

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Election Petition No. 1/2023

Purushottam Lal S/o Shri Charansingh, Aged About 42 Years,
R/o- Sirsoda, Roopbaas, Tehsil And Post Office- Roopbaas,
District Bharatpur (Rajasthan) Pin 321404, Mobile No.
8058252616, Email Purshottam.3658@gmail.com

----Petitioner

Versus

1. Ritu Banawat W/o Shri Rishi Bansal, Aged About 39 Years,
R/o- Makan No. 159, Gandhi Sewa Sadan Lal Bagh,
Nagarpalika -Bayana, Tehsil -Bayana, District Bharatpur
(Rajasthan,) Mobile No. 9414261862
2. Bachchusingh S/o Shri Kanchansingh, Aged About 44
Years, R/o- Basai, Post- Banshi Paharpur, Tehsil
Roopbaas, District Bharatpur (Rajasthan). Mobile
No.7891012126, 9810211751
3. Amarsingh S/o Shri Sukhram, Aged About 54 Years, R/o-
Basai, Post -Banshi Paharpur, Tehsil Roopbaas, District-
Bharatpur (Rajasthan) Mobile No. 9828039468,
9358321341
4. Mukesh S/o Shri Bhagwansingh, Aged About 46 Years,
R/o- Rudawal, District- Bharatpur (Rajasthan) Mobile No.
9587203632
5. Madanmohan S/o Shri Vedariya, R/o -Gram And Post-
Khedathakur, Tehsil Roopbaas, District-Bharatpur
(Rajasthan), Mobile No. 7073648625
6. Munniram S/o Shri Bhabuti, Aged About 58 Years, R/o
Singhrawali, Post-Kot, Tehsil Bayana, District-Bharatpur
(Rajasthan), Mobile No 9694883495
7. Neetu Sejwal D/o Shri Premsingh, R/o- Lal Darwaja,
Purani Sabji Mandi Bayana, Tehsil- Bayana, District-
Bharatpur (Rajasthan) Mobile No. 7014941326
8. Vijaysingh S/o Shri Mangal, Aged About 45 Years, R/o -
Jasora, Post- Kotthana, Tehsil Bayana, District Bharatpur
(Rajasthan, Mobile No. 9461747066)
9. Ajaysingh S/o Shri Kanchansingh, Aged About 25 Years,
R/o-Basai, Post- Banshi Paharpur, Tehsil-Roopbaas,
District Bharatpur (Rajasthan), 7610012221, 7891012126

10. Sudesh Kumari W/o Shri Nawalsingh, Aged About 35 Years, R/o-Nagla Baretha, Post-Bandh Baretha, Tehsil-Bayana, District -Bharatpur (Rajasthan), Mobile No. 7073515372
11. Nirwachan Adhikari And Upkhand Magistrate, Rajasthan Vidhansabha Nirwachan 2023, Vidhansabha Bayana (076), District- Bharatpur (Rajasthan)- 321401

----Respondents

For Petitioner(s) : Mr. Purushottam Lal, petitioner in person

For Respondent(s) : Mr. R.N. Mathur, Sr. Adv. Assisted by Mr. Utkarsh Dubey, Mr. Siddharth Shanker Sharma, Mr. Shrey Gahrana for respondent No.1
Mr. Raj Kumar Goyal with Ms. Morvi Sharma, Ms. Priyanka Paliwal for respondent No.3
Mr. Shivam Kumar Sharma for respondent No.7
Mr. Deen Dayal Sharma for respondents No.2 & 9
Mr. Anurag Sharma, Mr. Akshay Sharma for respondent No.11

HON'BLE MR. JUSTICE SUDESH BANSAL

Judgment

1.	Date of conclusion of Arguments	25.05.2026
2.	Date on which the judgment was reserved	25.05.2026
3.	Whether the full judgment or only operative part is pronounced	Full
4.	Date of Pronouncement	29.06.2026

REPORTABLE

1. This election petition has directly been filed before the High Court under Section 80/81 of the Representation of People Act, 1951 (for short "RP Act") which is triable by the High Court as per Section 80-A of the RP Act.

