IN THE HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE.
SINGLE BENCH : HON'BLE SHRI JUSTICE ALOK VERMA
Election Petition No.31/2014

Sureshchandra Bhandari . . . Petitioner

Versus

Smt. Neena Vikram Verma & Ors. . . . Respondents

CORAM

Hon'ble Shri Justice Alok Verma.

Whether approved for reporting ? Yes

Petitioner- Suresh Chandra Bhandari in person alongwith Shri Ajay Gangwal, learned counsel for the petitioner.

Shri C.L. Yadav, learned senior counsel with Shri Ajay Lonkar, learned counsel for respondent No.1.

Ms. Kirti Patwardhan, learned counsel for respondent No.5.

ORDER
20.11.2017

This Election Petition is filed under Section 81 read with Sections 80, 80-A and 100(1)(d)(i)(iv) of the Representation of the Peoples Act, 1951 (hereinafter referred to as "the RP Act") challenging the election of respondent No.1 for Madhya Pradesh Legislative Assembly held in November 2013.

2. It is not in dispute that the Election Commission of India and

Governor of Madhya Pradesh issued a notification dated 01.11.2013 and released the schedule of Vidhan Sabha Election to be held in the month of November, 2013. According to the schedule, a date 09.11.2013 was fixed for scrutiny of nomination papers and on that day at 10:00 a.m. in the morning, the Election Officer started scrutiny of nominations. It is also not disputed that the petitioner is a voter and resident of Constituency No.201, Dhar (General) of Madhya Pradesh Vidhan Sabha and his name appears at Sr. No.464 in the voter list. It is also not in dispute that respondent No.1 namely Neena Vikram Verma was a candidate of Bhartiya Janta Party and contested an election and was declared as the Return Candidate.

3. According to the petitioner, in compliance of directions issued by Hon'ble Apex Court in case of **Resurgence India vs. Election Commission of India; AIR 2014 SC 344** dated 13.09.2013, directions were issued vide letter bearing No.576/3/2013 SDR dated 30.09.2013. According to the directions issued, it was specifically mentioned that all the columns of affidavit should be filled and no column should be left blank, however, in the affidavit submitted by respondent No.1, 24 columns were left blank and such an affidavit should not have been accepted by the Election Officer and, as such, her affidavit was wrongly accepted. The Election Officer wrote a letter on

18.11.2013 to the Observer of the Election, bearing No.5064 in which he admitted that respondent No.1 left many columns blank and according to the petitioner, by accepting such nomination papers, the election officer acted in a partisan manner and he did not follow the directions and instructions issued by Election Commission of India.

4. The petitioner pointed out the columns in which entries were either left blank or in which wrong entries were made and in this respect his relevant portion of the pleadings may be reproduced here :-

> "(h)(I)यह कि अभ्यर्थी श्रीमती नीना विक्रम वर्मा के द्वारा नाम निर्देशन पत्र के साथ संलग्न शपथपत्र जो कि प्रथम दृष्ट्या अधूरा शपथपत्र प्रतीत होता है, जैसे कि प्रारूप 26 के भाग क के बिन्दु क्रमांक 4 के 1 में नाम शीर्षक के अंतर्गत स्वयं शब्द अंकित किया जाना, किन्तु अभ्यर्थी का नाम अर्थात श्रीमती नीना विक्रम वर्मा को अंकित नहीं किया जाना, जबकि बिन्दु क्रमांक किया जाना, जबकि बिन्दु क्रमांक 7अ में टिप्पणी के बाद बनी हुयी सारणी में स्वयं के नीचे अभ्यर्थी के द्वारा अपना नाम श्रीमती नीना विक्रम वर्मा अंकित किया गया है, अतः यह नहीं कहा जा सकता कि नाम शीर्षक के आगे स्वयं लिखा जाना ही पर्याप्त है। स्पष्ट है कि अभ्यर्थी के द्वारा नाम शीर्षक वाले स्तम्भ/खाने को खाली (Blank) छोड़ा गया है। इसी प्रकार भाग क के बिन्दु क्रमांक 3, 4 एवं 5 से सम्बन्धित सभी कॉलम को खाली (Blank) छोड़ा गया है। भाग क के बिन्दु क्रमांक 7 (ख) (2) के शीर्षक विकास सन्निर्माण आदि के माध्यम से भूमि पर विनिधान के सामने अंकित दोनो कॉलम को रिक्त (Blank) छोडा गया है। (**सुविधा के लिये रिट याचिका के साथ संलग्न शपथपत्र की प्रमाणित प्रति में खाली स्तम्थ/खाने (Blank Column) को पीले मार्कर (Yellow marker) के द्वारा चिन्हित किया गया है।**)
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> (II) इसी प्रकार भाग क के बिन्दु क्रमांक 7 (ख) (3) में सम्पत्ति की स्थिति निरंक दर्शायी गयी है किन्तु बिन्दु क्रमांक 7 (ख) (3) अन्तिम शीर्षक अनुमानित चालू बाजार मूल्य के सामने रू 5,00,000/– अंकित किये गये है। इस कॉलम में बिन्दु क्रमांक 7(ख) (3) में दर्शायी गयी कुल सम्पत्ति का बाजार मूल्य जो कि निरंक है, को दर्शाया जाना था, किन्तु निरंक के स्पान पर रू 5,00,000/– दर्शाये गये, जो कि भ्रामक जानकारी के अन्तर्गत आते है।
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> (III) भाग क के बिन्दु क्रमांक 7 (ख) (5) के शीर्षक पूर्वोक्त (1) से (5) का कुल चालू बाजार मूल्य में सह शीर्षक स्वयं के अन्तर्गत रू. 20,40,000/– अंकित किया गया है, जबकि कुल योग 25,40,000/– होना चाहिये, इसी प्रकार भाग क के बिन्दु क्रमांक 7 (ख)

