

HIGH COURT OF CHHATTISGARH
EP No. 9 of 2024

Prem Prakash Pandey S/o Late Shri Ram Ratan Pandey Aged About 65 Years R/o Q No. 1, Street No. 11, Sector- 9, Bhilai Nagar, Tehsil Durg, District Durg, Chhattisgarh- 490006

---- Petitioner

Versus

Devendra Yadav S/o Late Shri Indal Singh Yadav Aged About 33 Years R/o H. N. M I G- 175-176, Housing Board Colony, Industrial Area, Bhilai, Post Office- Smriti Nagar District- Durg, Chhattisgarh- 490020

---- Respondent

(Cause-title is taken from Case Information System)

For Petitioner	:	Dr. N. K. Shukla, Senior Advocate along with Ms. Priya Mishra, Advocate.
For Respondent	:	Mr. B. P. Sharma, Advocate along with Mr. Manay Nath Thakur, Advocate.

Hon'ble Shri Justice Rakesh Mohan Pandey
CAV ORDER

Date of Hearing : 20.06.2024

Date of Order : 05.07.2024

Heard on I.A. No. 3 of 2024, an application under Order VII

Rule XI read with Section 151 of CPC, 1908

1. The petitioner has preferred this election petition under Sections 80, 80A, 81, 100(1)(b), 100(1)(d)(i) and 100(1)(d)(iv) of the Representation of People Act, 1951 (for brevity 'Act, 1951') challenging the declaration of the respondent as a returned candidate from 65-Bhilai Nagar constituency. The election of the respondent is challenged by the petitioner mainly on the ground that the respondent while filing his nomination in the affidavit filed under Form 26 has not disclosed or has falsely mentioned certain facts contrary to Sections 33 and 33A of the Act, 1951 which materially affected the result of the election. It is further pleaded that the respondent failed to disclose:-

- (i) contact details as well as social media accounts handled by him;
- (ii) the correct income of himself and his wife for the financial year 2019-19;
- (iii) disproportionate increase in the current assets;
- (iv) disproportionate distribution of loans to his family members;
- (v) concealment of the fact that he has been declared a proclaimed offender in Criminal Case No. 2158/2015;
- (vi) issuance of a bailable warrant against him in Criminal Case No. 4884/2018;
- (vii) provisional attachment of his house situated at MIG 28, Housing Board, Kurud, Bhilai and a bank account maintained with the State Bank of India;
- (viii) discrepancy while submitting the details of movable assets; and,
- (ix) undervaluation of the immovable assets.

2. It is also one of the grounds that the nomination paper of the petitioner was improperly accepted which materially affected the result of the election. There is a further allegation of corrupt practice.

3. The respondent / returned candidate has moved an application under Order VII Rule XI read with Section 151 of the Code of Civil Procedure, 1908 for dismissal of the election petition filed by the petitioner on the ground that the instant election petition:-

- (i) was not presented by the petitioner;
- (ii) should contain a concise statement of the material facts on which the petitioner relies;
- (iii) security deposit was not made by the petitioner; and,
- (iv) in the election petition, the petitioner failed to plead material facts and particulars with regard to corrupt practices and other alleged facts.

