Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1478 OF 2015
(@ SLP(C) NO. 14918 OF 2009)

Krishnamoorthy ... Appellant

Versus

Sivakumar & Ors. ...Respondents

J U D G M E N T

Dipak Misra, J.

In a respectable and elevated constitutional democracy purity of election, probity in governance, sanctity of individual dignity, sacrosanctity of rule of law, certainty and sustenance of independence of judiciary, efficiency and acceptability of bureaucracy, credibility of institutions, integrity and respectability of those who run the institutions and prevalence of mutual deference among all the wings of the State are absolutely significant, in a way, imperative. They are not only to be treated as essential concepts and remembered as glorious precepts but also to be practised so that in the

conduct of every individual they are concretely and fruitfully manifested. The crucial recognised ideal which is required to be realised is eradication of criminalisation of politics and corruption in public life. When criminality enters into the grass-root level as well as at the higher levels there is a feeling that 'monstrosity' is likely to wither away the multitude and eventually usher in a dreadful fear that would rule supreme creating an incurable chasm in the spine of the whole citizenry. In such a situation the generation of today, in its effervescent ambition and volcanic fury, smothers the hopes, aspirations and values of tomorrow's generation and contaminate them with the idea to pave the path of the past, possibly thinking, that is the noble tradition and corruption can be a way of life and one can get away with it by a well decorated exterior. But, an intervening and pregnant one, there is a great protector, and an unforgiving one, on certain occasions and some situations, to interdict – "The law', the mightiest sovereign in a civilised society.

2. The preclude, we are disposed to think, has become a necessity, as, in the case at hand, we are called upon to decide, what constitutes "undue influence" in the context of

Section 260 of Tamil Nadu Panchayats Act, 1994 (for short 'the 1994 Act') which has adopted the similar expression as has been used under Section 123 (2) of the Representation of People's Act, 1951 (for brevity 'the 1951 Act') thereby making the delineation of great significance, for our interpretation of the aforesaid words shall be applicable to election law in all spheres.

3. The instant case is a case of non-disclosure of full particulars of criminal cases pending against a candidate, at the time of filing of nomination and its eventual impact when the election is challenged before the election tribunal. As the factual score is exposited the appellant was elected as the President of Thekampatti Panchayat, Mettupalayam Taluk, Coimbatore District in the State of Tamil Nadu in the elections held for the said purpose on 13.10.2006. The validity of the election was called in question on the sole ground that he had filed a false declaration suppressing the details of criminal cases pending trial against him and, therefore, his nomination deserved to be rejected by the Returning Officer before the District Court Coimbatore in Election O.P. No. 296 of 2006. As the factual matrix would unfurl that Tamil Nadu State

Election Commission (TNSEC) had issued a Notification bearing S.O. No. 43/2006/TNSEC/EG dated 1.9.2006 which stipulated that every candidate desiring to contest an election to a local body, was required to furnish full and complete information in regard to five categories referred to in paragraph five of the preamble to the Notification, at the time of filing his nomination paper. One of the mandatory requirements of the disclosure was whether the candidate was accused in any pending case prior to six months of filing of the nomination of any offence punishable with imprisonment for two years or more and in which, charges have been framed or cognizance taken by a court of law. It was asserted in the petition that the appellant, who was the President of a cooperative society, on allegations of criminal breach of trust, falsification of accounts, etc., was arrayed as an accused in complaint case in Crime No. 10 of 2001. During investigation, the police found certain other facets and eventually placed eight different chargesheets, being C.C. Nos. 3, 4, 5, 6, 7, 8, 9 and 10 of 2004 before the Judicial Magistrate-IV, Coimbatore and the Magistrate had taken cognizance much before the Election Notification. Factum of taking cognizance and

thereafter framing of charges in all the eight cases for the offences under Sections 120-B, 406, 408 and 477-A of the Indian Penal Code, 1860 ('IPC' for short) prior to the cut-off date are not in dispute. The appellant had filed a declaration and the affidavit only mentioning Crime No 10 of 2001 and did not mention the details of the chargesheets filed against him which were pending trial. In this backdrop, the Election Petition was filed to declare his election as null and void on the ground that he could not have contested the election and, in any case, the election was unsustainable.

4. In the Election Petition, the petitioner mentioned all the eight case by way of a chart. It is as follows:

S.No.	Crime No.10/01/Section	C.C. No.	Complainant	Court
01.	U/s 406 477A IPC	3/2004	CCIW/CID	JM IV Coimbatore
02.	U/s 120 (b) r/w 406 477 A IPC	6/2004	"	"
03.	U/s 408, 406 477 A IPC	6/2004	"	"
04.	"	6/2004	"	"
05.	"	7/2004	"	"
06.	U/s 120 (b) r/w 408, 406 477 A IPC	8/2004	"	"
07.	"	9/2005	"	"
08.	"	10/2004	"	"

5. After asseverating certain other facts, it was pleaded that the 1st respondent had deliberately suppressed material facts which if declared would enable his nomination papers being

rejected. That apart, emphasis was laid on the fact that the elected candidate had not declared the particulars regarding the criminal cases pending against him.

6. In this backdrop, the election of the first respondent was sought to be declared to be invalid with certain other consequential reliefs. In the counter-statement filed by the elected candidate, a stand was put forth that the election petitioner though was present at the time of scrutiny of the nomination papers, had failed to raise any objection and, in any case, he had mentioned all the necessary details in the nomination papers perfectly. It was further set forth as follows:

> "All the averments stated in the 3rd para of the petition is false and hereby denied. The averment stated that 1st respondent had deliberately omitted to provide the details of charge sheets having been filed against him which have been on file in eight cases is false and hereby denied. It is humbly submitted that this respondent has clearly mentioned about the case pending in Cr. No. 10/2001 pending before the JM No. 4 at page No. 2 in details of candidate. Therefore the above said averments are false, misleading and unsustainable."

7. The Principal District Judge of Coimbatore, the Election Tribunal, adverted to the allegations, the ocular and the

documentary evidence that have been brought on record and came to hold that nomination papers filed by the appellant, the first respondent to the Election Petition, deserved to be rejected and, therefore, he could not have contested the election, and accordingly he declared the election as null and void and ordered for re-election of the post of the President in question. The said order was challenged in revision before the High Court.

8. In revision, the High Court referred to the decisions in ***Union of India Vs. Association for Democratic Reforms***,[1] ***People's Union for Civil Liberties (PUCL) & Another V. Union of India and Another***[2], Notification issued by the Election Commission of India and the Notification of the State Election Commission, Sections 259 and 260 of the 1994 Act and adverted to the issues whether there was suppression by the elected candidate and in that context referred to the 'Form' to be filled up by a candidate as per the Notification dated 1.9.2006 and opined that an element of sanctity and solemnity is attached to the said declaration, by the very fact that it is required to be in the form of an affidavit sworn and

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1 (2002) 5 SCC 294
2 (2003) 4 SCC 399

attested in a particular manner. The High Court emphasised on the part of the verification containing the declaration that "nothing material has been concealed". On the aforesaid analysis, the High Court held that the elected candidate had not disclosed the full and complete information. Thereafter, the High Court referred to the authority in ***Association for Democratic Reforms*** (supra), incorporation of Sections 33A and 44A in the 1951 Act, Rule 4A of the Conduct of Election Rules, 1961 and Form 26 to the said Rules, Section 125A of the 1951 Act, the definition of 'Affidavit' as per Section 3(3) of the General Clauses Act, 1897, the conceptual meaning of Oath, Section 8 of The Oaths Act, 1969 and scanned the anatomy of Sections 259 and 260 of the 1994 Act and the principles that have been set out in various decisions of this Court and opined that the non-disclosure of full and complete information relating to his implication in criminal cases amounted to an attempt to interfere with the free exercise of electoral right which would fall within the meaning of 'undue influence' and consequently 'corrupt practice' under Section 259(1)(b) read with Section 260(2) of the 1994 Act. Being of this view, the High Court agreed with the ultimate conclusion

of the tribunal though for a different reason.

9. We have heard Ms. V. Mohana, learned counsel for the appellant, Mr. Subramonium Prasad, learned AAG for the State Election Commission, Mr. R. Anand Padmanabhan, learned counsel for the respondent No.1 and Mr. R. Neduamaran, learned counsel for the respondent no.2. Regard being had to the impact it would have on the principle relating to corrupt practice in all election matters as interpretation of the words 'undue influence' due to non-disclosure of criminal antecedents leading to "corrupt practice" under the 1951, Act, we also sought assistance of Mr. Harish N. Salve, learned senior counsel and Mr. Maninder Singh, learned Additional Solicitor General for Union of India.

10. First, we intend, as indicated earlier, to address the issue whether non-disclosure of criminal antecedents would tantamount to undue influence, which is a facet of corrupt practice as per Section 123(2) of the 1951 Act. After our advertence in that regard, we shall dwell upon the facts of the case as Ms. V. Mohana, learned counsel for the appellant has astutely highlighted certain aspects to demonstrate that there has been no suppression or non-disclosure and, therefore, the

election could not have been declared null and void either by the Election Tribunal or by the High Court. Postponing the discussions on the said score, at this stage, we shall delve into the aspect of corrupt practice on the foundation of non-disclosure of criminal antecedents.

11. The issue of disclosure, declaration and filing of the affidavit in this regard has a history, albeit, a recent one. Therefore, one is bound to sit in a time-machine. In ***Association for Democratic Reforms*** (supra), the Court posed the following important question:-

> "...In a nation wedded to republican and democratic form of government, where election as a Member of Parliament or as a Member of Legislative Assembly is of utmost importance for governance of the country, whether, before casting votes, voters have a right to know relevant particulars of their candidates? Further connected question is – whether the High Court had jurisdiction to issue directions, as stated below, in a writ petition filed under Article 226 of the Constitution of India?"

12. To answer the said question, it referred to the authorities in ***Vineet Narain V. Union of India***[3], ***Kihoto Hollohan V. Zachillhu***[4] and opined that in case when the Act or Rules are silent on a particular subject and the authority implementing the same has constitutional or statutory power to implement

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3 (1998) 1 SCC 226

4 1992 Supp (2) SCC 651

it, the Court can necessarily issue directions or orders on the said subject to fill the vacuum or void till the suitable law is enacted; that one of the basic structures of our Constitution is "republican and democratic form of government and, therefore, the superintendence, direction and control of the "conduct of all elections" to Parliament and to the legislature of every State vests in the Election Commission; and the phrase "conduct of elections" is held to be of wide amplitude which would include power to make all necessary provisions for conducting free and fair elections."

13. After so holding, the Court posed a question whether the Election Commission is empowered to issue directions. Be it noted, such a direction was ordered by the High Court of Delhi and in that context the Court relied upon ***Mohinder Singh Gill V. Chief Election Commissioner***[5], ***Kanhiya Lal Omar V. R.K. Trivedi***[6], ***Common Cause V. Union of India***[7] and opined thus:

> "If right to telecast and right to view sport games and the right to impart such information is considered to be part and parcel of Article 19(1)(a), we fail to understand why the right of a citizen/voter — a little man — to know about the

5 (1978) 1 SCC 405
6 (1985) 4 SCC 628
7 (1996) 2 SCC 752

> antecedents of his candidate cannot be held to be a fundamental right under Article 19(1)(a). In our view, democracy cannot survive without free and fair election, without free and fairly informed voters. Votes cast by uninformed voters in favour of X or Y candidate would be meaningless. As stated in the aforesaid passage, one-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce. Therefore, casting of a vote by a misinformed and non-informed voter or a voter having one-sided information only is bound to affect the democracy seriously. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions. Entertainment is implied in freedom of "speech and expression" and there is no reason to hold that freedom of speech and expression would not cover right to get material information with regard to a candidate who is contesting election for a post which is of utmost importance in the democracy."