2. Through this election petition, petitioner seeks to challenge election of respondent No.1 as a Member of Legislative Assembly (MLA), Bayana (Constituency No. 076) District Bharatpur in General Rajasthan State Assembly Elections, 2023. Petitioner was one of the contesting candidate, out of total eleven candidates who contested election for MLA in Bayana, Constituency No. 76 and secured 689 votes. Respondent No.1 got 105749 votes and was declared returned candidate for this Constituency. Other nine candidates, in total received 85743 votes and they have also been made party respondents No. 2 to 10 herein this petition. Respondent No.11 is Returning Officer-cum-Sub Divisional Magistrate, who declared the result of election on 03.12.2023. Thereafter, this election petition came to be filed by petitioner on 08.12.2023.

3. Challenge to the election of respondent No.1 has been fundamentally made by petitioner on the ground that respondent No.1 did not disclose the complete and correct information/particulars of her assets and liabilities, in the prescribed affidavit Form-26, rather also left certain columns blank and unfilled, hence, thereby she be held guilty of concealing the material and substantial information, which amounts to adopting corrupt practices, as such her nomination form is liable to be cancelled and consequentially, her election as MLA of Constituency Bayana declared on 03.12.2023, be declared void under Section 100 (1)(b)&(d) of the RP Act.

4. Simultaneously, a challenge has also been made by petitioner to the acceptance of nomination forms of other nine

contesting candidates of this Constituency Bayana (Respondents Nos.2 to 10 herein) on various grounds.

5. The submission of petitioner is that nomination forms of respondents No.1 to 10 suffer from several defects and were improperly accepted by the Returning Officer. The Final prayer of petitioner is that the nomination forms of respondents No.1 to 10, be cancelled and since thereafter, petitioner remains the only surviving candidate who, being unopposed by any other candidate, be declared a Returned Candidate and MLA of the Constituency Bayana in the General Rajasthan State Assembly Elections – 2023.

6. Reply to the election petition has been filed by Returning Candidate-respondent No.1 so also a separate reply has been filed by respondent No.3. No other respondents including Returning Officer, has opted to file a reply to the election petition. Respondents Nos.5, 6, 8 and 10 have been set ex parte. Relevant order-sheet to this effect is of dated 28.11.2024.

7. As per pleadings of parties, this Court on 19.12.2024 framed following issues, which were accepted by counsel for both parties agreeing that the framed issues encompass all the points involved and raised here in this election petition. Issues are:-

"(I) Whether facts and grounds or any of the ground enumerated in sub paras (1) to (13) of para No.5 of the Election Petition, attract the grounds envisaged under Section 100 (1)(b), 100 (1)(d)(i) and 100 (1)(d)(iv) of the Representation of the People Act,1951 and violate Rule 4A of The Conduct of Election Rules, 1961,which entail either for rejection of nomination form of respondent No.1-returning candidate or to declare her election dated 03.12.2023 as Member of Legislative Assembly of Constituency-Bayana (076) as void?"

(II) Whether as per the facts and grounds enumerated in para Nos.6 to 14 of the Election Petition, the nomination forms of respondents No.2 to 10 were improperly accepted by the returning officer and same are liable to be rejected or their candidature to contest the Elections-2023, for Member of Legislative Assembly of Constituency-Bayana (076) is liable to be cancelled?

(III) Whether, if issues No.1 and 2 are decided in favour of petitioner, the petitioner is entitled to be declared as unopposed elected Member of Legislative Assembly of Constituency-Bayana(076) for Elections-2023?