4. It is also pleaded in the application that correct facts and particulars were not set forth mentioning the names of the parties alleged to have committed such corrupt practices including the date and place of commission of each such practice. It is further pleaded that non-disclosure of social media accounts, status of criminal cases, assets and liabilities and details of provisions do not come within the purview of corrupt practices. Corrupt practice has been defined under Section 123 of the Act, 1951 and the allegations made in the election petition would not come within the purview of corrupt practices.
5. Dr. N. K. Shukla, the learned Senior Advocate appearing on behalf of the petitioner submitted that no column in the affidavit should be left blank by a candidate whereas column 3 of para 8 of the affidavit was left blank by the respondent. It is further pleaded that the returned candidate, his agents, and aides committed corrupt practices by holding a press conference on 15.11.2023 where wrongful allegations were made against the petitioner. He further submitted that pamphlets (Annexures P/13, 14, 15) were circulated by the respondent with false and derogatory contents. Defamatory and false posts on social media were also posted by the respondent or his agents.
6. With regard to the first ground raised by the respondent, from a perusal of the endorsement made by the Registrar (J) dated 17.01.2024, it is apparent that the election petition was presented on 17.01.2024 at about 01:15 P.M. by the petitioner himself, therefore the contention advanced by learned counsel for the respondent is contrary to the record. The next ground raised by the respondent is that the security deposit was not deposited by the petitioner. The law laid down by the Hon'ble Supreme Court in ***M. Y. Ghorpade Versus Shivaji Rao M. Paol*** reported in **(2002) 7 SCC 289** states that it is not necessary to deposit the security amount by the petitioner himself and it can be deposited either by the

petitioner or by his agent or advocate, therefore this ground is also not sustainable in the eyes of law. Now, coming to the next ground raised by the respondent with regard to the presentation of material facts and particulars of corrupt practices in the election petition; the petitioner has given full particulars, in para 9 of the election petition, the petitioner has categorically stated that as per the judgment rendered by the Hon'ble Supreme Court in the matter of ***Resurgence India Versus Election Commission of India and Anr.*** reported in ***(2014) 14 SCC 189*** (para 29) no column in the affidavit shall be left blank by the candidate, the respondent, however in defiance of the said mandate has left column 3 of the affidavit blank. The petitioner has pleaded that the election of the respondent is liable to be set aside. In para 11 (a), the petitioner has pleaded that non-disclosure of contact details as well as social media accounts handled by the respondent may lead to setting aside the election of the returned candidate. In para 11(b)(i) and (ii), the petitioner has pleaded that the details of income given by the respondent and his wife pertaining to the Financial Year 2018-19 are incorrect. In para 11(c)(i), the election petitioner has pleaded that the respondent has concealed the fact that he has been declared a proclaimed offender in Criminal Case No. 2158/2015 pending before the Judicial Magistrate First Class, Bilaspur and such non-disclosure would be tantamount to undue influence. It is further pleaded that a bailable warrant was issued against the respondent in Criminal Case No. 4884/2018 by the Judicial Magistrate First Class, Raipur. In para 11(c)(iii), the fact with regard to the provisional attachment of the house situated at MIG 28, Housing Board, Kurud, Bhilai and the SBI Account No. 30276434780 by the authorities under the Prevention of Money Laundering Act, 2002 has not been pleaded. It is also submitted that there is a discrepancy in stating the movable assets and undervaluation of immovable properties as pleaded in para 11(d)(e) of the instant petition. With regard to

corrupt practice by the respondent and his agents, the petitioner has pleaded material facts and has placed certain documents on record from para 21 to 23. He further submitted that the test for entertaining an application under Order VII Rule IX of CPC can be summed up as under:-

- a.** The remedy under Order VII Rule XI is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold without proceeding to record evidence and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision;
- b.** The underlying object of Order VII Rule XI (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted;
- c.** At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and can not be adverted to, or taken into consideration;
- d.** The test for exercising the power under Order VII Rule XI is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed;
- e.** The averments made in the plaint in their entirety must be held to be correct; and,
- f.** The averments made in the plaint as a whole have to be seen to find out whether Cl. (d) of Order VII Rule XI is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Documents on which the plaintiff places reliance in his suit

may also be taken into consideration at the time of deciding the application filed under Order 7 Rule 11(a) of CPC.

