



IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

CIVIL REVISION No. 213 of 2025

*SMT. POONAM*

*Versus*

*DULE SINGH AND OTHERS*

**Appearance:**

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*Ms. Mini Ravindran, learned counsel for the petitioner / applicant.*

*Shri Vishal Baheti, learned Senior Counsel assisted by Shri Harshwardhan Sharma & Shri Pranshu Holkar, learned counsel for respondent No.1 (CAVEAT).*

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**Heard on : 17<sup>th</sup> March, 2025**

**Delivered on : 25<sup>th</sup> March, 2025**

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**O R D E R**

Heard on the question of admission & interim relief.

The petitioner has filed the present Civil Revision under Section 26(2) of the Madhya Pradesh Municipalities Act, 1961 r/w section 115 of the Code of Civil Procedure, 1908 challenging the validity of the order dated 17.02.2025 passed by the District Judge, Bhikangaon, whereby election to the post of Councilor, Ward No.5, Nagar Parishad, Bhikangaon has been declared void.

**FACTS OF THE CASE**

02. The petitioner and respondents No.2 to 7 contested the election of Councilor of Ward No.5, Bhikangaon held on 27.09.2022. The petitioner secured the highest number of votes, and she was declared elected vide notification dated 04.10.2022. Thereafter, she was elected as President of the Nagar Parishad, Bhikangaon.

2.1. Respondent No.1 / election petitioner, being a voter of Ward



No.5 filed an Election Petition under Section 20 of the M.P. Municipalities Act & Madhya Pradesh Nagarpalika Nirvachan Niyam, 1994 on 02.11.2022 on the ground that the petitioner did not disclose her criminal antecedents as required under Rule 24-A(1) of the M.P. Nagar Palika Nirvachan Niyam, 1994 (in short 'the Rules of 1994'). According to respondent No.1, the petitioner was convicted under Section 138 of the Negotiable Instrument Act, 1881 and sentenced to undergo 01 year's rigorous imprisonment along with fine of Rs.78,40,000/- vide judgment dated 07.08.2018 by Judicial Magistrate First Class in Criminal Case No.282/2016 (District Excise Officer v/s Smt. Poonam Jaiswal). The said conviction dated 07.08.2018 was in force and she had a debt of Rs.64,13,966/- against the Government of Madhya Pradesh. It has also been alleged that the name of the petitioner is reflected in two voter list mentioned at Serial No.94 of Ward No.13, Nagar Parishad Voter List as well as Serial No.1415 of Ward No.15, Village – Goradiya.

2.2. The petitioner appeared and before filing a reply, filed an application under Order VII Rule 11 of the CPC seeking rejection of the election petition on the grounds; *firstly* that the petitioner has deposited Rs.200/- instead of Rs.100/- along with the election petition; and *secondly* that there is no disclosure as to how the election of Ward No.5 was affected due to non-disclosure of the criminal antecedents. Vide order dated 09.12.2023, the application was dismissed.

2.3. Being aggrieved by the aforesaid, the petitioner approached this Court by way of Miscellaneous Petition No.1536 of 2023. Vide order dated 18.07.2023, the miscellaneous petition was dismissed.



2.4. Learned District Judge, initially, framed two issues for adjudication on 15.05.2023, thereafter, on 24.01.2024, four additional issues were also framed.

2.5. Respondent No. 1 examined himself as PW-1 and exhibited 10 documentary evidence as Ex-P/1 to P/10. In defence, the petitioner did not appear in the witness box, but examined Shankar Singh as DW-1 to establish that the amount of Rs.64,13,966/- had been deposited by the petitioner Poonam Jaiswal on 15.07.2020, Kamal Jaiswal as DW-2 and Rajesh Jaiswal as DW-3.

2.5. After appreciating the evidence that came on record, learned District Judge has held that the petitioner was not disqualified to contest the election, but she was required to disclose about her conviction in the nomination form as well as in the affidavit. Vide order dated 17.02.2025, the learned District Judge has declared the election of the petitioner to the post of Councillor of Ward No.5, Nagar Parishad, Bhikangaon as void and she has been declared disqualified to contest the election. Hence, the present Civil Revision is before this Court.