14. In this regard, a reference was made to a passage from ***P.V. Narasimha Rao V. State (CBI/SPE)***[8], jurisdiction of the Election Commission and ultimately the Court issued the following directions:

> "The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:

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8 (1998) 4 SCC 626

> (1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past — if any, whether he is punished with imprisonment or fine.
>
> (2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.
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> (3) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependants.
>
> (4) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.
>
> (5) The educational qualifications of the candidate."

15. After the said decision was rendered, The Representation of the People (Amendment) Ordinance, 2002, 4 of 2002 was promulgated by the President of India on 24.8.2002 and the validity of the same was called in question under Article 32 of the Constitution of India. The three-Judge Bench in ***People's Union for Civil Liberties (PUCL)*** (supra) posed the following questions:-

> "Should we not have such a situation in selecting a candidate contesting elections? In a vibrant democracy – is it not required that a little voter should know the biodata of his/her would-be rulers,

law- makers or destiny-makers of the nation?"

And thereafter,

"Is there any necessity of keeping in the dark the voters that their candidate was involved in criminal cases of murder, dacoity or rape or has acquired the wealth by unjustified means? Maybe, that he is acquitted because the investigating officer failed to unearth the truth or because the witnesses turned hostile. In some cases, apprehending danger to their life, witnesses fail to reveal what was seen by them."

And again

"Is there any necessity of permitting candidates or their supporters to use unaccounted money during elections? It assets are declared, would it no amount to having some control on unaccounted elections expenditure?"

16. During the pendency of the judgment of the said case, the 1951 Act was amended introducing Section 33B. The Court reproduced Section 33-A and 33-B, which are as follows:-

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

33-B. Candidate to furnish information only under the Act and the rules.—Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made thereunder."

17. Though various issues were raised in the said case, yet we are really to see what has been stated with regard to the disclosure, and the Ordinance issued after the judgment.

M.B. Shah, J., in his ultimate analysis held as follows:-

> "What emerges from the above discussion can be summarised thus:
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> (A) The legislature can remove the basis of a decision rendered by a competent court thereby rendering that decision ineffective but the legislature has no power to ask the instrumentalities of the State to disobey or disregard the decisions given by the court. A declaration that an order made by a court of law is void is normally a part of the judicial function. The legislature cannot declare that decision rendered by the Court is not binding or is of no effect.
>
> It is true that the legislature is entitled to change the law with retrospective effect which forms the basis of a judicial decision. This exercise of power is subject to constitutional provision, therefore, it cannot enact a law which is violative of fundamental right.
>
> (B) Section 33-B which provides that notwithstanding anything contained in the judgment of any court or directions issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information in respect of his election which is not required to be disclosed or furnished under the Act or the rules made thereunder, is on the face of it beyond the legislative competence, as this Court has held that the voter has a fundamental right under Article 19(1)(a) to know the antecedents of a candidate for various reasons recorded in the earlier judgment as well as in this judgment.
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> The Amended Act does not wholly cover the directions issued by this Court. On the contrary, it provides that a candidate would not be bound to

furnish certain information as directed by this Court.

(C) The judgment rendered by this Court in *Assn. for Democratic Reforms* has attained finality, therefore, there is no question of interpreting constitutional provision which calls for reference under Article 145(3).

(D) The contention that as there is no specific fundamental right conferred on a voter by any statutory provision to know the antecedents of a candidate, the directions given by this Court are against the statutory provisions is, on the face of it, without any substance. In an election petition challenging the validity of an election of a particular candidate, the statutory provisions would govern respective rights of the parties. However, voters' fundamental right to know the antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures.

(E) It is established that fundamental rights themselves have no fixed content, most of them are empty vessels into which each generation must pour its content in the light of its experience. The attempt of the Court should be to expand the reach and ambit of the fundamental rights by process of judicial interpretation. During the last more than

> half a decade, it has been so done by this Court consistently. There cannot be any distinction between the fundamental rights mentioned in Chapter III of the Constitution and the declaration of such rights on the basis of the judgments rendered by this Court."

Being of this view, he declared Section 33-B as illegal, null and void.

18. **P. Venkatarama Reddi, J**. adverted to freedom of expression and right to information in the context of voters' right to know the details of contesting candidates and right of the media and others to enlighten the voter. As a principle, it was laid down by him that right to make a choice by means of a ballot is a part of freedom of expression. Some of the eventual conclusions recorded by him that are pertinent for our present purpose, are:-

> "(1) Securing information on the basic details concerning the candidates contesting for elections to Parliament or the State Legislature promotes freedom of expression and therefore the right to information forms an integral part of Article 19(1)(a). This right to information is, however, qualitatively different from the right to get information about public affairs or the right to receive information through the press and electronic media, though, to a certain extent, there may be overlapping.
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> xxx xxx xxx

(3) The directives given by this Court in *Union of India v. Assn. for Democratic Reforms* were intended to operate only till the law was made by the legislature and in that sense "pro tempore" in nature. Once legislation is made, the Court has to make an independent assessment in order to evaluate whether the items of information statutorily ordained are reasonably adequate to secure the right of information available to the voter/citizen. In embarking on this exercise, the points of disclosure indicated by this Court, even if they be tentative or ad hoc in nature, should be given due weight and substantial departure therefrom cannot be countenanced.

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5) Section 33-B inserted by the Representation of the People (Third Amendment) Act, 2002 does not pass the test of constitutionality, firstly, for the reason that it imposes a blanket ban on dissemination of information other than that spelt out in the enactment irrespective of the need of the hour and the future exigencies and expedients and secondly, for the reason that the ban operates despite the fact that the disclosure of information now provided for is deficient and inadequate.

(6) The right to information provided for by Parliament under Section 33-A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. However, there is no good reason for excluding the pending cases in which cognizance has been taken by the Court from the ambit of disclosure."

19. **Dharmadhikari, J**. in his supplementing opinion, observed thus:

> "The reports of the advisory commissions set up one after the other by the Government to which a reference has been made by Brother Shah, J., highlight the present political scenario where money power and muscle power have substantially polluted and perverted the democratic processes in India. To control the ill-effects of money power and muscle power the commissions recommend that election system should be overhauled and drastically changed lest democracy would become a teasing illusion to common citizens of this country. Not only a half-hearted attempt in the direction of reform of the election system is to be taken, as has been done by the present legislation by amending some provisions of the Act here and there, but a much improved elections system is required to be evolved to make the election process both transparent and accountable so that influence of tainted money and physical force of criminals do not make democracy a farce – the citizen's fundamental "right to information" should be recognised and fully effectuated. This freedom of a citizen to participate and choose a candidate at an election is distinct from exercise of his right as a voter which is to be regulated by statutory law on the election like the RP Act."

20. The purpose of referring to the aforesaid authorities in extenso is to focus how this Court has given emphasis on the rights of a voter to know about the antecedents of a candidate, especially, the criminal antecedents, contesting the election. With the efflux of time, the Court in subsequent decisions has further elaborated the right to know in the context of election, as holding a free and fair election stabilises the democratic process which leads to good governance. In this regard,

reference to a recent three-Judge Bench decision in ***Resurgence India V. Election Commission of India & Anr.***[9] is advantageously fruitful. A writ petition was filed under Article 32 of the Constitution of India to issue specific directions to effectuate the meaningful implementation of the judgments rendered by this Court in ***Association for Democratic Reforms*** (supra), ***People's Union for Civil Liberties (PUCL)*** (supra) and also to direct the respondents therein to make it compulsory for the Returning Officers to ensure that the affidavits filed by the contestants are complete in all respects and to reject the affidavits having blank particulars. The Court referred to the background, relief sought and Section 33A, 36 and 125A of the 1951 Act. A reference was also made to the authority in ***Shaligram Shrivastava V. Naresh Singh Patel***[10]. Culling out the principle from the earlier precedents, the three-Judge Bench opined:

> "Thus, this Court held that a voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament and such right to get information is universally recognized natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a)

9 AIR 2014 SC 344
10 (2003) 2 SCC 176

> of the Constitution. It was further held that the voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is a must. Thus, in unequivocal terms, it is recognized that the citizen's right to know of the candidate who represents him in the Parliament will constitute an integral part of Article 19(1)(a) of the Constitution of India and any act, which is derogative of the fundamental rights is at the very outset ultra vires".

The Court posed the question whether filing of affidavit stating that the information given in the affidavit is correct, but leaving the contents blank would fulfil the objectives behind filing the same, and answered the question in the negative on the reasoning that the ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizen under Article 19(1)(a) of the Constitution of India and the citizens are required to have the necessary information in order to make a choice of their voting and, therefore, when a candidate files an affidavit with blank particulars at the time of filing of the nomination paper, it renders the affidavit itself nugatory.

21. It is apt to note here that the Court referred to paragraph 73 of the judgment in ***People's Union for Civil Liberties (PUCL)*** (supra) case and elaborating further ruled

thus:

> "If we accept the contention raised by Union of India, viz., the candidate who has filed an affidavit with false information as well as the candidate who has filed an affidavit with particulars left blank should be treated at par, it will result in breach of fundamental right guaranteed under Article 19(1)(a) of the Constitution, viz., 'right to know' which is inclusive of freedom of speech and expression as interpreted in *Association for Democratic Reforms* (supra)."

22. The Court further held that filing of an affidavit with blank places will be directly hit by Section 125A(i) of the 1951 Act. Ultimately, the Court held:-

> "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."

23. The Court summarized its directions in the following manner:

> "(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."

24. The fear to disclose details of pending cases has been haunting the people who fight the elections at all levels. Fear, compels a man to take the abysmal and unfathomable route; whereas courage, mother of all virtues, not only shatters fears, but atrophies all that come in its way without any justification and paralyses everything that does not deserve to have locomotion. Democracy nurtures and dearly welcomes transparency. Many a cobweb is woven or endeavoured to be woven to keep at bay what sometimes becomes troublesome. Therefore, Rules 41(2) and (3) and 49-O of the Conduct of Election Rules, 1961 (for short, 'the Rules') came into force, to give some space to the candidates and deny the advantage to the voters. At that juncture, a writ petition under Article 32 of the Constitution of India was filed by the People's Union for Civil Liberties (PUCL) and another, challenging the constitutional validity of the said Rules to the extent that the said provisions violate the secrecy of voting which is fundamental to free and fair elections and is required to be maintained as per Section 128

of the 1951 Act and Rules 39, 49-M of the Rules. Relevant parts of Rule 41 and Rule 49-O read as follows:

> "41. **Spoilt and returned ballot papers** – (1).....
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> (2) If an elector after obtaining a ballot paper decides not to use it, he shall return it to the Presiding Officer, and the ballot paper so returned and the counterfoil of such ballot paper shall be marked as 'Returned: cancelled' by the Presiding Officer.
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> (3) All ballot papers cancelled under sub-rule (1) or sub-rule (2) shall be kept in a separate packet.
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> 49-O. Elector deciding not to vote – If an elector, after his electoral roll number has been duly entered in the register of voters in Form 17-A and has put his signature or thumb impression thereon as required under sub-rule (1) of Rule 49-L decided not to record his vote, a remark to this effect shall be made against the said entry in Form 17-A by the Presiding Officer and the signature or thumb impression of the elector shall be obtained against such remark."

25. Testing the validity of the aforesaid Rules, a three-Judge Bench in ***People's Union for Civil Liberties and Another V. Union of India and Another***[11] after dwelling upon many a facet opined thus:

> "Democracy being the basic feature of our constitutional set-up, there can be no two opinions that free and fair elections would alone guarantee the growth of a healthy democracy in the country.

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11 (2013) 10 SCC 1

> The "fair" denotes equal opportunity to all people. Universal adult suffrage conferred on the citizens of India by the Constitution has made it possible for these millions of individual voters to go to the polls and thus participate in the governance of our country. For democracy to survive, it is essential that the best available men should be chosen as people's representatives for proper governance of the country. This can be best achieved through men of high moral and ethical values, who win the elections on a positive vote. Thus in a vibrant democracy, the voter must be given an opportunity to choose none of the above (NOTA) button, which will indeed compel the political parties to nominate a sound candidate. This situation palpably tells us the dire need of negative voting."