7. Mr. B. P. Sharma, learned counsel appearing on behalf of the respondent submitted that the election petition was presented by the petitioner. He further submitted that no oral objection was raised by the petitioner as pleaded in the instant petition at the time of scrutiny of the nomination paper. He also submitted that if any objection would have been made by the election petitioner before the Returning Officer, the same would have been decided by the Returning Officer according to the provisions of Section 36(2) of the Act, 1951. He further argued that raising an objection after the declaration of the result is of no help to the petitioner. He also argued non-disclosure of social media accounts would not lead to setting aside the election. He contended that any disgruntled person may open a social media account in the name of the returned candidate and spread misinformation, therefore, the grounds raised by the election petitioner with regard to the non-disclosure of social media accounts is baseless. He further contended that in the criminal case which is pending before the Judicial Magistrate First Class, District-Bilaspur, the respondent has been declared a proclaimed offender. He also contended that the respondent was never served with any bailable or non-bailable warrant and the criminal case was not within his knowledge, therefore case number, as well as sections and the name of the Court, could not be disclosed in the affidavit. With regard to the criminal case pending before Judicial Magistrate First Class, District - Raipur, he stated that a bailable warrant has been issued but the same has not been served upon the respondent yet, therefore this fact was not disclosed in the affidavit. He stated that on this ground alone, the election of the returned candidate cannot be set aside. Mr. Sharma further stated that the respondent has specifically disclosed the registration of the case by the Enforcement Directorate and the case number

and the Court are also mentioned. With regard to corrupt practices, he stated that the name of the person, place of occurrence of such practice, time and date have not been specified in the election petition. He further submitted that the discrepancy committed by the respondent may be termed as an electoral offence and on this ground alone, the election of the returned candidate cannot be set aside. In support of his elaborate arguments, he placed reliance on the judgment rendered by the Hon'ble Supreme Court in the matter of ***Shambhu Prasad Sharma Versus Charandas Mahant and Others*** reported in **(2012) 11 SCC 390**.

8. I have heard learned counsel appearing for the respective parties, considered their rival submissions made herein above and carefully perused the election petition as well as the documents placed on the record.

9. The petitioner has filed this election petition under Sections 80, 80A, 81, 100(1)(b), 100(1)(d)(i), and 100(1)(d)(iv) of the Representation of People Act, 1951 challenging the election of the returned candidate on two counts:-

(i) The affidavit under form 26 was not filled by the respondent properly and authorized facts were not disclosed thus, the nomination paper of the returned candidate was improperly accepted; and,

(ii) The election of the respondent is liable to be set aside as he has engaged in corrupt practices.

10. The Hon'ble Supreme Court in the matter of ***Union of India Versus Association For Democratic Reforms and Another*** reported in **(2002) 5 SCC 289** while emphasizing the scope of Article 91(A) of the Constitution of India in para 46(7) held that voter has a right to know antecedents including criminal past of his candidate contesting election for MP or MLA. The same is reproduced herein below:-

46(7). Under our Constitution, Article 19(1)(a) provides for freedom of speech and expression. Voter's speech or expression in case of election would include casting of votes, that is to say, **voter speaks out or expresses by casting vote**. For this purpose, information about the candidate to be selected is a must. Voter's (little man - citizen's) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. **The little man may think over before making his choice of electing law-breakers as law-makers.**

In para 48 of the judgment, the Hon'ble Supreme Court issued a direction to the Election Commission of India to call for the information on affidavit by each candidate seeking election to the Parliament or State Legislative Assembly with regard to criminal antecedents of pending cases. The relevant para is reproduced herein below:-

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

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

Pursuant to the judgment passed in the matter of **Association For Democratic Reforms (supra)**, by way of an amendment, Section 33A was inserted in the Act, 1951 which reads as under:-

33A. Right to information. (1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) 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.]

Subsequently, Section 33B of the Act, 1951 has been struck down by the Supreme Court as ultra vires by virtue of the judgment passed in **People's Union for Civil Liberties Versus Union of India** reported in **AIR 2003 SC 2263**.