(5) के शीर्षक पूर्वोक्त (1) से (5) का कुल चालू बाजार मूल्य में सह शीर्षक पति या पत्नी के अन्तर्गत रू. 59,55,000/– अंकित किया गया है, जबकि कुल योग 77,10,000/– होना चाहिये।

(IV) भाग क के बिन्दु क्रमांक 8 की सारिणी में क्रम संख्या 1 के शीर्षक बैंक / वित्तीय संस्था (संस्थाओं) को ऋण या शोध्य बैंक या वित्तीय संस्था का नाम बकाया रकम, ऋण की प्रकृति के सामने सह शीर्षक पति या पत्नी के अन्तर्गत कार ऋण बकाया रू 4,96,557/– अंकित किया गया है, किन्तु ऋण प्रदाता बैंक या संस्था का नाम नही है। ऋण प्रदाता बैंक की जानकारी को छिपाया जाना मतदाता के मौलिक अधिकारों का हनन है।

(V) भाग क के बिन्दु क्रमांक 8 की सारिणी में क्रम संख्या 1 में सबसे अन्तिम शीर्षक दायित्वों का कुल योग के सामने सभी पॉच कॉलम रिक्त (Blank) है। इसी प्रकार भाग क के बिन्दु क्रमांक 8 की सारिणी में क्रम संख्या 2 में सबसे अन्तिम शीर्षक कोई अन्य शोध्य के सामने अंकित सभी पॉच कॉलम रिक्त (Blank) है। (**सुविधा के लिये रिट याचिका के साथ संलग्न शपथपत्र की प्रमाणित प्रति में खाली स्तम्भ / खाने (Blank column) को पीले मार्कर (Yellow marker) के द्वारा चिन्हित किया गया है।**)

(VI) भाग ख जो कि भाग – क के (1) से (10) तक के दिए गए ब्यौरों का उद्धरण (सार) abstract of the details given in (1) to 10 of Part - A से सम्बन्धित है, के बिन्दु क्रमांक 8 क के शीर्षक जॅगम आस्तियां (कुल मूल्य) के आगे सह शीर्षक स्वयं के अन्तर्गत रू 72,000/– अंकित किया गया है, जबकि इस स्थान पर रू. 59,72,000/– होना चाहिये। इसी प्रकार भाग ख के बिन्दु क्रमांक 8 ख के शीर्षक स्थावर आस्तियां में स्वअर्जित स्थावर सम्पत्ति की क्रय कीमत रू. 72,000/– अंकित की गयी है, जबकी रू. 7,60,000/– होना चाहिए।

(VII) इसी प्रकार भाग ख के बिन्दु क्रमांक 8 ख (2) के शीर्षक क्रय के पश्चात स्थावर सम्पत्ति की विकास/सन्निर्माण लागत (यदि लागू हो) के सामने के आगे सह शीर्षक स्वयं में निरंक दर्शाया गया है, जबकि रू. 40,000/– होना चाहिए।

(VIII) इसी प्रकार भाग ख के बिन्दु क्रमांक 8 (ख) (3) ख के शीर्षक विरासती आस्तीयां (कुल मूल्य) आगे सह शीर्षक स्वयं मे स्थित कॉलम को रिक्त (Blank) छोड़ा गया है। (**सुविधा के लिये रिट याचिका के साथ संलग्न शपथपत्र की प्रमाणित प्रति में खाली स्तम्भ / खाने (Blank Column) को पीले मार्कर (Yellow marker) के द्वारा चिन्हित किया गया है।**)

(IX) ऐसी स्थिति में निर्वाचन आयोग के द्वारा जारी दिशा निर्देश के परिप्रेक्ष्य में प्रस्तुत शपथपत्र निरर्थक (Affidavit nugatory/incomplete affidavit) है, जिससे नाम निर्देशनपत्र स्वतः निरस्त किया जाना चाहिये था।

(X) इसी प्रकार भाग ख के बिन्दु क्रमांक 9 (1) के शीर्षक सरकारी शोध्य (कुल) निरंक दर्शाया गया है, जबकि रू. 68,747/– होना चाहिये। इसी प्रकार भाग ख के बिन्दु क्रमांक 9 (2) के शीर्षक बैंक वित्तीय संस्थाओं और अन्य से ऋण (कुल) 5,00,000/– दर्शाया गया है, जबकी रू. 4,96,557/– होना चाहिए।

(XI) प्रस्तुत जानकारी भ्रामक होने के करण प्रस्तुत शपथपत्र निरर्थक (Affidavit nugatory/incomplete affidavit) है, जिससे