### **SUBMISSIONS OF PETITIONER'S COUNSEL**

03. Ms. Mini Ravindran, learned counsel appearing for the petitioner submitted that respondent No.1 / election petitioner had no locus to file the election petition as he was not the voter of Ward No.5 at the time of election as well as at the time of filing of the election petition. As per Section 20(2)(b)(i) of the M.P. Municipalities Act, no election or nomination under this Act be called in question except by a petition presented under Section 22 in the case of election of Councillor by any voter of the ward concerned. It is submitted that



Respondent No.1 / election petitioner did not file any documents along with the election petition to disclose that he is the voter of Ward No.5, therefore, on this ground alone, the election petition is liable to be dismissed. Ms. Ravindran further submitted that even if the election petitioner was a voter of Ward no.5, but in evidence he has admitted he did not remember whether he casted the vote or not.

3.1. Ms Mini Ravindran, learned counsel further submitted that the petitioner has been declared qualified to contest the election under Section 35(h) of the M.P. Municipalities Act because she was not convicted for commission of the offences punishable under Sections 135A, 171A or 171F or sub-section (3) of the Section 506 of the IPC. Therefore, her election has wrongly been declared void due to non-compliance with any provision of the Act or Rules made thereunder as contemplated under Section 22(d)(iii) of the M.P. Municipalities Act.

3.2. It is further submitted that under Rule 24A(1)(i) of the Rules of 1994 each candidate is required to furnish the information relating to the declaration of criminal antecedents, i.e. any pending criminal case, in which he is charged and any disposed of criminal in which he has been convicted. Even if such information is given in the nomination paper and the affidavit, the learned District Judge ought to have recorded the finding that the result of the election insofar as it concerns, the return candidate has been materially affected by non-compliance with the provisions of this Act or Rules.

3.3 It is further submitted that the petitioner was wrongly convicted under Section 138 of the Negotiable Instrument Act as the Excise Department presented the cheques for encashment which were



given as a security after obtaining the liquor license, not for payment of any Government dues. The said conviction has now been set aside by the learned appellate Court vide judgment dated 30.12.2022. In support of this contention, reliance has been placed upon a judgment delivered in the case of ***Kanimozhi Karunanidhi v/s A. Santhana Kumar & Others reported in 2023 SCC OnLine 573***. Paragraphs – 27 & 28 of the aforesaid judgment are reproduced below:-

27. In *Ram Sukh vs. Dinesh Aggarwal* (supra), this Court again while examining the maintainability of Election petition filed under Section 100(1)(d)(iv) of the RP Act, elaborately considered the earlier decisions and observed that it was necessary for the election petitioner to aver specifically in what manner the result of the election in so far as it concerned the returned candidate was materially affected due to omission on the part of the Returning Officer. The Court in the said case having found that such averments being missing in the Election petition, upheld the judgment of the High Court/Election Tribunal rejecting the Election petition at the threshold. The Court observed in para 14 to 21 as under: -

“14. The requirement in an election petition as to the statement of material facts and the consequences of lack of such disclosure with reference to Sections 81, 83 and 86 of the Act came up for consideration before a three Judge Bench of this Court in *Samant N. Balkrishna v. George Fernandez* [(1969) 3 SCC 238]. Speaking for the three-Judge Bench, M. Hidayatullah, C.J., inter alia, laid down that:

- (i) Section 83 of the Act is mandatory and requires first a concise statement of material facts and then the fullest possible particulars;
- (ii) omission of even a single material fact leads to an incomplete cause of action and statement of claim becomes bad;
- (iii) the function of particulars is to present in full a picture of the cause of action and to make the opposite party understand the case he will have to meet;
- (iv) material facts and particulars are distinct matters— material facts will mention statements of fact and particulars will set out the names of persons with date, time and place; and
- (v) in stating the material facts it will not do merely



to quote the words of the section because then the efficacy of the material facts will be lost.