11. The Hon'ble Supreme Court in the matter of **M. Y. Ghorpade (supra)** in para 4 held that:-

4. Mr S.S. Javali, learned Senior Counsel appearing for the appellant contended with force that the conclusion of the High Court is wholly erroneous and by no stretch of imagination the amount deposited as cost under Exhibit P-5 can be construed to be a deposit made by the election petitioner Shri Shivaji Rao Poal, and therefore, the election petition ought to have been dismissed for non-compliance with the mandatory requirements of Section 117 of the Act as provided in Section 86(1). Mr Javali, the learned Senior Counsel relied upon the decisions of this Court in the cases of *Aeltemesh Rein v. Chandulal Chandrakars*, *Charan Lal Sahu v. Nandkishore Bhatt*, *Rajendra Singh v. Usha Rani* and *M. Karunanidhi v. H.V. Hande*. Mr Srinivasan, learned counsel appearing for the respondent, on the other hand contended, that

the Act having provided for deposit of Rs 2000 as security for the cost with the sole purpose of discouraging frivolous election petition and for compensating the parties on the basis of the result of the election petition, and there being no requirement of law as to who could deposit the said amount, in the case in hand the amount having been deposited by the election petitioner himself, the High Court rightly came to the conclusion that there has been compliance with Section 117 of the Act, and therefore, the same need not be interfered with by this Court. According to the learned counsel the conclusion of the High Court is fortified by the evidence of Respondent 5 who unequivocally indicated that he had never deposited the sum of Rs 2000 though ostensibly his name appears to be on the receipt Exhibit P-5.

12. The Hon'ble Supreme Court in the matter of ***Kisan Shankar Kathore Versus Arun Dattatray and others*** reported in **(2014) 14 SCC 162** held that non-disclosure of assets of the candidate, his wife and dependent children would amount to suppression / non-disclosure. Relevant para of the aforementioned judgment is reproduced herein below:-

40. We have already reproduced above the relevant portions of judgments in Assn. for Democratic Reforms and People's Union for Civil Liberties and a the guidelines issued by the Election Commission pursuant thereto. A conjoint and combined reading thereof clearly establishes that the main reason for issuing directions by this Court and guidelines by the Election Commission pursuant thereto is that the citizens have fundamental right under Article 19(1)(a) of the Constitution of India to know about the candidates contesting the elections and this is the primary reason that casts a solemn obligation on these candidates to furnish information regarding the criminal antecedents, educational qualifications and assets held by the candidate, his spouse and dependent children. It is on that basis that not only the Election Commission has issued guidelines, but also prepared formats in which the affidavits are to be filed. As a fortiori, it follows that if the required information as per the said format in respect of the assets of the candidate, his wife and dependent children is not given, it would amount to suppression/non-disclosure.

13. The Hon'ble Supreme Court in the matter of ***Shambhu Prasad Sharma (supra)*** had held that the form of the nomination papers is not considered sacrosanct; it is to be seen whether there is a substantial compliance of the requirement as to form and every departure from the prescribed format cannot,

therefore be made a ground for rejection of the nomination papers. In the aforesaid matter, the nomination papers filed by the respondents nos. 2 to 18 therein were incomplete and were accompanied with requisite affidavits in appropriate format. Relevant para is reproduced herein below:-

18. From the above it is evident that the form of the nomination papers is not considered sacrosanct. What is to be seen is whether there is a substantial compliance with the requirement as to form. Every departure from the prescribed format cannot, therefore, be made a ground for rejection of the nomination paper.