नाम निर्देशनपत्र स्वतः निरस्त किया जाना चाहिये था।

(XII) इन सभी तथ्यों को ध्यान में रखते हुए, निर्वाचन अधिकारी 201 धार सामान्य के द्वारा याचिकाकार के द्वारा प्रस्तुत आपत्ति पर विचार नही किये जाने एवं विधि के प्रावधानों के निर्वाचन अधिकारी 201 धार सामान्य के द्वारा स्व प्रेरणा से उपलब्ध तथ्यों के आधार पर प्रस्तुत नाम निर्देशन पत्र को स्वीकार किये जाने में त्रुटि की जाकर विधि के द्वारा स्थापित नियमों का उल्लघन किया गया है।

(XIII) इस प्रकार विधि विरूद्ध रूप से प्रत्यर्थी क्रमांक एक श्रीमती नीना वर्मा जो कि विधानसभा निर्वाचन 2013 में विजयी रही है, के नामॉकन पत्र स्वीकार किये जाने से अवॉछित अभ्यर्थी के निर्वाचन में भाग लेने की परिस्थितियॉ निर्मित हो गयी। निर्वाचन परिणाम प्रभावित हो गये।

(XIV) अतः प्रस्तुत निर्वाचन याचिका निर्वाचन अधिकारी 201 धार सामान्य के द्वारा अभ्यर्थी श्रीमती नीना विक्रम वर्मा के द्वारा नाम निर्देशन पत्र को अनुचित एवं विधि विरूद्ध स्वीकार किये जाने के कारण लोक प्रतिनिधित्व अधिनियम 1951 की धारा 100 (1) (D) (i) एवं 100 (1) (D) (iv), के अन्तर्गत इस निर्वाचन याचिका के द्वारा चुनौती दी गयी है।"

5. According to the petitioner, since her nomination papers were wrongly accepted, election of respondent No.1 is liable to be declared void under Section 100(1)(d)(i)(iv) of the RP Act.

6. Out of the respondents, respondent Nos.1 and 5 appeared in response to the notices issued to them. Other respondents remained ex-parte. Only respondent Nos.1 and 5 filed written statements in this matter. As such, the case proceeded ex-parte against all the respondents except respondent Nos.1 and 5.

7. Contentions of respondent No.1 was that though there was a pleading that nomination papers of respondent No.1 was wrongly accepted, there was no pleading of the fact that election of respondent No.1 or the election in general, held in the year 2013 was materially affected by wrong acceptance of the affidavit. This apart, she denied that there was any intention to file a wrong

affidavit or incomplete affidavit. According to respondent No.1, she was not given any intimation by the returning officer regarding incomplete affidavit and affidavit was accepted as such, and therefore, she should not be penalized, if her affidavit was accepted by the Election Officer.

8. Respondent No.5 in his reply raised contentions, inter-alia, that the affidavit as prescribed under Rule 1994 of Conduct of Election Rules 1961 and Section 83 of the RP Act was not filed by the petitioner, and therefore, his petition is liable to be dismissed.

9. On the basis of pleadings of the parties, before this Court, the Court framed following issues which are described in column 2 of the table below. The detailed discussion on these issues may be found in paragraphs that follow and inferences against each issues are recorded in column 3 of table below:-

S. No.	Issues	Findings
1	Whether, in the affidavit submitted alongwith nomination papers by respondent No.1 for her nomination as candidate in Vidhan Sabha Election 2013, many columns and entries were left blank by respondent No.1?	Yes
2	If yes, whether, the affidavit was an incomplete affidavit?	Yes

3	If yes, whether, acceptance of such in incomplete affidavit was improper and amounts to non-compliance of any provision of the Constitution of India or of the Representation of the People Act, 1951, or any rules or orders made under the Act?	Yes
4	Whether, due to acceptance of such incomplete affidavit by the election officer, result of the election in so far as it concerns the respondent No.1, has been materially affected?	Yes
5	Relief and costs ?	Petition is allowed. Election of respondent No.1 is declared void. Costs of the petitioner shall be borne by respondent No.1 and remaining respondents shall bear their own costs. Counsel fee is quantified at Rs.10,000/-,if certified.
Additional Issue		
6 (a)	Whether, the petitioner has not filed affidavit under section 83 of the Act read with Rule 94-A of the Conduct of Elections Rules, 1961?	Said provisions are not applicable on this petition as commission of corrupt practices not alleged.
6 (b)	If yes, the effect thereof ?	None

10. Before proceedings to decide every issues in detail, we may first take into account, the order passed by the Hon'ble Apex Court in SLP No.19197 to 19198 of 2015 where SLP was filed against the order passed by this Court dated 24.11.2014 on I.A. No.6801/2014 order passed on 21.04.2015 in I.A. No.777/2015 and order passed on 31.08.2015 on I.A. No.4171/2015 the SLP was disposed of on 04.11.2015 and Hon'ble Apex Court made the following observations :-

> **"Though we do not see any reason to interfere with the impugned order of the High Court, however, it is brought to our notice by learned counsel for the petitioner that there are certain observations made in the impugned order regarding the content of certain documents without the content having being actually proved in accordance with law.**
>
> **In the circumstances, the High Court will try the Election Petition uninfluenced by such observations made in the impugned order.**
>
> **The special leave petition stands disposed of accordingly."**

11. At the juncture, I would like to make it clear that the Court is proceeded further without taking into consideration and without being influenced by such observations made in the impugned orders as stated above regarding contents of any documents filed before this Court in this petition.