26. Ultimately, the Court declared Rules 41(2) and (3) and Rule 49-O of the Rules as ultra vires the Section 128 of the 1951 Act and Article 19(1)(a) of the Constitution to the extent they violate the secrecy of voting and accordingly directed the Election Commission to provide necessary provision in the ballot papers/EVMs and another button called "None of the Above" (NOTA).

27. The aforesaid decisions pronounce beyond any trace of doubt that a voter has a fundamental right to know about the candidates contesting the elections as that is essential and a necessary concomitant for a free and fair election. In a way, it is the first step. The voter is entitled to make a choice after coming to know the antecedents of a candidate a requisite for

making informed choice. It has been held by **Shah, J**. in **People's Union of Civil Liberties** (supra) that the voter's fundamental right to know the antecedents of a candidate is independent of statutory requirement under the election law, for a voter is first a citizen of this country and apart from statutory rights, he has the fundamental right to know and be informed. Such a right to know is conferred by the Constitution.

28. Speaking about the concept of voting, this Court in ***Lily Thomas V. Speaker of Lok Sabha***[12], has ruled that:-

> ".....Voting is a formal expression of will or opinion by the person entitled to exercise the right on the subject or issue in question [and that] 'right to vote means right to exercise the right in favour of or against the motion or resolution. Such a right implies right to remain neutral as well'."

29. Emphasising on the choice in **People's Union for Civil Liberties (NOTA case)**, the Court has expressed thus:-

> "**55.** Democracy is all about choice. This choice can be better expressed by giving the voters an opportunity to verbalise themselves unreservedly and by imposing least restrictions on their ability to make such a choice. By providing NOTA button in the EVMs, it will accelerate the effective political participation in the present state of democratic system and the voters in fact will be empowered. We are of the considered view that in bringing out this

12 (1993) 4 SCC 234

right to cast negative vote at a time when electioneering is in full swing, it will foster the purity of the electoral process and also fulfil one of its objective, namely, wide participation of people.

56. Free and fair election is a basic structure of the Constitution and necessarily includes within its ambit the right of an elector to cast his vote without fear of reprisal, duress or coercion. Protection of elector's identity and affording secrecy is therefore integral to free and fair elections and an arbitrary distinction between the voter who casts his vote and the voter who does not cast his vote is violative of Article 14. Thus, secrecy is required to be maintained for both categories of persons.

57. Giving right to a voter not to vote for any candidate while protecting his right of secrecy is extremely important in a democracy. Such an option gives the voter the right to express his disapproval with the kind of candidates that are being put up by the political parties. When the political parties will realise that a large number of people are expressing their disapproval with the candidates being put up by them, gradually there will be a systemic change and the political parties will be forced to accept the will of the people and field candidates who are known for their integrity.

58. The direction can also be supported by the fact that in the existing system a dissatisfied voter ordinarily does not turn up for voting which in .turn provides a chance to unscrupulous elements to impersonate the dissatisfied voter and cast a vote, be it a negative one. Furthermore, a provision of negative voting would be in the interest of promoting democracy as it would send clear signals to political parties and their candidates as to what the electorate thinks about them."

30. Having stated about the choice of a voter, as is requisite

in the case at hand, we are required to dwell upon the failure to disclose the criminal cases pending against a candidate and its eventual impact; whether it would come within the concept of undue influence and thereby corrupt practice as per Section 123(2) of the 1951 Act. To appreciate the said facet, the sanctity of constitutional democracy and how it is dented by the criminalisation of politics are to be taken note of. The importance of constitutional democracy has been highlighted from various angles by this Court in ***S. Raghbir Singh Gill V. S. Gurcharan Singh Tohra***[13], ***S.S. Bola V. B.D. Sardana***[14], ***State of U.P. V. Jai Bir Singh***[15], ***Reliance Natural Resources Ltd., V. Reliance Industries Ltd.***[16], ***Ram Jethmalani V. Union of India***[17] and ***State of Maharahtra V. Saeed Sohail Sheikh***[18].

31. In a constitutional democracy, we are disposed to think that any kind of criminalisation of politics is an extremely lamentable situation. It is an anathema to the sanctity of democracy. The criminalisation creates a concavity in the heart of democracy and has the potentiality to paralyse,

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13 (1980) Supp SCC 53
14 (1997) 8 SCC 522
15 (2005) 5 SCC 1
16 (2010) 7 SCC 1
17 (2011) 8 SCC 1
18 (2012) 13 SCC 192

comatose and strangulate the purity of the system. In ***Dinesh Trivedi V. Union of India***[19]**,** a three-Judge Bench while dealing with the cause for the malaise which seems to have stricken Indian democracy in particular and Indian society in general, one of the primary reasons was identified as criminalisation of politics. The Court referred to the report of Vohra Committee and observed thus:

> "...In the main report, these various reports have been analysed and it is noted that the growth and spread of crime syndicates in Indian society has been pervasive. It is further observed that these criminal elements have developed an extensive network of contacts with bureaucrats, government functionaries at lower levels, politicians, media personalities, strategically located persons in the non-governmental sector and members of the judiciary; some of these criminal syndicates have international links, sometimes with foreign intelligence agencies. The Report recommended that an efficient nodal cell be set up with powers to take stringent action against crime syndicates, while ensuring that it would be immune from being exploited or influenced."

In the said case, the Court further observed:

> "We may now turn our focus to the Report and the follow-up measures that need to be implemented. The Report reveals several alarming and deeply disturbing trends that are prevalent in our present society. For some time now, it has been generally perceived that the nexus between politicians,

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19 (1997) 4 SCC 306

> bureaucrats and criminal elements in our society has been on the rise, the adverse effects of which are increasingly being felt on various aspects of social life in India. Indeed, the situation has worsened to such an extent that the President of our country felt constrained to make references to the phenomenon in his Addresses to the Nation on the eve of the Republic Day in 1996 as well as in 1997."

32. In ***Anukul Chandra Pradhan V. Union of India and others***[20], the Court was dealing with the provisions made in the election law which excluded persons with criminal background and the kind specified therein, from the elections as candidates and voters. In that context, the Court held thus:

> ".....The object is to prevent criminalisation of politics and maintain probity in elections. Any provision enacted with a view to promote this object must be welcomed and upheld as subserving the constitutional purpose. The elbow room available to the legislature in classification depends on the context and the object for enactment of the provision. The existing conditions in which the law has to be applied cannot be ignored in adjudging its validity because it is relatable to the object sought to be achieved by the legislation. Criminalisation of politics is the bane of society and negation of democracy. It is subversive of free and fair elections which is a basic feature of the Constitution. Thus, a provision made in the election law to promote the object of free and fair elections and facilitate maintenance of law and order which are the essence of democracy must, therefore, be so viewed. More

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20 (1997) 6 SCC 1

> elbow room to the legislature for classification has to be available to achieve the professed object."

Be it stated, the Court did not accept the challenge to the constitutional validity of sub-Section 5 of Section 62 of the 1951 Act which was amended to provide that no person shall vote at any election if he is confined in prison, whether under a sentence of imprisonment, or under lawful confinement, or otherwise or is in the lawful custody of the police. A proviso was carved out to exclude a person subjected to preventive detention under any law for the time being in force.

33. Recently, in ***Manoj Narula V. Union of India***[21], the Constitution Bench harping on the concept of systemic corruption, has been constrained to state thus:

> "12. It is worth saying that systemic corruption and sponsored criminalisation can corrode the fundamental core of elective democracy and, consequently, the constitutional governance. The agonised concern expressed by this Court on being moved by the conscious citizens, as is perceptible from the authorities referred to hereinabove, clearly shows that a democratic republic polity hopes and aspires to be governed by a government which is run by the elected representatives who do not have any involvement in serious criminal offences or offences relating to corruption, casteism, societal problems, affecting the sovereignty of the nation and many other offences. There are recommendations given by different committees

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21 (2014) 9 SCC 1

constituted by various Governments for electoral reforms. Some of the reports that have been highlighted at the Bar are (*i*) Goswami Committee on Electoral Reforms (1990), (*ii*) Vohra Committee Report (1993), (*iii*) Indrajit Gupta Committee on State Funding of Elections (1998), (*iv*) Law Commission Report on Reforms of the Electoral Laws (1999), (*v*) National Commission to Review the Working of the Constitution (2001), (*vi*) Election Commission of India — Proposed Electoral Reforms (2004), (*vii*) the Second Administrative Reforms Commission (2008), (*viii*) Justice J.S. Verma Committee Report on Amendments to Criminal Law (2013), and (ix) Law Commission Report (2014).

13. Vohra Committee Report and other reports have been taken note of on various occasions by this Court. Justice J.S. Verma Committee Report on Amendments to Criminal Law has proposed insertion of Schedule 1 to the 1951 Act enumerating offences under IPC befitting the category of "heinous" offences. It recommended that Section 8(1) of the 1951 Act should be amended to cover, inter alia, the offences listed in the proposed Schedule 1 and a provision should be engrafted that a person in respect of whose acts or omissions a court of competent jurisdiction has taken cognizance under Sections 190(1)(*a*), (*b*) or (*c*) of the Code of Criminal Procedure or who has been convicted by a court of competent jurisdiction with respect to the offences specified in the proposed expanded list of offences under Section 8(1) shall be disqualified from the date of taking cognizance or conviction, as the case may be. It further proposed that disqualification in case of conviction shall continue for a further period of six years from the date of release upon conviction and in case of acquittal, the disqualification shall operate from the date of taking cognizance till the date of acquittal."

34. Criminalisation of politics is absolutely unacceptable.

Corruption in public life is indubitably deprecable. The citizenry has been compelled to stand as a silent, deaf and mute spectator to the corruption either being helpless or being resigned to fate. Commenting on corruption, the court in ***Niranjan Hemchandra Sashittal V. State of Maharashtra***[22], was constrained to say thus:

> "It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered. The only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality."

35. The Constitution Bench in ***Subramanian Swamy V. CBI***[23], while striking down Section 6-A of the Delhi Special Police Establishment Act, 1946, observed thus:

> "Corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the PC Act, 1988. It is difficult to justify the classification which has been made in Section 6-A because the goal of law in the PC Act, 1988 is to meet corruption cases with a very strong hand and all public servants are

22 (2013) 4 SCC 642
23 (2014) 8 SCC 682

> warned through such a legislative measure that corrupt public servants have to face very serious consequences."
>
> And thereafter:
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> "Corruption is an enemy of nation and tracking down corrupt public servant, howsoever high he may be, and punishing such person is a necessary mandate under the PC Act, 1988. The status or position of public servant does not qualify such public servant from exemption from equal treatment. The decision-making power does not segregate corrupt officers into two classes as they are common crimedoers and have to be tracked down by the same process of inquiry and investigation."

36. In this backdrop, we have looked and posed the question that whether a candidate who does not disclose the criminal cases in respect of heinous or serious offences or moral turpitude or corruption pending against him would tantamount to undue influence and as a fallout to corrupt practice. The issue is important, for misinformation nullifies and countermands the very basis and foundation of voter's exercise of choice and that eventually promotes criminalisation of politics by default and due to lack of information and awareness. The denial of information, a deliberate one, has to be appreciated in the context of corrupt practice. Section 123 of the 1951 Act deals with corrupt

practices. Sub-Section 2 of Section 123 deals with undue influence. The said sub-Section reads as follows:

> "(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person [with the consent of the candidate or his election agent], with the free exercise of any electoral right:
>
> Provided that-
>
> (a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who-
>
> (i) threatens any candidate or any elector, or any person in whom a candidate or an elector interest, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or
>
> (ii) induces or attempt to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,
>
> shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;
>
> (b) a declaration of public policy, or a promise of publication, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause."