15. At this juncture, in order to appreciate the real object and purport of the phrase “material facts”, particularly with reference to election law, it would be appropriate to notice the distinction between the phrases “material facts” as appearing in clause (a) and “particulars” as appearing in clause (b) of sub-section (1) of Section 83. As stated above, “material facts” are primary or basic facts which have to be pleaded by the petitioner to prove his cause of action and by the defendant to prove his defence. “Particulars”, on the other hand, are details in support of the material facts, pleaded by the parties. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Unlike “material facts” which provide the basic foundation on which the entire edifice of the election petition is built, “particulars” are to be stated to ensure that the opposite party is not taken by surprise.

16. The distinction between “material facts” and “particulars” and their requirement in an election petition was succinctly brought out by this Court in *Virender Nath Gautam v. Satpal Singh* [(2007) 3 SCC 617] wherein C.K. Thakker, J., stated thus: (SCC pp. 631-32, para 50)

“50. There is distinction between *facta probanda* (the facts required to be proved i.e. material facts) and *facta probantia* (the facts by means of which they are proved i.e. particulars or evidence). It is settled law that pleadings must contain only *facta probanda* and not *facta probantia*. The material facts on which the party relies for his claim are called *facta probanda* and they must be stated in the pleadings. But the facts or facts by means of which *facta probanda* (material facts) are proved and which are in the nature of *facta probantia* (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue.”

17. Now, before examining the rival submissions in the light of the aforestated legal position, it would be expedient to deal with another submission of the learned counsel for the appellant that the High Court should not have exercised its power either under Order 6 Rule 16 or Order 7 Rule 11 of the Code to reject the



election petition at the threshold. The argument is twofold viz.:

- (i) that even if the election petition was liable to be dismissed ultimately, it should have been dismissed only after affording an opportunity to the election petitioner to adduce evidence in support of his allegation in the petition, and
- (ii) since Section 83 does not find a place in Section 86 of the Act, rejection of the petition at the threshold would amount to reading into sub-section (1) of Section 86 an additional ground.

In our opinion, both the contentions are misconceived and untenable.

18. Undoubtedly, by virtue of Section 87 of the Act, the provisions of the Code apply to the trial of an election petition and, therefore, in the absence of anything to the contrary in the Act, the court trying an election petition can act in exercise of its power under the Code, including Order 6 Rule 16 and Order 7 Rule 11 of the Code. The object of both the provisions is to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy the judicial time of the courts. If that is so in matters pertaining to ordinary civil litigation, it must apply with greater vigour in election matters where the pendency of an election petition is likely to inhibit the elected representative of the people in the discharge of his public duties for which the electorate have reposed confidence in him. The submission, therefore, must fail.

19. Coming to the second limb of the argument viz. absence of Section 83 in Section 86 of the Act, which specifically provides for dismissal of an election petition which does not comply with certain provisions of the Act, in our view, the issue is no longer res integra. A similar plea was negated by a three-Judge Bench of this Court in *Hardwari Lal v. Kanwal Singh* [(1972) 1 SCC 214], wherein speaking for the Bench, A.N. Ray, J. (as His Lordship then was) said: (SCC p. 221, para 23)

“23. Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasised that Section 83 did not find place in Section 86. Under Section 87 of the Act



every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits. A suit which does not furnish cause of action can be dismissed.”

20. The issue was again dealt with by this Court in *Azhar Hussain v. Rajiv Gandhi* [1986 Supp SCC 315] . Referring to earlier pronouncements of this Court in *Samant N. Balkrishna* [(1969) 3 SCC 238] and *Udhav Singh v. Madhav Rao Scindia* [(1977) 1 SCC 511] wherein it was observed that the omission of a single material fact would lead to incomplete cause of action and that an election petition without the material facts is not an election petition at all, the Bench in [Azhar Hussain](#) case [1986 Supp SCC 315] held that all the facts which are essential to clothe the petition with complete cause of action must be pleaded and omission of even a single material fact would amount to disobedience of the mandate of [Section 83\(1\)\(a\)](#) of the Act and an election petition can be and must be dismissed if it suffers from any such vice.