Issue Nos.1, 2 and 3

12. These issues are related to each other, and therefore, they are being dealt with together. The petitioner avers that the affidavit

submitted by respondent No.1 was an incomplete affidavit as many columns were left blank by respondent No.1, and therefore, acceptance of incomplete nomination papers accompanied by such affidavit was also improper and it amounted to non compliance of provisions of Constitution of India and provisions of the RP Act. According to the petitioner, he raised an objection regarding incomplete affidavit, however, it was dismissed by the returning officer on the ground that it was not mentioned in the objection as to against which nomination, the objection was being raised. Immediately, thereafter, he filed another objection, but the same was dismissed on the ground that after due consideration his first objection was dismissed, and therefore, second objection was not tenable. Acceptance of the incomplete nomination papers, according to the directions issued by Hon'ble Apex Court in the case of **Resurgence India (supra)**, and therefore, under the provisions of Section 100(1)(d)(i)(iv) of the RP Act, the election of respondent No.1 is liable to be declared void.

13. The statutory provisions in respect of giving necessary details in the affidavit is incorporated in Section 33A of the RP Act, which is as under :-

> **"33A. Right to information.— (1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of section 33, also furnish the information as to whether—**
>
> **(i) he is accused of any offence punishable with**

imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment 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 delivered."

14. The procedure for scrutiny of nomination form is given in Section 36 of the Act which is as under :-

"36. Scrutiny of nomination.—

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

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

(a) [that on the date fixed for the scrutiny of nominations the candidate] either is not qualified or is

disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely: — Articles 84, 102, 173 and 191,

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

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

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

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

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

(5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:

Provided that in case [an objection is raised by the returning officer or is made by any other person] the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

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

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

Representation of the People Act, 1950 (43 of 1950).

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

15. In light of above provisions, the Hon'ble Apex Court in case of **Resurgence India (supra)** issued certain directions. The relevant facts which form the background of issuing such directions may be briefly stated. Initially certain directions were issued in case of **Union of India vs. Association for Democratic Reforms and another; (2002) 5 SCC 294**. In light of the directions issued by Hon'ble Apex Court in this case, the Election Commission of India issued directions on 28.06.2002 and directed that all the candidates contesting election of Legislative Assembly and Parliament to furnish full and complete information in form of an affidavit duly sworn before the Judicial Magistrate First Class. It was also directed that non furnishing of affidavit by any candidate or furnishing of any wrong and incomplete information or suppression of material information will result in rejection of nomination papers. Apart from inviting penal consequences under Indian Penal Code, it was also directed that such information shall be considered to be wrong or incomplete or suppression of material information, which is found to be a defect of substantial character by the Returning Officer in

a summary enquiry conducted by him at the time of scrutiny of the nomination. Subsequent to this, the matter again came before the Hon'ble Apex Court in case of **People Union for Civil Liberties (PUCL) and another vs. Union of India and another**; where the Hon'ble Apex Court reaffirmed the aforesaid decision passed in case of **Association for Democratic Reform (supra)** but held that directions to reject the nomination papers for furnishing wrong information or concealing material information and verification of assets and liabilities by means of his summary enquiry at the time of scrutiny of nomination cannot be justified. Fresh directions were issued in pursuant of this judgment in **PUCL case (supra)** on 27.03.2003.

16. Resurgence India (supra) was a Non Governmental Organizers (NGO) registered under Societies Registration Act. It took a massive exercise under the banner "Punjab Election Watch" and affidavits pertaining to the candidates of six major political parties in the State were analyzed in order to verify their completeness. During such campaign, large scale irregularities were found in most of the affidavits filed by the candidates. After examining the case law, the Hon'ble Apex Court in paras 26 and 27 of the judgment reads as under :-

> **"26. In succinct, if the Election Commission accepts the nomination papers in spite of blank particulars in the affidavits, it will directly violate the fundamental right of the citizen to know the criminal**

antecedents, assets and liabilities and educational qualification of the candidate. Therefore, accepting affidavit with blank particulars from the candidate will rescind the verdict in Association for Democratic Reforms (supra). Further, the subsequent act of prosecuting the candidate Under Section 125A(i) will bear no significance as far as the breach of fundamental right of the citizen is concerned. For the aforesaid reasons, we are unable to accept the contention of the Union of India.

27. What emerges from the above discussion can be summarized in the form of following directions:

(i) The voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament/Assemblies and such right to get information is universally recognized. 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.

(ii) 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.

(iii) Filing of affidavit with blank particulars will render the affidavit nugatory.

(iv) 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 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.

(v) We clarify to the extent that Para 73 of

People's Union for Civil Liberties case (supra) will not come in the way of the Returning Officer to reject the nomination paper when affidavit is filed with blank particulars.