37. Section 259 of the 1994 Act deals with grounds for declaring elections to be void. Section 259(1) is as follows:

"259. Grounds for declaring elections to be void.- (1) Subject to the provisions of sub-section (2), if the District Judge is of opinion-

(a) that on the date of his election a returned candidate was not qualified or was disqualified, to be chosen as a member under this Act, or,

(b) that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent, or

(c) that any nomination paper has been improperly rejected, or

(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) by any corrupt practice committed in the interests of the returned candidate by a person other than that candidate or his agent or a person acting with the consent of such candidate or agent, or

(iii) by the improper acceptance or refusal of any vote or reception of any vote which is void; or

(iv) by the non-compliance with the provisions of this Act or of any rules or orders made thereunder, the Court shall declare the election of the returned candidate to be void."

38. Section 260 deals with corrupt practices. Sub-Sections (1) and (2) of Section 260 read as follows:

"260. **Corrupt practices** – The following shall be deemed to be corrupt practice for the purposes of this Act:-

> (1) Bribery as defined in Clause (1) of Section 123 of the Representation of People Act, 1951. (Central Act XLIII of 1951)
>
> (2) Undue influence as defined in Clause (2) of the said section."

39. From the aforesaid provisions, it is clear as day that concept of undue influence as is understood in the context of Section 123(2) of the 1951 Act has been adopted as it is a deemed conception for all purposes. Thus, a candidate is bound to provide the necessary information at the time of filing nomination paper and for the said purpose, the Returning Officer can compel the candidate to furnish the relevant information and if a candidate, as has been held in ***Resurgence India*** (supra), files an affidavit with a blank particulars would render the affidavit nugatory. As has been held in the said judgment if a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is liable to be rejected. It has been further directed in the said case that the candidate must make a minimum effort to explicitly remark as 'Nil' or 'Not Applicable' or 'Not Known' in the columns and not to leave the particulars blank. It is because the citizens have a fundamental right to

know about the candidate, for it is a natural right flowing from the concept of democracy. Thus, if a candidate paves the path of adventure to leave the column blank and does not rectify after the reminder by the Returning Officer, his nomination paper is fit to be rejected. But, once he fills up the column with some particulars and deliberately does not fill up other relevant particulars, especially, pertaining to the pendency of criminal cases against him where cognizance has been taken has to be in a different sphere.

40. Mr. Harish Salve, learned senior counsel, who was requested to assist the Court, would unequivocally submit that it would come within the arena of corrupt practice. The propositions that have been presented by the learned Amicus Curiae are as follows:

A. The notion of what constitutes the free exercise of any electoral right cannot be static. The exercise of electoral rights in a democracy is central to the very existence of a democracy. The notion of the free exercise of any electoral right is thus not something that can be ossified – it must

evolve with the constitutional jurisprudence and be judged by contemporary constitutional values.

B. The disclosure by a candidate of his character antecedents was premised by this Court on the right of an elector to know – which right flows from the right to the informed exercise of an electoral right.

C. Section 123(2) of the 1951 Act necessarily implies that any influence on the mind of the voter that interferes with a free exercise of the electoral right is a corrupt practice. Misleading voters as to character antecedents of a candidate in contemporary times is a serious interference with the free exercise of a voter's right.

D. In the context of disclosure of information, if the falsity or suppression of information relating to the criminal antecedents of a candidate is serious enough to mislead voters as to his character, it would clearly *influence* a voter in favour of a candidate. This Court should take judicial notice of the problem of criminalization

of politics – which led this Court to ask Parliament to seriously consider ameliorative changes to the law.

E. Section 123 of the 1951 Act defines "undue influence" in terms of interference with the free exercise of an electoral right. This result, i.e., interference with the free exercise of an electoral right, may apply to a person or a body of persons. As clarified in *Ram Dial v. Sant Lal, (1959) 2 SCR 748*, Section 123 does not emphasise the individual aspect of the exercise of such influence, but pays regard to the use of such influence as has the tendency to bring about the result contemplated in the clause.

F. It is not every failure to disclose information that would constitute an *undue influence*. In the context of criminal antecedents, the failure to disclose the particulars of any charges framed, cognizance taken, or conviction for any offence that involves moral turpitude would constitute

an act that causes *undue influence* upon the voters.

G. Purity of public life has its own hallowedness and hence, there is emphasis on the importance of truth in giving information. Half truth is worse than silence; it has the effect potentiality to have a cacophony that can usher in anarchy.

Learned Amicus Curiae has commended us to certain paragraphs from ***Association for Democratic Reforms*** (supra), ***People's Union for Civil Liberties (PUCL)*** (supra) and ***Manoj Narula*** (supra).

41. Mr. Maninder Singh, learned Additional Solicitor General, who was requested to assist us, has submitted that to sustain the paradigms of constitutional governance, it is obligatory on the part of the candidate to strictly state about the criminal cases pending against him, especially, in respect of the offences which are heinous, or involve moral turpitude or corruption. He would submit, with all fairness at his command, that for democracy to thrive, the 'right to know' is paramount and if a maladroit attempt is made by a candidate not to disclose the pending cases against him pertaining to

criminal offences, it would have an impact on the voters as they would not be in a position to know about his antecedents and ultimately their choice would be affected. Learned ASG would urge that as the non-disclosure of the offence is by the candidate himself, it would fall in the compartment of corrupt practice.

42. Mr. Subramonium Prasad, learned AAG for the State of Tamil Nadu and learned counsel for private respondents have supported the contentions raised by Mr. Harish Salve and Mr. Maninder Singh.

43. Ms. V. Mohana, learned counsel for the appellant would submit that the High Court has fallen into error by treating it as a corrupt practice. It is her submission that as a matter of fact, there has been no non-disclosure because the appellant had stated about the crime number, and all other cases are ancillary to the same and, in a way, connected and, therefore, non-mentioning of the same would not bring his case in the arena of non-disclosure. That apart, learned counsel would contend that the appellant has read upto Class X and he had thought as the other cases were ancillary to the principal one, and basically offshoots, they need not be stated and,

therefore, in the absence of any intention, the concept of undue influence cannot be attracted. Learned counsel would urge that though there was assertion of the registration of cases and cognizance being taken in respect of the offences, yet the allegation of corrupt practices having not mentioned, the election could not have been set aside. To buttress her submissions, she has commended us to the decisions in ***Mahadeo V. Babu Udai Pratap Singh & Ors.***[24]***, Baburao Patel & Ors. V. Dr. Zakir Hussain & Ors.***[25]***, Jeet Mohinder Singh V. Harminder Singh Jassi***[26]***, Govind Singh V. Harchand Kaur***[27]***, Mangani Lal Mandal V. Bishnu Deo Bhandari***[28]***,*** and ***Shambhu Prasad Sharma V. Charandas Mahant***[29],

44. At this stage, we think it condign to survey certain authorities how undue influence has been viewed by this Court and the relevant context therein. In ***Ram Dial v. Sant Lal***[30] while discussing about the facet of undue influence, the three-Judge Bench distinguished the words of English Law

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24 AIR 1966 SC 824
25 AIR 1968 SC 904
26 (1999) 9 SCC 386
27 (2011) 2 SCC 621
28 (2012) 3 SCC 314
29 (2012) 11 SCC 390
30 AIR 1959 SC 855

relating to undue influence by stating that the words of the English statute lay emphasis upon the individual aspect of the exercise of undue influence. Thereafter, the Court proceeded to state about the undue influence under the Indian law by observing thus:

> "…The Indian law, on the other hand, does not emphasize the individual aspect of the exercise of such influence, but pays regard to the use of such influence as has the tendency to bring about the result contemplated in the clause. What is material under the Indian law, is not the actual effect produced, but the doing of such acts as are calculated to interfere with the free exercise of any electoral right. Decisions of the English courts, based on the words of the English statute, which are not strictly in pari materia with the words of the Indian statute, cannot, therefore, be used as precedents in this country."
>
> [Emphasis added]

After so stating, the Court considered the submission that a religious leader has as much the right to freedom of speech as any other citizen and, that, therefore, exhortation in favour of a particular candidate should not have the result of vitiating the election. Elaborating further, it has been held:

> "…… the religious leader has a right to exercise his influence in favour of any particular candidate by voting for him and by canvassing votes of others for him. He has a right to express his opinion on the individual merits of the candidates. Such a course of conduct on his part, will only be a use of his great influence amongst a particular section of the voters

> in the constituency; but it will amount to an abuse of his great influence if the words he uses in a document, or utters in his speeches, leave no choice to the persons addressed by him, in the exercise of their electoral rights. If the religious head had said that he preferred the appellant to the other candidate, because, in his opinion, he was more worthy of the confidence of the electors for certain reasons good, bad or indifferent, and addressed words to that effect to persons who were amenable to his influence, he would be within his rights, and his influence, however great, could not be said to have been misused. But in the instant case, as it appears, according to the findings of the High Court, in agreement with the Tribunal, that the religious leader practically left no free choice to the Namdhari electors, not only by issuing the *hukam* or *farman,* as contained in Exh. P-1, quoted above, but also by his speeches, to the effect that they must vote for the appellant, implying that disobedience of his mandate would carry divine displeasure or spiritual censure, the case is clearly brought within the purview of the second paragraph of the *proviso* to Section 123(2) of the Act."

In view of the aforesaid analysis, the Court dismissed the appeal and affirmed the decision of the High Court whereby it had given the stamp of approval to the order of Election Tribunal setting aside the appellants election.

45. In ***Baburao Patel*** (supra), the Court while dealing with the challenge to the Presidential Election, addressed to the issue pertaining to undue influence. The Court observed:

> "We may in this connection refer to Section 123(2) of the Representation of the People Act 1951 which also defines "undue influence". The definition there

> is more or less in the same language as in Section 171-C of the Indian Penal Code except that the words "direct or indirect" have been added to indicate the nature of interference. It will be seen that if anything, the definition of "undue influence" in the Representation of the People Act may be wider. It will therefore be useful to refer to cases under the election law to see how election tribunals have looked at the matter while considering the scope of the words "undue influence"."

46. The Court referred to the authority in ***R.B. Surendra Narayan Sinha V. Amulyadhone Roy***[31] where the question arose whether by issuing a whip on the day of election requesting the members to cast their preference in a particular order, the leader of a party exercises undue influence and the answer was given in the negative. A reference was made to ***Linge Gowda V. Shivananjappa***[32], wherein it has been held that a leader of a political party was entitled to declare the public the policy of the party and ask the electorate to vote for his party without interfering with any electoral right and such declarations on his part would not amount to undue influence under the 1951 Act. In ***Mast Ram V. S. Iqbal Singh***[33], the legitimate exercise of influence by a political party or an association should not be confused

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31 1940 IC 30

32 (1953) 6 Ele LR 288 (Ele. Tri Bangalore)

33 (1955) 12 Ele LR 34 (Ele Tri Amritsar)

with undue influence. After referring to various authorities, the Court opined thus:

> "It will be seen from the above review of the cases relating to undue influence that it has been consistently held in this country that it is open to Ministers to canvass for candidates of their party standing for election. Such canvassing does not amount to undue influence but is proper use of the Minister's right to ask the public to support candidates belonging to the Minister's party. It is only where a Minister abuses his position as such and goes beyond merely asking for support for candidates belonging to his party that a question of undue influence may arise. But so long as the Minister only asks the electors to vote for a particular candidate belonging to his party and puts forward before the public the merits of his candidate it cannot be said that by merely making such request to the electorate the Minister exercises undue influence. The fact that the Minister's request was addressed in the form of what is called a whip, is also immaterial so long as it is clear that there is no compulsion on the electorate to vote in the manner indicated."