21. We may now advert to the facts at hand to examine whether the election petition suffered from the vice of non- disclosure of material facts as stipulated in Section 83(1)(a) of the Act. As already stated the case of the election petitioner is confined to the alleged violation of Section 100(1)(d)(iv). For the sake of ready reference, the said provision is extracted below:

“100. Grounds for declaring election to be void.  
— (1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

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(d)that the result of the election, insofar as it concerns a returned candidate, has been materially affected—

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(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.” It is plain that in order to get an election declared as void under the said provision, the election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under the Act, the result of the election, insofar as it concerned the returned candidate, was materially affected.”





28. The legal position enunciated in afore-stated cases may be summed up as under:-

- i. Section 83(1)(a) of RP Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an Election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code.
- ii. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgement of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.
- iii. Material facts mean the entire bundle of facts which would constitute a complete cause of action. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary.
- iv. In order to get an election declared as void under Section 100(1)(d)(iv) of the RP Act, the Election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act, the result of the election, in so far as it concerned the returned candidate, was materially affected.
- v. The Election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses it as a handle for vexatious purpose.
- vi. An Election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under Clause (a) of Rule 11 of Order VII CPC read with the mandatory requirements enjoined by Section 83 of the RP Act.

3.4. Ms. Ravindran also submitted that so far as the recovery against the petitioner initiated by the Excise Department is concerned, the petitioner has paid the amount of Rs.64,13,966/- to the



Excise Department, therefore, the impugned order is unsustainable in the eyes of law and the revision be admitted and the impugned order be stayed.

3.5. Ms. Ravindran, learned counsel concluded her submissions that respondent No.1 / election petitioner was required to accompany the Government Treasury Receipt of Rs.100/- along with the election petition, but he submitted a challan of Rs.200/-, therefore, the election petition is liable to be dismissed on this ground alone. In support of the aforesaid contention, reliance has been placed upon a judgment delivered by the Apex Court in the case of *Sitaram v/s Radhey Shyam Vaishnav & Others reported in (2018) 4 SCC 507*. Paragraphs – 32, 39 & 40 of the aforesaid judgment are reproduced below:-

"32. We may immediately clarify that the aforesaid cases dealt with substantial compliance relating to 'true copy', 'verification', 'affidavit' and applicability of the principle of curability. In G.M. Siddeshwar (supra), the Court made a difference between total and complete non-compliance with the provision of Section 83 of the 1951 Act whereupon the election petition cannot be described as an election petition and may be dismissed at the threshold. In the instant case, we are concerned with the deposit by treasury challan which shall accompany the election petition. The Rule prescribes in categorical terms that the tribunal shall dismiss the petition in case of non-compliance. We have referred to the authorities relating to security deposits under Section 117 of the 1951 Act. The present rules refer to municipal election. It is worthy to note that the election petition in para 15 has stated thus:-

"15. That necessary Court fee has been paid with this petition. Rs. 1000/- has been deposited before this Hon'ble Court as per Law. A copy of this petition has already been sent to the District Returning Officer."

39. The discussion hereinabove can be categorized into three compartments. First, the deposit is mandatory and the mode of deposit is directory; second, the non-deposit will entail dismissal and irregular deposit is curable and third, in other areas like verification, signature of parties, service of copy,