(vi) 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.

(vii) Filing of affidavit with blanks will be directly hit by Section 125A(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 penalized for the same act by prosecuting him/her."

17. It is apparent from aforesaid directions issued by the Hon'ble Apex Court that blank column should not be left and it should be filled with either 'Nil', 'Not Applicable' or 'Not known'. In light of the aforesaid directions, we may now proceed to see whether the affidavit filed by respondent No.1 was incomplete, as the columns were left blank in the affidavit. The certified copy of the affidavit is **Ex.P-2**. The original affidavit was brought by Sudhir Kare (P.W.-3). He was an Election Officer in District Dhar when election of Legislative Assembly were held in the year 2013. In para 5 of his statement, it was mentioned that the original affidavit was brought by one Rajendra Ujjainkar, who accompanied the witness alongwith official record. When statement of this witness was recorded, the original affidavit was shown to him. He admitted that on page 1 column 4 of the affidavit **Ex.P-2,** there were lines drawn in the column relating to

dependents. Similarly, in part B of column 2 against development and construction, a line was drawn. Also in column 8, the columns were left blank for showing total liabilities. Similarly, in the extract of information in part B (b) in column 3 a line was drawn.

18. The petitioner in his statement has stated that apart from this, there were mathematical errors of adding the figures in many portions. Respondent No.1- Neena Vikram Verma was confronted with such defects and blank columns, in cross-examination in para 13 to 16 and her replies, most of the questions were answered evasively and she merely said that whatever information is given in the affidavit was correct.

19. In light of the above oral evidence adduced by both the parties, it is apparent that there were many columns which were left blank in the affidavit. Apart from that, there were mathematical errors which were apparent from face of the documents. As such, in accordance with instructions issued by Election Commission of India in pursuance of directions issued by the Hon'ble Apex Court in case of **Resurgence India (supra)**, it was a duty of the Returning Officer to intimate Neena Vikram Verma about these deficiencies in the affidavit. The directions issued by the Election Commission have been filed by Jitendra Singh Chouhan (P.W.-4). Copy of these directions are **Ex.P-14/C**

& 15/C. There is a checklist appended to the directions, according to which, the returning officer was under an obligation to intimate the deficiencies to the candidates and also the date by which such deficiencies should be removed. However, from the documents produced by the petitioner, it appears that according to Ex.P-5, while dismissing the objection raised by the petitioner, the nomination papers of respondent No.1 were accepted, and subsequently, by way of afterthought, it was mentioned on Ex.P-5 that his objection was dismissed, as it was not clear from his objection, as to against which nomination it was filed. However, it was clearly mentioned by the same returning officer while accepting nomination papers of respondent No.1 from which it is apparent that he deliberately ignored the deficiencies that were found in the nomination papers.

20. Apart from these objections, the petitioner also mentioned that there were more persons than permitted while nomination papers of respondent No.1 was being accepted and this was against the provisions of Section 36 of the RP Act. He produced the CD which was a photograph of the proceeding when nomination paper of respondent No.1 was being accepted. The contents of the CD was shown which is marked as **Article A** and respondent No.1 admitted that only 5 minutes were given to the petitioner for raising his objection, and therefore, it is also proved

that a certificate **Ex.P-19** under Section 65 B is also produced with the CD.

21. Apparently, when only 5 minutes were granted to the petitioner, it was only for namesake that he was granted an opportunity to raise an objection and such an opportunity to raise an objection cannot be called as a proper opportunity, and therefore, it was apparent that the returning officer wrongly accepted incomplete affidavit filed by respondent No.1 inspite of such deficiencies which were apparent on face of the documents, and as such, the affidavit was not in line with the directions issued by the Hon'ble Apex Court in case of **Resurgence India (supra)**, and therefore, regarding these issues, it was proved that the affidavit was incomplete, many columns were left blank, and therefore, it amounts to accepting the nomination paper improperly. These issues are decided accordingly.

Issue No.4

22. From the very beginning, contention of respondent No.1 has been that there is no pleading in the petition to the effect that election of respondent No.1 was materially affected, as her nomination papers were improperly accepted by the Returning Officer.

23. Going through the pleading of the petitioner, it appears that the only indication in this regard could be found in para h (XIII)

of the plaint, which had already been quoted above in para 4 of this order, however, the exact language used in Section 100(1)(d)(i)(iv) of the RP Act was not used in the pleading, and therefore, if we accept contention of the counsel for respondent No.1 that there is no pleading in accordance with provisions of Section 100(1)(d)(i)(iv), we have to consider the question whether absence of such pleading is fatal to the petition.

24. In this regard, a distinction may be made between Section 83(1)(a) which provides that an election petition which contained concise statement of material facts on which the petitioner relies, this is analogous to order 6 Rule 2 of CPC. The Section provides that all the material facts should be concisely stated.