47. In ***S.K. Singh V. V.V. Giri***[34], the majority while interpreting Section 18 of the Presidential and Vice-Presidential Elections Act, 1952 (for short, 'the 1952 Act') in the context of Section 171-C I.P.C., expressed thus:

> "….. In our opinion, if distribution of the pamphlet by post to electors or in the Central Hall is proved it would constitute "undue influence" within Section 18 and it is not necessary for the petitioners to go further and prove that statements contained in the

34 (1970) 2 SCC 567

> pamphlet were made the subject of a verbal appeal or persuasion by one member of the electoral college to another and particularly to those in the Congress fold."

After so stating, the Court drew distinction between Section 18 of the 1952 Act and Section 123 of the 1951 Act. It referred to Chapter IX A of the Indian Penal Code, 1860 which deals with offences relating to elections and adverted to the issue of undue influence at elections as enumerated under Section 171-C. The argument that was advanced before the Court was to the following effect:

> "…the language of Section 171-C suggests that undue influence comes in at the second and not at the first stage, and therefore, it can only be by way of some act which impedes or obstructs the elector in his freely casting the vote, and not in any act which precedes the second stage i.e. during the stage when he is making his choice of the candidate whom he would support. This argument was sought to be buttressed by the fact that canvassing is permissible during the first stage, and, therefore, the interference or attempted interference contemplated by Section 171-C can only be that which is committed at the stage when the elector exercises his right i.e. after he has made up his mind to vote for his chosen candidate or to refrain from voting. It was further argued that the words used in Section 171-C were "the free exercise of vote" and not "exercise of free vote". The use of those words shows that canvassing or propaganda, however virulent, for or against a candidate would not amount to undue influence, and that under influence can only mean some act by way of threat or fear or some adverse consequence administered

at the time of casting the vote."

Repelling the said contention, the Court held thus:

> "We do not think that the Legislature, while framing Chapter IX-A of the Code ever contemplated such a dichotomy or intended to give such a narrow meaning to the freedom of franchise essential in a representative system of Government. In our opinion the argument mentioned above is fallacious. It completely disregards the structure and the provisions of Section 171-C. Section 171-C is enacted in three parts. The first sub-section contains the definition of "undue influence". This is in wide terms and renders a person voluntarily interfering or attempting to interfere with the free exercise of any electoral right guilty of committing undue influence. That this is very wide is indicated by the opening sentence of sub-section (2), i.e. "without prejudice to the generality of the provisions of sub-section (1)". It is well settled that when this expression is used anything contained in the provisions following this expression is not intended to cut down the generality of the meaning of the preceding provision. This was so held by the Privy Council in *King-Emperor* v. *Sibnath Banerj*[35]."

After so stating, the Court proceeded to lay down as follows:-

> "It follows from this that we have to look at sub-section (1) as it is without restricting its provisions by what is contained in sub-section (2). Sub-section (3) throws a great deal of light on this question. It proceeds on the assumption that a declaration of public policy or a promise of public action or the mere exercise of a legal right can interfere with an electoral right, and therefore it provides that if there is no intention to interfere with the electoral right it

35 AIR 1945 PC 156

shall not be deemed to be interference within the meaning of this section. At what stage would a declaration of public policy or a promise of public action act and tend to interfere? Surely only at the stage when a voter is trying to make up his mind as to which candidate he would support. If a declaration of public policy or a promise of public action appeals to him, his mind would decide in favour of the candidate who is propounding the public .policy or promising a public action. Having made up his mind he would then go and vote and the declaration of public policy having had its effect it would no longer have any effect on the physical final act of casting his vote.

Sub-section (3) further proceeds on the basis that the expression "free exercise of his electoral right" does not mean that a voter is not to be influenced. This expression has to be read in the context of an election in a democratic society and the candidates and their supporters must naturally be allowed to canvass support by all legal and legitimate means. They may propound their programmes, policies and views on various questions which are exercising the minds of the electors. This exercise of the right by a candidate or his supporters to canvass support does not interfere or attempt to interfere with the free exercise of the electoral right. What does, however, attempt to interfere with the free exercise of an electoral right is, if we may use the expression, "tyranny over the mind". If the contention of the respondent is to be accepted, it would be quite legitimate on the part of a candidate or his supporter to hypnotise a voter and then send him to vote. At the stage of casting his ballot paper there would be no pressure cast on him because his mind has already been made up for him by the hypnotiser.

It was put like this in a book on Elections:

> "The freedom of election is two-fold; (*1*) freedom in the exercise of judgment. Every voter should be free to exercise his own judgment, in selecting the candidate he believes to be best fitted to represent the constituency; (*2*) Freedom to go and have the means of going to the poll to give his vote without fear or intimidation."[36]

We are supported in this view by the statement of Objects and Reasons attached to the bill which ultimately resulted in the enactment of Chapter IX-A. That statement explains in clear language that "undue influence was intended to mean voluntary interference or attempted interference with the right of any person to stand or not to stand as or withdraw from being a candidate or to vote or refrain from voting, and that the definition covers all threats of injury to person or property and all illegal methods of persuasion, and any interference with the liberty of the candidates or the electors". "The Legislature has wisely refrained from defining the forms interference may take. The ingenuity of the human mind is unlimited and perforce the nature of interference must also be unlimited."

[Emphasis supplied]

48. In ***Bachan Singh V. Prithvi Singh***[37], there was a publication of posters bearing the caption "Pillars of Victory" with photographs of the Prime Minister, Defense Minister and Foreign Minister. It was contended before this Court that the publication of the poster not only amounted to the exercise of "undue influence" within the contemplation of Section 123(2)

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36 Law of Elections and Election Petitions – Nanak Chand – 1950 Edn., p. 263

37 (1975) 1 SCC 368

but also constituted an attempt to obtain or procure assistance from the members of the armed forces of the Union for furtherance of the prospects of returned candidate's election within the purview of Section 123(7). The Court, treating the contention as unsustainable held thus:

> "Doubtless the definition of "undue influence" in sub-section (2) of Section 123 is couched in very wide terms, and on first flush seems to cover every conceivable act which directly or indirectly interferes or attempts to interfere with the free exercise of electoral right. In one sense even election propaganda carried on vigorously, blaringly and systematically through charismal leaders or through various media in favour of a candidate by recounting the glories and achievements of that candidate or his political party in administrative or political field, does meddle with and mould the independent volition of electors, having poor reason and little education, in the exercise of their franchise. That such a wide construction would not be in consonance with the intendment of the legislature is discernible from the proviso to this clause. The proviso illustrates that ordinarily interference with the free exercise of electoral right involves either violence or threat of injury of any kind to any candidate or an elector or inducement or attempt to induce a candidate or elector to believe that he will become an object of divine displeasure or spiritual censure. The prefix "undue" indicates that there must be some abuse of influence. "Undue influence" is used in contra-distinction to "proper influence". Construed in the light of the proviso, clause (2) of Section 123 does not bar or penalise legitimate canvassing or appeals to reason and judgment of the voters or other lawful means of persuading voters to vote or not to vote for a candidate. Indeed, such proper and peaceful

> persuasion is the motive force of our democratic process.
>
> We are unable to appreciate how the publication of this poster interfered or was calculated to interfere with the free exercise of the electoral right of any person. There was nothing in it which amounted to a threat of injury or undue inducement of the kind inhibited by Section 123(2)."

49. In ***Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra***[38]**,** a three-Judge Bench speaking through **Beg, J**., about undue influence had to say this:

> "Section 123(2), gives the "undue influence" which could be exercised by a candidate or his agent during an election a much wider connotation than this expression has under the Indian Contract Act. "Undue influence", as an election offence under the English law is explained as follows in *Halsbury's Laws of England*, Third Edn., Vol. 14, pp. 223-24(para 387):
>
> > "A person is guilty of undue influence, if he directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraint, or inflicts, or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting, or on account of that person having voted or refrained from voting.
> >
> > A person is also guilty of undue influence if, by abduction, duress or any fraudulent

38 (1976) 2 SCC 17

> device or contrivance, he impedes or prevents the free exercise of the franchise of an elector or proxy for an elector, or thereby compels, induces or prevails upon an elector or proxy for an elector either to vote or to refrain from voting."

It will be seen that the English law on the subject has the same object as the relevant provisions of Section 123 of our Act. But, the provisions of Section 123(2), (3) and (3-A) seem wider in scope and also contain specific mention of what may be construed as "undue influence" viewed in the background of our political history and the special conditions which have prevailed in this country.

We have to determine the effect of statements proved to have been made by a candidate, or, on his behalf and with his consent, during his election, upon the minds and feelings of the ordinary average voters of this country in every case of alleged corrupt practice of undue influence by making statements. We will, therefore, proceed to consider the particular facts of the case before us.

xxxxx xxxxx xxxxx

To return to the precise question before us now, we may repeat that what is relevant in such a case is what is professed or put forward by a candidate as a ground for preferring him over another and not the motive or reality behind the profession which may or may not be very secular or mundane. It is the professed or ostensible ground that matters. If that ground is religion, which is put on the same footing as race, caste, or language as an objectionable ground for seeking votes, it is not permissible. On the other hand, if support is sought on a ground distinguishable from those falling in the prohibited categories, it will not be struck by Section 123 of the Act whatever else it may not offend. It is then left to the electorate to

> decide whether a permissible view is right or wrong."

50. In ***Aad Lal v. Kanshi Ram***[39]**,** while deliberating on undue influence as enshrined under Section 123(2) of the 1951 Act, it has been held thus:

> "It has to be remembered that it is an essential ingredient of the corrupt practice of "undue influence" under sub-section (2) of Section 123 of the Act, that there should be any "direct or indirect interference or attempt to interfere" on the part of the candidate or his agent, or of any other person with the consent of the candidate or his agent, "with the free exercise of any electoral right". There are two provisos to the sub-section, but they are obviously not applicable to the controversy before us. It was .therefore necessary, for the purpose of establishing the corrupt practice of "undue influence", to prove that there was any direct or indirect interference or attempt to interfere with the exercise of any electoral right."

51. At this stage, it is useful to clarify that the provisos to Section 123(2) are, as has been postulated in the provision itself, without prejudice to the generality of the said clause. The meaning of the said phraseology has been interpreted in ***Shiv Kripal Singh*** (supra). In this context, we may profitably quote a passage from ***Om Prakash & Ors. V. Union of India & Ors***.[40]

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39 (1980) 2 SCC 350

40 (1970) 3 SCC 942

"It is therefore contended relying on sub-section (2) that inasmuch as no fraud or false representation or concealment of any material fact has been alleged or proved in this case, the Chief Settlement Commissioner cannot exercise the revisionary power under Section 24. This contention in our view has no validity. It is a well established proposition of law that where a specific power is conferred without prejudice to the generality of the general powers already specified, the particular power is only illustrative and does not in any way restrict the general power. The Federal Court had in *Talpade's case* indicated the contrary but the Privy Council in *King Emperor* v. *Sibnath Banerjee* Indian Appeals – Vol. 72 p. 241 observed at page 258:

> "Their Lordships are unable to agree with the learned Chief Justice of the Federal Court on his statement of the relative positions of subsections (1) and (2) of Section 2 of the Defence of India Act, and counsel for the respondents in the present appeal was unable to support that statement, or to maintain that Rule 26 was invalid. In the opinion of Their Lordships, the function of sub-section (2) is merely an illustrative one; the rule-making power is conferred by sub-section (1) and 'the rules' which are referred to in the opening sentence of sub-section (2) are the rules which are authorised by, and made under, sub-section (1); the provisions of sub-section (2) are not restrictive of sub-section (1) as, indeed is expressly stated by the words 'without prejudice to the generality of the powers conferred by sub-section (1)'."

52. Similar view has been expressed in ***V.T. Khanzode and***

Ors. V. Reserve Bank of India and Anr.[41], ***D.K. Trivedi & Sons V. State of Gujarat***[42], ***State of J&K V. Lakhwinder Kumar***[43], and ***BSNL V. Telecom Regulatory Authority of India***[44]. Thus, the first part of Section 123(2) is not restricted or controlled by the provisos.