etc., the principle of substantial compliance or the doctrine of curability will apply. In the case at hand, Rule 3(5)(d) commands that the election petition shall be accompanied by the treasury challan. The word used in the Rule is 'accompanied' and the term 'accompany' means to co-exist or go along. There cannot be a separation or segregation. The election petition has to be accompanied by the treasury challan and with the treasury challan, as has been understood by this Court, there has to be a deposit in the treasury. The 2012 Rules, when understood appropriately, also convey that there has to be deposit in the treasury. Once the election petition is presented without the treasury challan, the decisions of this Court in Charan Lal Sahu (I) (supra) and Aeltemesh Rein (supra) pertaining to non-deposit will have full applicability. The principle stated in M. Karunanidhi (supra), K. Kamaraja Nadar (supra), Chandrika Prasad Tripathi (supra) and other decisions will not get attracted. The interpretation placed on the 1986 Rules by the learned single Judge in Ashok Kumar (supra) cannot be treated to lay down the correct law. We arrive at the said conclusion as we do not find that there is really any Rule which prescribes filing of treasury challan before the Election Tribunal in election petition after seeking permission at the time of presenting an election petition. Permission, if any, may be sought earlier. Such was the case in Bajrang Lal v. Kanhaiya Lal and others where the election petition was submitted on 31.8.2005 and an application was submitted before the court below on 30.8.2005 under Section 53 of the Act of 1959 with the signature of the advocate and an order was passed by the court on the same application itself on 30.8.2005 allowing the advocate to deposit the security amount under Section 53 of the Act of 1959 for election petition. The election petition was submitted on 31.8.2005. In such a fact situation, the High Court found that there was compliance with the provision.

40. Mr. Jain would submit that this is not an incurable defect as the deposit has been made within the period of limitation. The said submission leaves us unimpressed inasmuch as Rule 7 leaves no option to the Judge but to dismiss the petition. Thus, regard being had to the language employed in both the 22 RLW 2007 (2) Raj 1551 Rules, we are obligated to hold that the deposit of treasury challan which means deposit of the requisite amount in treasury at the time of presentation of the election petition is mandatory. Therefore, the inevitable conclusion is that no valid election petition was presented. In such a situation, the learned Additional District Judge was



bound in law to reject the election petition."

**SUBMISSION OF RESPONDENT'S NO.1 COUNSEL**

04. Shri Vishal Baheti, learned Senior Counsel for respondent No.1 / the election petitioner on Caveat contends that all the issues raised by this petitioner in the present revision were raised in the application preferred under Order VII Rule 11 of the CPC. After rejection of the said application, a miscellaneous petition was filed, which has been dismissed by this Court. Respondent No.1 filed the voter ID and voter list in the miscellaneous petition to establish that he was the voter at the time of election, therefore, he has a locus to file an election petition as required under Section 20 of the M.P. Municipalities Act & Madhya Pradesh Nagarpalika Nirvachan Niyam, 1994.

4.1. Learned Senior Counsel further contended that the petitioner did not disclose her conviction in a criminal case neither in the nomination paper nor in the affidavit which has materially affected the election. She did not enter into the witness box for cross-examination, therefore, any defence taken by the petitioner in the election petition is not liable to be considered as the same has not been established during the evidence.

4.2. Learned Senior Counsel further argued that all the other grounds raised in this civil revision had already been considered by the Co-ordinate Bench at Principal Seat in the case of *Vijay Singh v/s Kishore & Others (Civil Revision No.87 of 2016)* in which vide order dated 27.06.2019, the election of the returned candidate was set aside. Shri Baheti, learned Senior Counsel has also placed reliance upon a judgment delivered by the High Court of Chhatisgarh at Bilaspur in the case of *Sapandeep Mahto v/s Rajkishan Mahto &*



*Others reported in 2022 SCC OnLine Chh 1416*, in which in similar facts and circumstances by placing the reliance upon a judgment passed by the Apex Court in the case of *Krishnamoorthy v/s Shiva Kumar reported in (2015) 3 SCC 467*, the election of the returned candidate has been set aside by holding that when the candidate had special knowledge of the pending case cognizance of which has been taken or charges have been framed and there is non-disclosure on his part, it would amount to undue influence, and therefore, the election is to be declared null and void. Therefore, learned Senior Counsel submits even though there is no ground to admit this revision and no question of grant of interim relief does not arise.