25. In this case, the allegation is that the affidavit supporting the nomination papers is incomplete, columns were left blank and also there are some mathematical errors and wrong entries of figures. In this regard, all the material facts can be found in the plaint. Section 83(1)(b) provides that full particulars should be given of any corrupt practice when the petitioner alleges such corrupt practice. However, this part of the section does not apply in the present petition, as there is no allegation of any corrupt practice in this case. On this aspect, the judgment of Hon'ble Apex Court in case of **Udhav Singh vs. Madhav Rao Scindia; AIR 1976 SC 744** may be seen. In paras 38, 39 and 40 of the

judgment, the Hon'ble Apex Court observed that :-

> **“38. All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are "material facts". In the context of a charge of corrupt practice, "material facts" would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election-petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are "material facts" which must be pleaded and failure to plead even a single material fact amounts to disobedience of the mandate of sec. 83(1) (a).**
>
> **39. "Particulars", on the other hand, are "the details of the case set up by the party". "Material particulars" within the contemplation of clause (b) of S.83(i) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a). 'Particulars' serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative.**
>
> **40. The distinction between 'material facts' and 'material particulars" was pointed out by this Court in several cases, three of which have been cited at the bar. It is not necessary to refer to all of them. It will be sufficient to close the discussion by extracting what A. N. Ray J. (as he then was) said on this point in Hardwari Lal's case (supra):**
>
> > **"It is therefore vital that the corrupt practice charged against the respondent should be a full and complete statement of material facts to clothe the petitioner with a complete cause of action and to give an equal and full opportunity to the respondent to meet the case and to defend the charges. Merely, alleging that the**

> **respondent obtained or procured or attempted to obtain or procure assistance are extracting words from the statute which will have no meaning unless and until facts are stated to show what that assistance is and how the prospect of election is furthered by such assistance. In the present case, it was not even alleged that the assistance obtained or procured was other than the giving of vote. It was said by counsel for the respondent that because the statute did not render the giving of vote a corrupt practice the words "any assistance" were full statement of material fact. The submission is fallacious for the simple reason that the manner of assistance, the measure of assistance are all various aspects of fact to clothe the petition with a cause of action which will call for an answer. Material facts are facts which if established would give the petitioner the relief asked for. If the respondent had not appeared, could the court have given a verdict in favour of the election petitioner. The answer is in the negative because the allegations in the petition did not disclose any cause of action."**

26. Keeping this distinction in mind, it is apparent that when material facts are concisely stated in the petition and it discloses cause of action, such a petition is a triable petition. On this aspect, the judgment of Hon'ble Apex Court in case of **Ashraf Kokkur vs. K.V. Abdul Khader; AIR 2015 SC 147** may be referred. It is apparent that the petitioner has given all the material facts to show that the affidavit was incomplete and in what manner the affidavit is incomplete was also pleaded in detail. Now, the question arises as to whether without any pleading that such improper acceptance of nomination papers affected the election of

respondent No.1 materially, this petition is maintainable and election of respondent No.1 is liable to be declared void.

27. In this aspect, the Hon'ble Apex Court's decision in the case of **Chhedi Ram vs. Jhilmit Ram; AIR 1984 SC 146** can be referred to with some benefit, the following situation emerged :-

> **"(i) Where the candidate whose nomination was improperly accepted had obtained 6,710 votes, that is almost 20 times the difference between the number of votes secured by the successful candidate and the candidate securing the next highest number of votes and the number of votes secured by the candidates whose nomination was improperly accepted bore a fairly high proportion to the number of votes secured by the successful candidate, it was a little over one third, the result of the election might safely he said to have been affected.**
>
> **(ii) The burden of establishing that the result of the election has been materially affected as a result of the improper acceptance of a nomination is on the person impeaching the election.**
>
> **(iii) The burden is readily discharged if the nomination which has been improperly accepted was that of the successful candidate himself. On the other hand, the burden is wholly incapable of being discharged if the candidate whose nomination was improperly accepted obtained a less number of votes than the difference between the number of votes secured by the successful candidate and the number of votes secured by the candidate who got the ticket highest number of votes.**
>
> **(iv) In both these situations, the answers are obvious.**
>
> **(v) The complication arises only in cases where the candidate, whose nomination was improperly accepted, has secured a larger number of votes than the difference between the number of votes secured by the successful candidate and the number of votes got by the candidate securing the next highest number of votes.**
>
> **(vi) If the number of votes secured by the**

> **candidate whose nomination was improperly accepted is not disproportionately large as compared with the difference between the number of votes secured by the successful candidate and the candidate securing the next higher number of votes, it would be next to impossible to conclude that the result of the election has been materially affected."**

28. Finally, the Hon'ble Apex Court considered the issue in detail in case of **Mairembarm Prithviraj Alias Prithviraj Singh vs. Pukhrem Sharatchandra Singh; (2017) 2 SCC 487**. In para 21 onward, the Hon'ble Apex Court observed as under :-

> **"21. There is no dispute that an election cannot be set aside on the ground of improper acceptance of any nomination without a pleading and proof that the result of the returned candidate was materially affected. The point to be considered is whether the law as laid down by this Court relating to the pleading and proof of the fact of the result of the returned candidate being materially affected applies to a case where the nomination of the returned candidate is declared to have been improperly accepted. A situation similar to the facts of this case arose for consideration of this Court in Durai Muthuswami's case. It is necessary to deal with this case in detail as the Counsel for the Appellant submitted that the said judgment is not applicable to the facts of the present case and that finding in the said case have to be treated as obiter.**
>
> **The facts, in brief, of Durai Muthuswami are that the Petitioner in the election petition contested in the election to the Tamil Nadu Legislative Assembly from Sankarapuram constituency. He challenged the election of the First Respondent on the grounds of improper acceptance of nomination of the returned candidate, rejection of 101 postal ballot papers, ineligible persons permitted to vote, voting in the name of dead persons and double voting. The High Court dismissed the election petition by holding that the Petitioner failed to allege and prove that the result of the election was materially affected by the improper acceptance of the nomination of the First Respondent as**

required by Section 100 (1) (d) of the Act. The Civil Appeal filed by the Petitioner therein was allowed by this Court in Durai Muthuswami (supra) in which it was held as follows:

> **"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."