53. From the aforesaid authorities, the following principles can be culled out:-

(i) The words "undue influence" are not to be understood or conferred a meaning in the context of English statute.

(ii) The Indian election law pays regard to the use of such influence having the tendency to bring about the result that has contemplated in the clause.

(iii) If an act which is calculated to interfere with the free exercise of electoral right, is the true and effective test whether or not a candidate is guilty of undue influence.

(iv) The words "direct or indirect" used in the

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41 (1982) 2 SCC 7
42 (1986) Supp. SCC 20
43 (2013) 6 SCC 333
44 (2014) 3 SCC 222

provision have their significance and they are to be applied bearing in mind the factual context.

(v) Canvassing by a Minister or an issue of a whip in the form of a request is permissible unless there is compulsion on the electorate to vote in the manner indicated.

(vi) The structure of the provisions contained in Section 171-C of IPC are to be kept in view while appreciating the expression of 'undue influence' used in Section 123(2) of the 1951 Act.

(vii) The two provisos added to Section 123(2) do not take away the effect of the principal or main provision.

(viii) Freedom in the exercise of judgment which engulfs a voter's right, a free choice, in selecting the candidate whom he believes to be best fitted to represent the constituency, has to be given due weightage.

(ix) There should never be tyranny over the mind which would put fetters and scuttle the free exercise of an electorate.

(x) The concept of undue influence applies at both the stages, namely, pre-voting and at the time of casting of vote.

(xi) "Undue influence" is not to be equated with "proper influence" and, therefore, legitimate canvassing is permissible in a democratic set up.

(xii) Free exercise of electoral right has a nexus with direct or indirect interference or attempt to interfere.

54. The aforesaid principles are required to be appreciated regard being had to the progression of the election law, the contemporaneous situation, the prevalent scenario and the statutory content. We are absolutely conscious, the right to contest an election is neither a fundamental right nor a common law right. Dealing with the constitutional validity of Sections 175(1) and 177(1) of the Haryana Panchayati Raj Act, 1994, the three-Judge Bench in ***Javed V. State of Haryana***[45] opined thus:

> "Right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. At the most, in view of Part IX having been added in the Constitution, a

[45] (2003) 8 SCC 369

> right to contest election for an office in Panchayat may be said to be a constitutional right — a right originating in the Constitution and given shape by a statute. But even so, it cannot be equated with a fundamental right. There is nothing wrong in the same statute which confers the right to contest an election also to provide for the necessary qualifications without which a person cannot offer his candidature for an elective office and also to provide for disqualifications which would disable a person from contesting for, or holding, an elective statutory office.
>
> Reiterating the law laid down in *N.P. Ponnuswami* v. *Returning Officer, Namakkal Constituency*[46] and *Jagan Nath* v. *Jaswant Singh*[47] this Court held in *Jyoti Basu* v. *Debi Ghosal*[48]:
>
> > "*8.* A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation."

55. The purpose of referring to the same is to remind one that the right to contest in an election is a plain and simple statutory right and the election of an elected candidate can only be declared null and void regard being had to the grounds provided in the statutory enactment. And the ground

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46 AIR 1952 SC 64
47 AIR 1954 SC 210
48 (1982) 1 SCC 691

of 'undue influence' is a part of corrupt practice.

56. Section 100 of the 1951 Act provides for grounds for declaring election to be void. Section 100(1) which is relevant for the present purpose reads as under:

> **"100. Grounds for declaring election to be void.-**
>
> (1) Subject to the provisions of sub-section (2) 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 or the Government of Union Territories Act, 1963 (20 of 1963); or
>
> (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
>
> (c) that any nomination has been improperly rejected; or
>
> (d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected-
>
> (i) by the improper acceptance or any nomination, or
>
> (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or
>
> (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

> (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,
>
> The High Court shall declare the election of the returned candidate to be void."

57. As is clear from the provision, if the corrupt practice is proven, the Election Tribunal or the High Court is bound to declare the election of the returned candidate to be void. The said view has been laid down in ***M. Narayan Rao V. G. Venkata Reddy & Others***[49] and ***Harminder Singh Jassi*** (supra).

58. At this juncture, it is necessary to elucidate on one essential aspect. Section 100(1)(d)(ii) stipulates that where the High Court is of the opinion that the result of the election has been materially affected by any corrupt practice, committed in the interest of the returned candidate by an agent, other than his election agent, the High Court shall declare the election of the returned candidate to be void. This stands in contra distinction to Section 100(1)(b) which provides that election of a returned candidate shall be declared to be void if corrupt practice has been committed by a returned candidate or his election agent or by any other

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49 (1977) 1 SCC 771

person with his consent or with the consent of the returned candidate or his election agent. Thus, if the corrupt practice is proven on the foundation of Section 100(1)(b), the High Court is not to advert to the facet whether result of the election has been materially affected, which has to be necessarily recorded as a finding of a fact for the purpose of Section 100(1)(d)(ii).

59. In this context, we may refer to the authority in ***Samant N. Balkrishna and Anr. V. George Fernandez and Others***[50], wherein **Hidayatullah, C.J.**, speaking for the Court opined thus:

> "If we were not to keep this distinction in mind there would be no difference between Section 100(1)(*b*) and 100(1)(*d*) insofar as an agent is concerned. We have shown above that a corrupt act per se is enough under Section 100(1)(*b*) while under Section 100(1)(*d*) the act must directly affect the result of the election insofar as the returned candidate is concerned. Section 100(1)(*b*) makes no mention of an agent while Section 100(1)(*d*) specifically does. There must be some reason why this is so. The reason is that an agent cannot make the candidate responsible unless the candidate has consented or the act of the agent has materially affected the election of the returned candidate. In the case of any person (and he may be an agent) if he does the act with the consent of the returned candidate there is no need to prove the consent of the returned

50 (1969) 3 SCC 238

> candidate and there is no need to prove the effect on the election."

60. In ***Manohar Joshi V. Nitin Bhaurao Patil and Anr.***[51], a three-Judge Bench reiterated the principle by stating that:

> "The distinction between clause (*b*) of sub-section (1) and sub-clause (*ii*) of clause (*d*) therein is significant. The ground in clause (*b*) provides that the commission of any corrupt practice by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent by itself is sufficient to declare the election to be void. On the other hand, the commission of any corrupt practice in the interests of the returned candidate by an agent other than his election agent (without the further requirement of the ingredient of consent of a returned candidate or his election agent) is a ground for declaring the election to be void only when it is further pleaded and proved that the result of the election insofar as it concerns a returned candidate has been materially affected."

61. The distinction between the two provisions, as has been explained by this Court is of immense significance. If the corrupt practice, as envisaged under Section 100(1)(b) is established, the election has to be declared void. No other condition is attached to it. Keeping this in view, we are required to advert to the fundamental issue whether non-disclosure of criminal antecedents, as has been stipulated under Section 33A and the Rules framed under the 1951 Act,

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51 (1996) 1 SCC 169

would tantamount to corrupt practice and if so, how is it to be proven. We have already referred to the facet of undue influence in some decisions of this Court. Emphasis has been laid by Mr. Salve, learned amicus curiae, on influence on the mind of the voter that interferes with the free exercise of the electoral right and how such non-disclosure or suppression of facts can be a calculated act to interfere with such right. The undue influence as has been mentioned under Section 123(2) uses the words 'direct or indirect'. The Court has drawn distinction between legitimate canvassing and compulsion on the electorate. Emphasis has been given to the ingenuity of the human mind which is unlimited and how the nature of interference can be unlimited. The ostensibility of the ground has been taken into consideration. In this context, we think it apt to reproduce Section 171-C that deals with undue influence at elections. The said provision reads as follows:

> "**171C - Undue influence at elections**
>
> (1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.
>
> (2) Without prejudice to the generality of the provisions of sub-section (1), whoever--

> (a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or
>
> (b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).
>
> (3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section."

The said provision has been referred to by the Constitution Bench in ***Shiv Kripal Singh's*** case.

62. At this juncture, it is fruitful to refer to Notes on Clauses which are relevant for the present purpose when the Bill No. 106 of 1950 was introduced. It reads as follows:

> "Clauses 121 to 133 deal with certain offences with respect to elections. It may be pointed out that Chapter IX-A of the Indian Penal Code already contains provisions for punishment for the corrupt practices of bribery, undue influence and personation at elections. "Bribery", "undue influence" and "personation" as defined in the said Chapter do not differ materially from the descriptions of such practices contained in clause 118 of the Bill which have been reproduced from Part I of the First Schedule to the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936, and from the electoral rules which have been in force since 1921. The said Chapter IX-A also contains provisions for

> punishment for false statements and for illegal payments in connection with an election and for failure to keep election accounts. It has, therefore, been considered necessary to include in this Bill any provision for the corrupt practices and other electoral offences already dealt with in the Indian Penal Code. Further, it would not be possible to omit those provisions from the Indian Penal Code and include them in this Bill, as they apply not only in relation to an election in Parliament, or to the Legislature of a State, but also to every other kind of election, such as, election to Municipalities, District Boards and other local authorities. Accordingly, only provisions with regard to certain other electoral offences have been included in these clauses."

63. In ***Shiv Kripal Singh*** (supra), as has been stated earlier, the Court had referred to the objects and reasons attached to the Bill, which ultimately resulted in enactment of Chapter IX-A of the I.P.C.

64. In ***Charan Lal Sahu V. Giani Zail Singh and Anr.***[52], the Court after referring to Section 171C opined thus:

> "The gravamen of this section is that there must be interference or attempted interference with the "free exercise" of any electoral right. "Electoral right" is defined by Section 171-A(*b*) to mean the right of a person to stand, or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election....."

65. Similarly, in ***Baburao Patel*** (supra), the Court has compared Section 123(2) which defines undue influence, more

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52 (1984) 1 SCC 390

or less, in the same language as in Section 171-C IPC except the words "direct or indirect" which have been added into the nature of interference. In the said case while dealing with the definition of Section 171-C IPC, the Court has observed thus:

> "It will be seen from the above definition that the gist of undue influence at an election consists in voluntary interference or attempt at interference with the free exercise of any electoral right. Any voluntary action which interferes with or attempts to interfere with such free exercise of electoral right would amount to undue influence. But even though the definition in sub-s. (1) of s. 171-C is wide in terms it cannot take in mere canvassing in favour of a candidate at an election. If that were so, it would be impossible to run democratic elections. Further sub-s. (2) of s. 171-C shows what the nature of undue influence is though of course it does not cut down the generality of the provisions contained in sub-section (1). Where any threat is held out to any candidate or voter or any person in whom a candidate or voter is interested and the threat is of injury of any kind, that would amount to voluntary interference or attempt at interference with the free exercise of electoral right and would be undue influence. Again where a person induces or attempts to induce a candidate, or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure, that would also amount to voluntary interference with the free exercise of the electoral right and would be undue influence. What is contained in sub-s. (2) of S. 171-C is merely illustrative. It is difficult to lay down in general terms where mere canvassing ends and interference or attempt at interference with the free exercise of any electoral right begins. That is a matter to be determined in each case; but there can be no doubt that if what is done is merely

> canvassing it would not be undue influence. As sub-section (3) of s. 171-C shows, the mere exercise of a legal right without intent to interfere with an electoral right would not be undue influence."

66. Regard being had to the aforesaid position of law and the meaning given under Section 123(2) of the 1951 Act to "undue influence", we may refer to Section 33-A of the 1951 Act. Section 33-A of the 1951 Act, which has been introduced w.e.f. 24.08.2002, requires a candidate to furnish the information as to whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which charge has been framed by the court of competent jurisdiction. Sub-Section 2 of Section 33-A of the 1951 Act requires the candidate or his proposer, as the case maybe, at the time of delivery to the Returning Officer an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-Section (1). It need no special emphasis to state that giving a declaration by way of an affidavit duly sworn by the candidate has its own signification.