#### **APPRECIATION & CONCLUSION**

05. So far as the first contention of the petitioner that respondent No.1 / election petitioner was not the voter of Ward No.5 at the time of filing of election petition is concerned, the same has no substance because in the written statement, the petitioner did not plead specifically that respondent No.1 has no locus to file the election petition as he was not a voter of Ward No.5. The petitioner has simply denied the averment made by respondent No.1 that he is the voter of Ward No.5. In M.P. No.1536 of 2023 decided on 18.07.2023, the Co-ordinate Bench of this Court has clearly observed that respondent No.1 filed a voter list and his voter ID, therefore, no illegality has been committed by the learned Tribunal to come to a conclusion that it is a matter of evidence.

06. Even otherwise, had the petitioner seriously disputed the election petition about the locus of the election petitioner, then the



trial Court could have framed the issue on this point. Since the petitioner did not dispute the above locus in the written statement, therefore, no issue was framed whether respondent No.1 being a voter can file an election petition or not ? Now this issue cannot be raised first time in this civil revision. Even otherwise, the petitioner herein did not enter into the witness box to support this allegation that the election petitioner is not the voter of Ward No.5.

07. It is also not in dispute that at the time of filling out nomination form the petitioner was already convicted under Section 138 of the Negotiable Instrument Act vide judgment dated 07.08.2018 passed by the JMFC, Burhanpur and a criminal appeal was pending. Admittedly, she did not disclose this fact in the nomination paper as well as in the affidavit.

08. Rule 24A of the Rules of 1994 mandates that *each candidate shall furnish information relating to the declaration of antecedents, especially any pending criminal case in which he is charged and any disposed criminal case in which he has been convicted*. This provision is mandatory in nature. No valid explanation has been offered by the petitioner in the written statement about the non-disclosure of his criminal case. Even she didn't enter into the witness box to state the reasons for non-disclosure of a criminal case. The non-compliance with the provisions of Rule 24A of the Rules of 1994 comes under the category of non-compliance with the provisions of the Act or any of the Rules as contemplated under Section 22(d)(iii) of the M.P. Municipalities Act.

09. The only contention of Ms. Mini Ravindran which has some substance is that, even if there was non-compliance of the provision



of Rule 24A of the Rules of 1994, the election petitioner has failed to prove that the election of the returned candidate has materially been affected. The Apex Court in the case of *Krishnamoorthy (supra)* has observed that such non-disclosure amounts to undue influence. Paragraphs – 82, 83 & 84 of the aforesaid judgment are reproduced below:-

"82. Having stated about the need for vibrant and healthy democracy, we think it appropriate to refer to the distinction between disqualification to contest an election and the concept or conception of corrupt practice inhered in the words "undue influence". Section 8 of the 1951 Act stipulates that conviction under certain offences would disqualify a person for being a Member either of House of Parliament or the Legislative Assembly or Legislative Council of a State. We repeat at the cost of repetition unless a person is disqualified under law to contest the election, he cannot be disqualified to contest. But the question is when an election petition is filed before an Election Tribunal or the High Court, as the case may be, questioning the election on the ground of practising corrupt practice by the elected candidate on the foundation that he has not fully disclosed the criminal cases pending against him, as required under the Act and the Rules and the affidavit that has been filed before the Returning Officer is false and reflects total suppression, whether such a ground would be sustainable on the foundation of undue influence. We may give an example at this stage. A candidate filing his nomination paper while giving information swears an affidavit and produces before the Returning Officer stating that he has been involved in a case under Section 354 IPC and does not say anything else though cognizance has been taken or charges have been framed for the offences under Prevention of Corruption Act, 1988 or offences pertaining to rape, murder, dacoity, smuggling, land grabbing, local enactments like MCOCA, U.P. Goonda Act, embezzlement, attempt to murder or any other offence which may come within the compartment of serious or heinous offences or corruption or moral turpitude. It is apt to note here that when an FIR is filed a person filling a nomination paper may not be aware of lodgement of the FIR but when cognizance is taken or charge is framed, he is definitely aware of the said situation. It is within his special knowledge. If the offences are not disclosed in entirety, the



electorate remain in total darkness about such information. It can be stated with certitude that this can definitely be called antecedents for the limited purpose, that is, disclosure of information to be chosen as a representative to an elected body.