23. It is clear from the above judgment that there is a difference between the improper acceptance of a nomination of a returned candidate and the improper acceptance of nomination of any other candidate. There is also a difference between cases where there are only two candidates in the fray and a situation where there are more than two candidates contesting the election. If

the nomination of a candidate other than the returned candidate is found to have been improperly accepted, it is essential that the election Petitioner has to plead and prove that the votes polled in favour of such candidate would have been polled in his favour. On the other hand, if the improper acceptance of nomination is of the returned candidate, there is no necessity of proof that the election has been materially affected as the returned candidate would not have been able to contest the election if his nomination was not accepted. It is not necessary for the Respondent to prove that result of the election in so far as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination as there were only two candidates contesting the election and if the Appellant's nomination is declared to have been improperly accepted, his election would have to be set aside without any further enquiry and the only candidate left in the fray is entitled to be declared elected.

24. The judgment of this Court in Durai Muthuswami (supra) was referred to in Jagjit Singh v. Dharam Pal Singh, 1995 Supp (1) SCC 422 page 429 in which it was held as follows:

"21. The trial Judge has held that since there is no averment in the petition that the result of the election was materially affected by improper rejection or acceptance of votes, it is devoid of cause of action. We are unable to agree that the absence of such an averment in the facts of this case is fatal. As pointed out by this Court, there may be cases where the obvious conclusion to be drawn from the circumstances is that the result of the election has been materially affected and that Section 100(1)(d) of the Act is not intended to provide a convenient technical plea in a case where there can be no dispute at all about the result of the election being materially affected by the alleged infirmity. (See:Durai Muthuswami vs. N. Nachiappan). In the present case, the appellant in the election petition has stated that he has lost by a margin of 80 votes only. From the various averments in the election petition it was evident that the number of valid votes of the appellant which are alleged to have been improperly rejected is much more than 80. From the averments

contained in the election petition it is thus obvious if the appellant succeeds in establishing his case as set out in the election petition the result of this election, insofar as it concerns the returned candidate, would be materially affected."

25. It was held by this Court in Vashist Narain Sharma v. Dev Chandra, reported in 1955 (1) SCR 509 as under:

> **"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."

This Court in Kisan Shankar Kathore v. Arun Dattatray Sawant dealt with a situation similar to that of this case. In that case, the election of the returned candidate was successfully challenged on the ground of non- disclosure of material information. The appeal filed by the returned candidate was dismissed by this Court by observing as follows:

"43.... 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."

26. Mere finding that there has been an improper acceptance of the nomination is not sufficient for a declaration that the election is void under Section 100 (1) (d). There has to be further pleading and proof that the result of the election of the returned candidate was materially affected. But, there would be no necessity of any proof in the event of the nomination of a returned candidate being declared as having been improperly accepted, especially in a case where there are only two candidates in the fray. If the returned candidate's nomination is declared to have been improperly

accepted it would mean that he could not have contested the election and that the result of the election of the returned candidate was materially affected need not be proved further. We do not find substance in the submission of Mr. Giri that the judgment in Durai Muthuswami (supra) is not applicable to the facts of this case. The submission that Durai Muthuswami is a case of disqualification under Section 9-A of the Act and, so, it is not applicable to the facts of this case is also not correct. As stated supra, the election petition in that case was rejected on the ground of non- compliance of Section 100 (1) (d). The said judgment squarely applies to this case on all fours. We also do not find force in the submission that the Act has to be strictly construed and that the election cannot be declared to be void under Section 100 (1) (d) without pleading and proof that the result of the election was materially affected. There is no requirement to prove that the result of the election of the returned candidate is materially affected once his nomination is declared to have been improperly accepted.

27. For the aforementioned reasons, the Civil Appeal is dismissed. No costs.

Civil Appeal No. 2829 of 2016

28. This appeal is filed by the Petitioner in the election petition challenging that part of the judgment dated 29.02.2016 of the High Court Manipur at Imphal, by which the relief that he should be declared to be elected was rejected. The Appellant contested the election as a candidate of the Nationalist Congress Party (NCP). Respondent No.1 was declared to have been elected on 28.01.2012. The election of the First Respondent was set aside by the High Court in the election petition filed by the Appellant. The Appellant also sought for a relief that he should be declared to have been elected. Such relief was rejected by the High Court. Hence, this appeal.