67. This Court had issued certain directions in ***Association for Democratic Reforms*** (supra) and ***People's Union for Civil Liberties (PUCL)*** (supra). Section 33-A which has been reproduced earlier is relatable to furnishing of an information

in respect of an 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. At this stage, it is appropriate to refer to Section 169 of the 1951 Act, the same being pertinent in the context. It reads as under:

> "**Section 169 - Power to make rules**
>
> (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--
>
> (a) the form, of affidavit under sub-section (2) of section 33A;
>
> (aa) the duties of presiding officers and polling officers at polling stations;
>
> (aaa) the form of contribution report;
>
> (b) the checking of voters by reference to the electoral roll;
>
> (bb) the manner of allocation of equitable sharing of time on the cable television network and other electronic media;
>
> (c) the manner in which votes are to be given both generally and in the case of illiterate voters or voters under physical or other disability;
>
> (d) the manner in which votes are to be given by a presiding officer, polling officer, polling agent or any other person, who being an elector for a constituency is authorised or appointed for duly at a polling station at which he is not entitled to vole;
>
> (e) the procedure to be followed in respect of the lender of vote by a person representing himself to be

an elector after another person has voted as such elector;

(ee) the manner of giving and recording of voles by means of voting machines and the procedure as to voting to be followed at polling stations where such machines are used;

(f) the procedure as to voting to be followed at elections held in accordance with the system of proportional representation by means of the single transferable vote;

(g) the scrutiny and counting of votes including cases in which a recount of the votes may be made before the declaration of the result of the election;

(gg) the procedure as to counting of votes recorded by means of voting machines;

(h) the safe custody of ballot boxes, voting machines, ballot papers and other election papers, the period for which such papers shall be preserved and the inspection and production of such papers;

(hh) the material to be supplied by the Government to the candidates of recognised political parties at any election to be held for the purposes of constituting the House of the People or the Legislative Assembly of a State;.

(i) any other matter required to be prescribed by this Act."

68. Rule 4A has been inserted in Conduct of Election Rules, 1961 ('for short, 1961 Rules) w.e.f. 3.9.2002. Rule 4A reads as follows:

"**4A. Form of affidavit to be filed at the time of delivering nomination paper** – The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33 of the Act,

also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26."

As per the aforesaid Rule, the affidavit is required to be filed in Form 26. For the present purpose, the relevant part is as follows:-

" **FORM 26**

(See rule 4A)

Affidavit to be filed by the candidate alongwith nomination paper before the returning officer for election to .....(name of the House) from .....constituency (Name of the Constituency)

X – X – X

(5) I am /am not accused of any offence(s) punishable with imprisonment for two years or more in a pending case(s) in which a charge (s) has/have been framed by the court(s) of competent jurisdiction.

If the deponent is accused of any such offence(s) he shall furnish the following information:-

(i) The following case(s) is /are pending against me in which charges have been framed by the court for an offence punishable with imprisonment for two years or more :-

(a) Case/First Information Report No./ Nos. together with complete details of concerned Police Station/District/State	
(b) Section(s) of the concerned Act(s) and short description of the offence(s) for which charged	
(c) Name of the Court, Case No. and date of order taking cognizance:	

(d) Court(s) which framed the charge(s)	
(e) Date(s) on which the charge(s) was/were framed	
(f) Whether all or any of the proceedings(s) have been stayed by any Court(s) of competent jurisdiction	

(ii) The following case(s) is /are pending against me in which cognizance has been taken by the court other than the cases mentioned in item (i) above:-

(a) Name of the Court, Case No. and date of order taking cognizance:	
(b) The details of cases where the court has taken cognizance, section(s) of the Act(s) and description of the offence(s) for which cognizance taken	
(c) Details of Appeal(s)/Application(s) for revision (if any) filed against the above order(s)	

(6) I have been/have not been convicted, of an offence(s) [other than any offence (s) referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8 of the Representation of the People Act, 1951 (43 of 1951)] and sentenced to imprisonment for one year or more.

If the deponent is convicted and punished as aforesaid, he shall furnish the following information:

In the following case, I have been convicted and sentenced to imprisonment by a court of law:

(a) The Details of cases, section(s) of the concerned Act(s) and description of the offence(s) for which convicted	
(b) Name of the Court, Case No.	

and date of order(s):	
(c) Punishment imposed	
d) Whether any appeal was/has been filed against the conviction order. If so, details and the present status of the appeal:	

"

69. On a perusal of the aforesaid format, it is clear as crystal that the details of certain categories of offences in respect of which cognizance has been taken or charges have been framed must be given/furnished. This Rule is in consonance with Section 33-A of the 1951 Act. Section 33(1) envisages that information has to be given in accordance with the Rules. This is in addition to the information to be provided as per Section 33(1) (i) and (ii). The affidavit that is required to be filed by the candidate stipulates mentioning of cases pending against the candidate in which charges have been framed by the Court for offences punishable with imprisonment for two years or more and also the cases which are pending against him in which cognizance has been taken by the court other than the cases which have been mentioned in Clause 5(i) of Form 26. Apart from the aforesaid, Clause 6 of Form 26 deals with conviction.

70. The singular question is, if a candidate, while filing his nomination paper does not furnish the entire information what would be the resultant effect. In ***Resurgence India*** (supra), the Court has held that if a nomination paper is filed with particulars left blank, the Returning Officer is entitled to reject the nomination paper. The Court has proceeded to state that candidate must take the minimum effort to explicitly remark as 'Nil' or 'Not Applicable' or 'Not known' in the columns. In the said case, it has been clarified that para 73 of ***People's Union for Civil Liberties (PUCL)*** case will not come in the way of Returning Officer to reject the nomination paper when the affidavit has been filed with blank particulars. It is necessary to understand what has been stated in para 73 of ***People's Union for Civil Liberties (PUCL)*** case, how it has been understood and clarified in ***Resurgence India*** (supra). Para 73 of ***People's Union for Civil Liberties (PUCL)*** case reads as follows:

> "While no exception can be taken to the insistence of affidavit with regard to the matters specified in the judgment in Assn for Democratic Reforms case, the direction to reject the nomination paper for furnishing wrong information or concealing material information and providing for a summary enquiry at the time of scrutiny of the nominations, cannot be justified. In the case of assets and liabilities, it

> would be very difficult for the Returning Officer to consider the truth or otherwise of the details furnished with reference to the 'documentary proof'. Very often, in such matters the documentary proof may not be clinching and the candidate concerned may be handicapped to rebut the allegation then and there. If sufficient time is provided, he may be able to produce proof to contradict the objector's version. It is true that the aforesaid directions issued by the Election Commission are not under challenge but at the same time prima facie it appears that the Election Commission is required to revise its instructions in the light of directions issued in Assn for Democratic Reforms case and as provided under the Representation of the People Act and its third Amendment."

In ***Resurgence India*** (supra), the aforequoted said paragraph has been explained thus:

> "The aforesaid paragraph, no doubt, stresses on the importance of filing of affidavit, however, opines that the direction to reject the nomination paper for furnishing wrong information or concealing material information and providing for a summary inquiry at the time of scrutiny of the nominations cannot be justified since in such matters the documentary proof may not be clinching and the candidate concerned may be handicapped to rebut the allegation then and there. This Court was of the opinion that if sufficient time is provided, the candidate may be in a position to produce proof to contradict the objector's version. The object behind penning down the aforesaid reasoning is to accommodate genuine situation where the candidate is trapped by false allegations and is unable to rebut the allegation within a short time. Para 73 of the aforesaid judgment nowhere contemplates a situation where it bars the Returning Officer to reject the nomination paper on

> account of filing affidavit with particulars left blank. Therefore, we hereby clarify that the above said paragraph will not come in the way of the Returning Officer to reject the nomination paper if the said affidavit is filed with blank columns."

71. Both the paragraphs when properly understood relate to the stage of scrutiny of the nomination paper. In this context, a question may arise if a candidate fills up all the particulars relating to his criminal antecedents and the nomination is not liable for rejection in law, what would be the impact. At the stage of scrutiny, needless to say, even if objections are raised, that possibly cannot be verified by the Returning Officer. Therefore, we do not intend to say that if objections are raised, the nomination paper would be liable for rejection. However, we may hasten to clarify that it is not the issue involved in the present case. The controversy which has emanated in this case is whether non-furnishing of the information while filing an affidavit pertaining to criminal cases, especially cases involving heinous or serious crimes or relating to corruption or moral turpitude would tantamount to corrupt practice, regard being had to the concept of undue influence. We have already referred to the authorities in ***Association for Democratic Reforms*** (supra) and **People's**

Union for Civil Liberties (NOTA case), (supra). Emphasis on all these cases has been given with regard to essential concept of democracy, criminalisation of politics and preservation of a healthy and growing democracy. The right of a voter to know has been accentuated. As a part of that right of a voter, not to vote in favour of any candidate has been emphasised by striking down Rules 41(2), 41(3) and 49-O of the Rules. In ***Association for Democratic Reforms*** (supra), it has been held thus:

> "For health of democracy and fair election, whether the disclosure of assets by a candidate, his/her qualification and particulars regarding involvement in criminal cases are necessary for informing voters, maybe illiterate, so that they can decide intelligently, whom to vote for. In our opinion, the decision of even an illiterate voter, if properly educated and informed about the contesting candidate, would be based on his own relevant criteria of selecting a candidate. In democracy, periodical elections are conducted for having efficient governance for the country and for the benefit of citizens — voters. In a democratic form of government, voters are of utmost importance. They have right to elect or re-elect on the basis of the antecedents and past performance of the candidate. The voter has the choice of deciding whether holding of educational qualification or holding of property is relevant for electing or re-electing a person to be his representative. Voter has to decide whether he should cast vote in favour of a candidate who is involved in a criminal case. For maintaining purity of elections and a healthy democracy, voters are required to be educated and well informed about

> the contesting candidates. Such information would include assets held by the candidate, his qualification including educational qualification and antecedents of his life including whether he was involved in a criminal case and if the case is decided — its result, if pending — whether charge is framed or cognizance is taken by the court. There is no necessity of suppressing the relevant facts from the voters."
>
> [Emphasis supplied]

72. In **People's Union for Civil Liberties (NOTA case)**, (supra), emphasis has been laid on free and fair elections and it has been opined that for democracy to survive, it is fundamental that the best available man should be chosen as the people's representative for proper governance of the country and the same can be at best be achieved through persons of high moral and ethical values who win the elections on a positive vote. Needless to say, the observations were made in the backdrop of negative voting.

73. In ***Manoj Narula*** (supra) the court, while discussing about democracy and the abhorrent place the corruption has in a body polity, has observed that a democratic polity, as understood in its quintessential purity, is conceptually abhorrent to corruption and, especially corruption at high places, and repulsive to the idea of criminalisation of politics as it corrodes the legitimacy of the collective ethos, frustrates

the hopes and aspirations of the citizens and has the potentiality to obstruct, if not derail, the rule of law. Democracy, which has been best defined as the government of the people, by the people and for the people, expects prevalence of genuine orderliness, positive propriety, dedicated discipline and sanguine sanctity by constant affirmance of constitutional morality which is the pillar stone of good governance. While dealing with the concept of democracy, the majority in ***Indira Nehru Gandhi* v. *Raj Narain***[53], stated that "democracy" as an essential feature of the Constitution is unassailable. The said principle was reiterated in ***T.N. Seshan, CEC of India* v. *Union of India***[54] and ***Kuldip Nayar* v. *Union of India***[55]. It was pronounced with asseveration that democracy is the basic and fundamental structure of the Constitution. There is no shadow of doubt that democracy in India is a product of the rule of law and also an embodiment of constitutional philosophy.