83. The sanctity of the electoral process imperatively commands that each candidate owes and is under an obligation that a fair election is held. Undue influence should not be employed to enervate and shatter free exercise of choice and selection. No candidate is entitled to destroy the sacredness of election by indulging in undue influence. The basic concept of "undue influence" relating to an election is voluntary interference or attempt to interfere with the free exercise of electoral right. The voluntary act also encompasses attempts to interfere with the free exercise of the electoral right. This Court, as noticed earlier, has opined that legitimate canvassing would not amount to undue influence; and that there is a distinction between "undue influence" and "proper influence". The former is totally unacceptable as it impinges upon the voter's right to choose and affects the free exercise of the right to vote. At this juncture, we are obliged to say that this Court in certain decisions, as has been noticed earlier, laid down what would constitute "undue influence". The said pronouncements were before the recent decisions in *PUCL (supra)*, *PUCL (NOTA) (supra)* and Association of Democratic Reforms (*supra*) and other authorities pertaining to corruption were delivered. That apart, the statutory provision contained in Sections 33, 33A and Rules have been incorporated.

84. In this backdrop, we have to appreciate the spectrum of "undue influence". In *PUCL (supra)* Venkattarama Reddi, J. has stated thus:

"Freedom of voting as distinct from right to vote is thus a [pic]species of freedom of expression and therefore carries with it the auxiliary and complementary rights such as right to secure information about the candidate which are conducive to the freedom".

10. In view of the above, the voter has the right to know the enticements of a person who is going to represent him in future upon election. As held above, the petitioner did not enter into the witness box to establish that by non-disclosure of her conviction, the election was not materially affected or did not influence the election.





11. So far as the contention of Ms. Ravindran that even if the election petitioner was a voter, but in evidence, he admitted that he did not disclose that he cast the vote is concerned, it makes no difference whether the election petitioner cast the vote or not, but being a voter of the Ward No.5, from where the petitioner was elected he has a locus to file an election petition.

12. So far as the last contention of Ms. Mini Ravindran that instead of Rs.100/-, the election petitioner has deposited Rs.200/- along with the election petition is concerned, even if the election petitioner has deposited the excess amount, it cannot be said that election was not liable to be admitted.

13. So for as the contention of Ms. Ravindran that the petitioner has been declared eligible to contest the election, therefore, the election has wrongly been declared void is concerned, disqualification of a candidate for election as a President or election or nomination as a Councillor is provided under Section 35 of the M.P. Municipalities Act. The petitioner is not falling under sub-section (h), (hh) & (hhh) of Section 35, therefore, she has rightly been declared qualified to contest the election. Hence, she submitted the nomination form and under Rule 24A(iii) of the Rules of 1994, the Returning Officer was not authorized to check the contents of the nomination form, therefore, the nomination form of this petitioner was accepted and she was permitted to contest the election. At the time of acceptance of the form, no one raised any objection about the qualification and disqualification of the petitioner, but election of the returned candidate is liable to be declared void on the ground as mentioned in Section 22 of the M.P. Municipalities Act. Section 22(1)



(a) gives a ground for declaring the election as void if it is proved that the returned candidate was not qualified or was disqualified to be chosen as President or Councillor. However, the election petitioner challenged the election on the grounds of Section 22(d)(iii) of the M.P. Municipalities Act. The election of the returned candidate can be declared void on any of the grounds mentioned in (a) to (d) of subsection (1) of Section 22.

14. Admittedly, the petitioner did not disclose about the criminal antecedent in the nomination form, therefore, the same gave ground to the election petitioner to challenge her election as Councillor. The learned District Judge has rightly declared her disqualified and further declared the election void. Hence, no case for interference is made out.

15. In view of the above, the admission is declined, hence, the Civil Revision is hereby dismissed.

(VIVEK RUSIA)  
J U D G E