14. The Hon'ble Supreme Court in the matter of ***Karikho Kri Versus Nuney Tayang and anr.*** reported in **(2024) SCC OnLine 519** has considered all earlier judgments. In the said matter, Karikho Kri was required to state as to whether he had been in occupation of accommodation provided by the Government at any time during the last 10 years before the date of notification of the current election and, if so, whether he furnished a declaration to the effect that there were no dues payable in respect of the said accommodation in relation to rent, electricity charges, water charges and telephone charges. Karikho Kri, however, failed to disclose the fact that he had been in occupation of government accommodation during his tenure as an MLA between 2009 and 2014. The Apex Court in para 49 has held that the failure on the part of Karikho Kri to disclose the dues of municipal / property taxes payable by him and his wife cannot be held to be a non-disclosure at all. The same is reproduced herein below for ready reference:-

49. As regards the failure on the part of Karikho Kri to disclose the dues of municipal/property taxes payable by him and his wife, the same cannot be held to be a non-disclosure at all, inasmuch as he did disclose the particulars of such dues in one part of his Affidavit but did not do so in another part. In any event, as Mr. Arunabh Chowdhury, learned senior counsel, fairly stated that he would not be pressing this ground, we need not labour further upon this point.

It is further held in para 50 that the High Court was in error in concluding that non-disclosure of the three vehicles, that still remain registered in the names of his wife and son as on the date of filing of his nomination, amounted to a 'corrupt practice' under Section 123(2) of the Act, 1951, the same reads thus:-

50. *On the above analysis, we hold that the High Court was in error in concluding that sufficient grounds were made out under Sections 100(1)(b), 100(1) (d) (i) and 100(1)(d) (iv) of the Act of 1951 to invalidate the election of Karikho Kri and, further, in holding that non-disclosure of the three vehicles, that still remained registered in the names of his wife and son as on the date of filing of his nomination, amounted to a 'corrupt practice' under Section 123(2) of the Act of 1951. In consequence, we find no necessity to independently deal with Civil Appeal No. 4716 of 2023 filed by Nuney Tayang, in the context of denial of relief to him by the High Court, or the issues raised by Dr. Mohesh Chai in the replies filed by him.*

Accordingly, the appeal preferred by Karikho Kri was allowed and the election petition filed by Nuney Tayang was dismissed.

- 15.** From a perusal of the judgment rendered by the Hon'ble Supreme Court in the matter of ***Assn. For Democratic Reforms (supra)*** and Section 33A of the Act, 1951, it is quite vivid that a citizen / voter has the right to know antecedents including the criminal past of his candidate, therefore, directions were issued to the Election Commission of India to direct the contesting candidates seeking election to furnish information with regard to conviction / acquittal / discharge in any criminal offence prior to 6 months of the filing of nomination paper, whether the candidate is accused in any pending case, of any offence punishable with the imprisonment for two years or more, and in which charge has been framed or cognizance is taken by the Court of law; assets of the candidate; liabilities, if any, particularly, whether there are any over dues of any public financial institution or government dues; and educational qualifications of the candidate.

- 16.** In the present election petition, the respondent has failed to disclose the fact that he has been declared absconding in the Criminal Case pending before the Judicial Magistrate First Class, Bilaspur pertaining to the offence punishable under Sections 127 and 147 of the Indian Penal Code and likewise, in the case pending before Judicial Magistrate First Class, Raipur for commission of offence punishable under Sections 186, 332, 427 and 147 of the Indian Penal Code, fresh bailable warrant has been issued. The election petitioner has stated that non-disclosure of correct facts in the affidavit has materially affected the election process. With regard to corrupt practice, the election petitioner has pleaded various relevant facts from para 21 to 24 of the election petition. With regard to immovable property, the respondent has not pleaded the correct facts. It is true that non-disclosure of social media accounts would not be fatal and cannot be treated as a ground for rejection of the nomination papers.
- 17.** The facts and law discussed above go to the root of the case and the issues involved in the present election petition cannot be rejected at the preliminary stage on an application moved under Order VII Rule XI of CPC. Thus, the application moved by the respondent is liable to be and is hereby **rejected**.
- 18.** It is made clear that any observation made herein above would not come in the way of deciding the election petition on the merits. These observations are made for the interlocutory application moved by the respondent under Order VII Rule XI of CPC only.
- 19.** List this matter on the 31st of July, 2024.

Sd/-
(Rakesh Mohan Pandey)
Judge