74. Having stated about the need for vibrant and healthy democracy, we think it appropriate to refer to the distinction

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53 (1975) Supp SCC 1
54 (1995) 4 SCC 611
55 (2006) 7 SCC 1

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.

75. 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.

76. 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 .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".

77. In ***Patangrao Kadam v. Prithviraj Sayajirao Yadav Deshmukh***[56], the Court observed that:

> "Clean, efficient and benevolent administration are the essential features of good governance which in turn depends upon persons of competency and good character".

78. From the aforesaid, it is luculent that free exercise of any electoral right is paramount. If there is any direct or indirect interference or attempt to interfere on the part of the candidate, it amounts to undue influence. Free exercise of the electoral right after the recent pronouncements of this Court and the amendment of the provisions are to be perceived regard being had to the purity of election and probity in public life which have their hallowedness. A voter is entitled to have an informed choice. A voter who is not satisfied with any of the candidates, as has been held in ***People's Union for Civil***

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56 (2001) 3 SCC 594

Liberties (NOTA case), can opt not to vote for any candidate. The requirement of a disclosure, especially the criminal antecedents, enables a voter to have an informed and instructed choice. If a voter is denied of the acquaintance to the information and deprived of the condition to be apprised of the entire gamut of criminal antecedents relating to heinous or serious offences or offence of corruption or moral turpitude, the exercise of electoral right would not be an advised one. He will be exercising his franchisee with the misinformed mind. That apart, his fundamental right to know also gets nullified. The attempt has to be perceived as creating an impediment in the mind of a voter, who is expected to vote to make a free, informed and advised choice. The same is sought to be scuttled at the very commencement. It is well settled in law that election covers the entire process from the issue of the notification till the declaration of the result. This position has been clearly settled in ***Hari Vishnu Kamath V. Ahmad Ishaque and others***[57], ***Election Commission of India V. Shivaji***[58] and ***V.S. Achuthanandan V. P.J. Francis and***

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57 AIR 1955 SC 233

58 (1988) 1 SCC 277

Another[59]. We have also culled out the principle that corrupt practice can take place prior to voting. The factum of non-disclosure of the requisite information as regards the criminal antecedents, as has been stated hereinabove is a stage prior to voting.

79. At this juncture, it will be appropriate to refer to certain instructions issued from time to time by the Election Commission of India. On 2.7.2012, the Election Commission of India has issued the following instructions:

> "To
>
> The Chief Electoral Officer of all
> States and UTs.
>
> Sub:- Affidavit filed by candidates along with their nomination papers-dissemination thereof.
>
> Sir/Madam,
>
> Please refer to the Commission's instructions regarding dissemination of information in the affidavits filed by the candidates along with the nomination papers. The Commission has, inter alia, directed that copies of affidavits should be displayed on the notice board of RO/ARO, and in cases where offices of RO and ARO are outside the boundary of the constituency concerned, copies of affidavits should be displayed in the premises of a prominent public office within the limits of the constituency. Further, affidavits of all contesting candidates are required to be uploaded on the website of the CEO

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59 (1999) 3 SCC 737

2. There are complains at times that in the absence of adequate publicity/awareness mechanism, the general public is not sensitized about the availability of the affidavits filed by the candidates with the result that the affidavits do not fully serve the intended purpose of enabling the electors to know the background of the candidates so as to enable them to make an informed choice of their representative.

3. The Commission has directed that, at every election, press release should be issued at the State and District level stating that affidavits of the candidates are available for the electors to see and clearly mentioning in the Press release of the DEO place (s) at which copies of the affidavits have been displayed. The press release should also make it clear that the affidavits can also be viewed on the website, and the path to locate them on the website should also be mentioned.

4. Please bring these instructions to the notice of all DEOs, ROs and other authorities concerned for compliance in future elections.

Yours faithfully,
(K.F. WILFRED)
PRINCIPAL SECRETARY"

80. In continuation, some further instructions were issued on 12.10.2012. The relevant paragraph is reproduced as follows:

"Now the Commission has reviewed the above instruction and has decided that the affidavit filed by all candidates, whether set up by the recognized political parties or unrecognized political parties or independents shall be put up on the website soon after the candidates file same and within 24 hours in any event. Even if any candidate withdraws his

> candidature, the affidavit already uploaded on the website shall not be removed."

81. At this juncture, it is also relevant to refer to the circular dated 12.6.2013 which deals with complaints/counter affidavits filed against the statements in the affidavits and dissemination thereof. It is condign to reproduce the relevant para:

> "From the year 2004 onwards, the affidavits of candidates are being uploaded on the website of the CEO. However, the same is not done in respect of counter affidavits filed, if any. The Commission has now decided that henceforth, all counter affidavits (duly notarized) filed by any person against the statements in the affidavit filed by the candidate shall also be uploaded on the website alongwith the affidavit concerned. Such uploading should also be done within 24 hours of filing of the same."

82. Recently on 3.3.2014, the Commission has issued a circular no. 3/ER/2013/SDR Vol.V to the Chief Electoral Officers of all States and Union Territories relating to affidavits filed by candidates and dissemination thereof. We think it appropriate to reproduce the same in toto as it has immense significance.

> "As per the existing instructions of the Commission the affidavits filed by the candidates with the nomination paper are uploaded on the website of the CEO and full hard copies of affidavits are displayed on the notice board of the Returning Officer for dissemination of information. In case the

office of the ARO is at a place different from the office of the RO, then a copy each of the affidavits is also displayed on the notice board in ARO's office. If the offices of the both RO and ARO are outside the territorial limits of the constituency, copies of the affidavits are to be displayed at a prominent public place within the constituency. Further, if any one seeks copies of the affidavits from the RO, copies are to be supplied.

2. There have been demands from different quarters seeking wider dissemination of the information declared in the affidavits filed by the contesting candidates, for easier access to the electors. Accordingly, views of the CEOs were sought in this regard. The responses received from the various Chief Electoral Officers have been considered by the Commission. The response received from CEOs showed that most of the CEOs are in favour of displaying the abstracts part of the affidavit as given in PART-II of the affidavit in Form 26, in different public officers in the constituency.

3. The Commission after due consideration of the matter has decided that for wider dissemination of information, apart from existing mode of dissemination of information, as mentioned in para I above, the Abstract Part-II of the affidavit (given in part B of Form 26) filed by the contesting candidates shall be displayed at specified additional public offices, such as (I) Collectorate, (20) Zila Parishad Office (3) SDM Office (4) Panchayat Samiti office (i.e. Block Office) (5) office of Municipal Body or bodies in the constituency (6) Tahsil/Taluka office and (7) Panchayat Office. This shall be done within 5 days of the date of withdrawal of candidature. In the Collectorate and Zila Parishad Office, abstracts of affidavits of all candidates in all constituencies in the District shall be displayed. Abstracts of one constituency should be displayed together and not in scattered manner. Similarly, if there are more than one constituency in a Sub-

> Division, all abstracts of all candidates in such constituencies shall be displayed in SDM's office.
>
> Kindly convey these directions to all DEOs, ROs, SDMs etc. for elections to Lok Sabha Legislative Assembly and Legislative Council constituencies. These instructions will not apply to elections to Council of States and State Legislative Council by MLAs as only elected representatives are electors for these elections."

83. The purpose of referring to the instructions of the Election Commission is that the affidavit sworn by the candidate has to be put in public domain so that the electorate can know. If they know the half truth, as submits Mr. Salve, it is more dangerous, for the electorate are denied of the information which is within the special knowledge of the candidate. When something within special knowledge is not disclosed, it tantamounts to fraud, as has been held in ***S.P. Chengalvaraya Naidu (Dead) By LRs V. Jagannath (Dead) By LRs & Others***[60]. While filing the nomination form, if the requisite information, as has been highlighted by us, relating to criminal antecedents, are not given, indubitably, there is an attempt to suppress, effort to misguide and keep the people in dark. This attempt undeniably and undisputedly is undue influence and, therefore, amounts to corrupt practice. It is

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60 (1994) 1 SCC 1

necessary to clarify here that if a candidate gives all the particulars and despite that he secures the votes that will be an informed, advised and free exercise of right by the electorate. That is why there is a distinction between a disqualification and the corrupt practice. In an election petition, the election petitioner is required to assert about the cases in which the successful candidate is involved as per the rules and how there has been non-disclosure in the affidavit. Once that is established, it would amount to corrupt practice. We repeat at the cost of repetition, it has to be determined in an election petition by the Election Tribunal.

84. Having held that, we are required to advert to the factual matrix at hand. As has been noted hereinbefore, the appellant was involved in 8 cases relating to embezzlement. The State Election Commission had issued a notification. The relevant part of the said notification reads as under:-

> "1. Every candidate at the time of filing his nomination paper for any election or casual election for electing a member or Members or Chairperson or Chairpersons of any Panchayat or Municipality, shall furnish full and complete information in regard to all the five matters referred in paragraph-5 of the preamble, in an Affidavit or Declaration, as the case may be, in the format annexed hereto:-
>
> Provided that having regard to the difficulties in

swearing an affidavit in a village, a candidate at the election to a Ward Member of Village Panchayat under the Tamil Nadu Panchayats Act, 1994 shall, instead of filing an Affidavit, file before the Returning Officer a declaration in the same format annexed to this order:

2. The said affidavit by each candidate shall be duly sworn before a Magistrate of the First Class or a Notary Public or a Commissioner of Oaths appointed by the High Court of the State or before an Officer competent for swearing an affidavit.

3. Non-furnishing of the affidavit or declaration, as the case, may be, by any candidate shall be considered to be violation of this order and the nomination of the candidate concerned shall be liable for rejection by the Returning Officer at the time of scrutiny of nomination for such non-furnishing of the affidavit/declaration, as the case may be.

4. The information so furnished by each candidate in the aforesaid affidavit or declaration as the case may be, shall be disseminated by the respective Returning Officers by displaying a copy of the affidavit on the notice board of his office and also by making the copies thereof available to all other candidate on demand and to the representatives of the print and electronic media.

5. If any rival candidate furnished information to the contrary, by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with the affidavit of the candidate concerned in the manner directed above.

6. All the Returning Officers shall ensure that the copies of the affidavit/declaration, prescribed herein by the Tamil Nadu State Election Commission in the Annexure shall be delivered to the candidates along with the forms of nomination papers as part of the

nomination papers."

85. We have also reproduced the information that is required to be given. Sections 259 and 260 of the 1994 Act makes the provisions contained under Section 123 of the 1951 Act applicable. Submission of Ms. V. Mohana, learned counsel for the appellant is that there was no challenge on the ground of corrupt practice. As we find the election was sought to be assailed on many a ground. The factum of suppression of the cases relating to embezzlement has been established. Under these circumstances, there is no need to advert to the authorities which are cited by the learned counsel for the appellant that it has no material particulars and there was no ground for corrupt practice. In fact, in a way, it is there. The submission of the learned counsel for the appellant that he has passed up to Class X and, therefore, was not aware whether he has to give all the details as he was under the impression that all the cases were one case or off-shoots of the main case. The aforesaid submission is noted to be rejected. Therefore, we are of the view that the High Court is justified in declaring that the election as null and void on the ground of corrupt practice.

86. In view of the above, we would like to sum up our conclusions:

(a) Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative.

(b) When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right.

(c) Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.

(d) As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under

Section 100(1)(b) of the 1951 Act.

(e) The question whether it materially affects the election or not will not arise in a case of this nature.

87. Before parting with the case, we must put on record our unreserved appreciation for the valuable assistance rendered by Mr. Harish N. Salve, learned senior counsel and Mr. Maninder Singh, learned Additional Solicitor General for Union of India.

88. Ex consequenti, the appeal, being sans substance, stands dismissed with costs, which is assessed at Rs.50,000/-.

.....J.
(Dipak Misra)

.....J.
(Prafulla C. Pant)

New Delhi
February 05, 2015