29. After the result of the election was declared on 28.01.2012, the Appellant resigned from NCP and joined Bhartiya Janta Party (BJP). To a question posed by the Court during the recording of his evidence, the Appellant stated that he tendered

resignation from NCP in the latter part of 2013, that he joined BJP and he continued to be a member of the BJP. In January, 2016, the Appellant filed an application for amendment to the election petition. He intended to insert additional submissions relating to his expulsion from NCP on 23.12.2013 and the representation made by him to the President NCP Manipur to cancel the expulsion order. He also wanted to bring on record the fact that his enrolment to the membership of BJP was rejected on 18.01.2016. He further stated in the application that the order of expulsion by the NCP was revoked by an order dated 21.01.2016.

30. The arguments in the election petition filed by the Appellant were concluded on 25.02.2016. The High Court recorded a finding in the impugned judgment that all the pending miscellaneous applications were disposed of with the consent of both sides and the election petition was to be adjudicated on the basis of existing material on record. As the miscellaneous application filed by the Appellant was not considered, the High Court decided the matter on the basis of the material on record which clearly showed that the Appellant resigned from NCP and joined BJP. After a careful consideration of the material on record, the High Court refused to grant the declaration as sought by the Appellant. The High Court held that having joined BJP, the Appellant was not entitled for a declaration as he contested the election in 2012 on behalf of NCP. The High Court highlighted the fact that the Appellant will be an MLA belonging to BJP, if declared elected after having contested the election on behalf of the NCP. Taking into account the spirit of law as expressed in paragraph no. 2 of the 10th Schedule of the Constitution of India the High Court did not grant the relief sought by the Appellant that he should be declared elected.

31. Ms. Meenakshi Arora, learned Senior Counsel appearing for the Appellant submitted that the 10th Schedule to the Constitution is not applicable to adjudication of an election petition. She relied upon Section 53 (2) of the Act to contend that the Appellant should be declared as duly elected as he was the only person remaining in the fray after the election of

respondent/returned candidate was declared void. Section 101 of the Act provides for declaration of the Petitioner to have been duly elected if the High Court is of the opinion that the Petitioner received majority of the valid votes.

32. According to Section 80 (A) of the Act, the High Court will have the jurisdiction to try an election petition. It is well settled law that the High Court hearing an election petition is not an 'authority' and that it remains the High Court while trying an election petition under the Act. (See T. Deen Dayal v. High Court of A.P., 1997 (7) SCC 535 at page 540. This Court in Hari Shanker Jain v. Sonia Gandhi, 2001 (8) SCC 233 at page 244 upheld the decision of a Full Bench of the Rajasthan High Court wherein it was decided that the jurisdiction of the High Court to try an election petition is not by way of constituting a special jurisdiction and conferring it upon the High Court. It is an extension of the original jurisdiction of the High Court to hear and decide the election disputes. It is clear from the above judgments of this Court that the inherent power of the High Court is not taken away when the election disputes are adjudicated. Section 53 (2) is a power conferred on the Returning Officer to declare a candidate elected when the number of candidates is equal to the number of seats to be filled. The power of the High Court is not fettered by Section 53 (2). The High Court has taken into consideration an anomalous situation that would arise by a candidate belonging to one party being declared elected after having crossed the floor. We are in agreement with the High Court and we do not intend to interfere with the discretion exercised by the High Court.

33. For the aforesaid reasons, the Civil Appeal is dismissed. No order as to costs."

29. Reverting back to the present petition, it is apparent that respondent No.1 was the return candidate. As already held while deciding the Issue Nos.1 to 3, the nomination papers were wrongly accepted, and as such, relying on the principles laid

down by Hon'ble Apex Court in case of **Mairembarm Prithviraj (supra)**, it is apparent that even when there is no pleading in the petition that the election of respondent No.1 was materially affected, this lapse is not fatal and election can be declared void under Section 100(1)(d)(i)(iv). This issue is accordingly decided in affirmative.

Issue No.6(a) and 6(b)

30. This issue was framed on the basis of pleadings made in return filed by respondent No.5. According to the pleadings, the affidavit filed in support of the petition is not in accordance with provisions of Section 83 of the RP Act 94A of Conduct of Election Rules, 1961.

31. Proviso appended to Section 83 of the Act provides that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed Form in support of allegations of such corrupt practice and the particulars therein. Such form of affidavit is prescribed in Rule 1994 and Form 25 of Conduct of Election Rules, 1961.

32. However, it may be seen that in this petition, corrupt practice is not pleaded, and therefore, the proviso appended to the section does not apply, and as such, the objection raised by respondent No.5 has no force, liable to be rejected. This issue is decided accordingly.

33. Accordingly, this petition is allowed. The election of respondent No.1 is declared void.

Costs of the petitioner shall be borne by respondent No.1 and remaining respondents shall bear their own costs.

Counsel fee is quantified at Rs.10,000/-, if certified.

The Registry is directed to send an authenticated copy of this order to the Election Commission of India and Speaker of Madhya Pradesh Legislative Assembly as provided for by Section 103 of the Representation of People Act, 1951, at the earliest.

Certified copy as per rules.

(Alok Verma)
Judge

Kafeel Ahmed Ansari
Digitally signed by Kafeel Ahmed Ansari
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