it was argued, was to be declared elected. This was based upon the analogy observed in the case of Balammal and Others Vs. State of

Madras and Others, . However, that was a case in which there were only two candidates who stood for election since one was disqualified, other

was declared elected. Consequently, in the case of D.K. Sharma (supra), the Court considered that the evidence of 15 of the voters who were

examined had not stated that they themselves exercised their votes. Their evidence was that they were aware of the disqualification of the

candidate before they voted for him. They were workers of the Petitioner. They deposed that they canvassed that no vote should be cast in favour

of the Respondent who was disqualified. However, none stated that even if they had the notice of disqualification, they would exercise their vote in

favour of the returned candidate only. No documentary evidence showing that the voters were informed was produced. The election was not

interfered with.

This is case of a returned candidate who has failed in his statutory duty. His nomination is void. It could not have been accepted. Hence the votes

cast in his favour must be wasted. They cannot be considered. It matters not whether or how it would materially affect the election.

52. Hence Issue Nos. (1) and (2) are answered in the affirmative and Issue No. (3) in the negative.

53. Issue No. (4): The Respondent was a public servant. He served as a Junior Engineer in the Irrigation Department of the State of Maharashtra.

An inquiry was held against him. He was fined. He was required to payRs.7178.40. It is contended by the Petitioner that that amount has not been

paid and hence the Respondent owes dues to the Government. The Respondent has contended that he has paid the dues and has sought to

produce the receipt in that behalf. The Respondent has got examined an officer from the Irrigation Department of the State of Maharashtra. The

officer has produced the copy of the receipt from the records of the department which is inconsonance with the certified copy produced by the

Respondent which is identified by the officer. The dues are seen to be paid. There were no dues which could be disclosed in the nomination. There

was no suppression of any fact. Hence Issue No. (4) is answered in the negative.

54. Issue No. (5): The Respondent was required to make and subscribe his oath or affirmation before the person authorised in that behalf by the

Election Commission asset out in Schedule-III of the Constitution for being qualified to be a member of the State Legislature under Article 173 of

the Constitution. The Petitioner contends that the form of oath of the Respondent is under Article 84 of the Constitution of India instead. That deals

with qualification of membership of the parliament which does not apply to the election in this case.

55. The original printed form is for taking oath under Article 173 and not under Article 84. There is a handwritten correction showing the

applicability of Article 84. The Petitioner has got produced the certified copy of the nomination papers of the Respondent. The certified copy

would only show the fact that the papers duly certified were the papers which were got from the record of the public office. The certified copy

cannot prove the truth of the contents of those records. (See: Om Prakash Berlia and Another Vs. Unit Trust of India and Others,). The

handwritten portion showing Article 84(a) in the nomination paper of the Respondent which is his statement on oath cannot show that that was in

the handwriting of the Respondent. The Respondent has not admitted it to be so. It is for the Petitioner to prove that fact. No evidence in that

behalf is led. The original oath taken by the Respondent is on the form in Marathi language. That form does not show that it was printed under

Article 84(a) of the Constitution. Article 84(a) applies to qualification of membership of the parliament and requires the oath and affirmation to be

made there under. That could not have been in Marathi language. It is only the oath required to be taken for the State Legislature under Article 173

of the Constitution which could have been in Marathi language for the election in the State of Maharashtra. Hence it is not proved that the

Respondent used the form under Article 84(a) and took oath before an officer not authorised by the Election Commission in that behalf.

56. Further it is contended on behalf of the Respondent by virtue of the two timings mentioned on the form of oath that the oath was not properly

administered, My attention is drawn to the form of oath showing that at11 O? clock on the relevant date being 24September2009, the Respondent

took oath and that at 11.10 the Returning Officer accepted it. There is no material irregularity in the oath or its acceptance. Hence Issue No.(5) is

answered in the affirmative.

57. Issue No. 6: Since it is seen that the Respondent was disqualified from being chosen to fill the seat of the Member of Maharashtra Legislative

Assembly at the Maharashtra Legislative General Elections 2009 as he had not disclosed the most material part of the disclosure he was liable and

obliged to make and that his nomination was defective and liable to be rejected by the Returning Officer and was wholly improperly accepted, the

Respondent''s election as Member of the Maharashtra Legislative Assembly from 115 Malegaon(Outer) Assembly Constituency at the

Maharashtra Legislative Assembly General Elections-2009 held in the month of September-October, 2009 must be and is held to be void and is

accordingly set aside.

58. Counsel on behalf of the Respondent applies for stay of this order. Counsel on behalf of the Petitioner states that no sufficient cause is shown

for stay and that the stay, if any, may be granted only on the condition that the Respondent does not take part in any of the sessions of the

Maharashtra Legislative Assembly from his constituency and on the condition that he does not take or receive any emoluments in his capacity as a

member of the Maharashtra Legislative Assembly. The application is made under the specific statutory provisions contained in Section 116-B of

the RPA. This judgment is required to be tested. That itself is a sufficient cause. However, since the stay is required to be granted upon the

condition as deemed fit by the Court, it would be just and proper that the Respondent does not partake in any of the emoluments that he would be

entitled consequent upon his membership of the Maharashtra Legislative Assembly pursuant to his election.

59. Hence this order is stayed for a period of four weeks from today upon the condition that the Respondent shall not be given and shall not

receive any emoluments as a member of the Maharashtra Legislative Assembly.

60. The Prothonotary and Senior Master of this Court shall communicate this judgment to the Election Commissioner of the State of Maharashtra

and the Hon''ble Speaker of the Maharashtra Legislative Assembly, by sending an authenticated copy of this judgment to them.