(IV) Relief. "

8. Petitioner, in his evidence, produced his affidavit as evidence-in-chief and exhibited 167 documents. He has thoroughly been cross-examined by counsel for respondent No.1-Returned Candidate, so also by counsel for respondent No.3 and respondent Nos.2 & 9. Petitioner did not opt to produce any other evidence or witness and he closed his evidence. In rebuttal, respondent No.1-Returned Candidate, submitted her affidavit as evidence-in-chief whereupon she has also been thoroughly cross-examined by the petitioner. On behalf of respondent No.1, documents Exhibit A/1 to A/6 have been placed on record and then respondent No.1 also closed her evidence. No other respondent chose to produce evidence. After conclusion of evidence of parties, final verbal arguments have been heard at length and in addition thereto, petitioner and respondent No.1 have also submitted their respective written submissions along with reference to numerous case laws therein. Counsels appearing for respondent No.3 and respondent Nos.2 & 9 also put forth their verbal submissions.

9. This Court carefully scanned the pleadings and evidence of parties so also gone through the case laws referred and relied upon by both sides as indicated in their respective written submissions and keenly pondered over the submissions made by petitioner in person and respective counsels, appearing for respondents.

10. At the outset, it is noteworthy that RP Act prescribes a comprehensive framework for the conduct of elections to the Parliament and State Assemblies so also provides the qualifications and disqualifications for membership, corrupt practices and other offences connected with elections, and the procedure for resolving doubts and disputes arising therefrom.

It may be noted here that, in order to implement the provisions of RP Act, the Government has also framed Rules in consultation with the Election Commission, invoking powers envisaged under Section 169 of the Act, known as "The Conduct of Elections Rules, 1961" (hereinafter referred to as the "Rules of 1961").

11. Section 33 of the RP Act, talks about presentation of nomination papers and requirements for a valid nomination. Section 33A stipulates a mandate requiring a candidate to furnish information about criminal cases, if any, ensuring right to information of citizens. Section 33B, as it was, postulates that a candidate shall not be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed under the Act or the Rules, but it is worthwhile to note that this Section was later declared invalid and void, for being

contrary to the directions of Hon'ble Supreme Court. Section 36 deals with the scrutiny of nomination. Section 75A deals with declaration of assets and liabilities by the elected candidate after election. Section 80 to 84 contains provisions governing the presentation of an election petition to the High Court and Section 86 to 107 deals with the conduct of the trial of an election petition. Section 100 envisages grounds on which the election can be declared void.

12. It may be noted here that Section 33A and 33B, were inserted in the RP Act by way of the Representation of the People (Third Amendment) Act, 2002 and Rule 4A was added to the Rules, as an upshot of the directions issued by Hon'ble Supreme Court in case of **Union of India Vs. Association for Democratic Reforms [(2002) 5 SCC 294]**. Although, later on vires of Section 33B came to be challenged and this Section was declared null and void by the Apex Court in an another case of **People's Union for Civil Liberties (PUCL) Vs. Union of India [(2003) 4 SCC 399]**, because Section 33B was found to be in conflict to the directions issued by Hon'ble Supreme Court in Association for Democratic Reform's case (supra). For ready reference, it would be apposite to reproduce Section 33A and 33B and Rule 4A hereunder:-

"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) or 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 of 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 very fine 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.

33B. 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.*

(Now declared void)

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.*

(emphasis supplied)

13. It is further noteworthy that the Hon'ble Supreme Court revisited its previous decisions rendered in case of *Association for Democratic Reform's* (supra) and *PUCL's* case (supra), in a subsequent judgment delivered in case of **Resurgence India Vs.**

Election Commission of India & Anr. [(2014) 14 SCC 189]

wherein while clarifying the importance of mentioning of the information as required in the Form-26 affidavit, following directions were issued by the Supreme Court, which are incorporated in Para No. 29 of the judgment and read as follows:-

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

- 29.1. 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.
- 29.2. *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.*
- 29.3. Filing of affidavit with blank particulars will render the affidavit nugatory.
- 29.4. 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.
- 29.5. *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.*

29.6. 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.

29.7. Filing of affidavit with blanks will be directly hit by Section 125-A(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."

(emphasis supplied)

14. The proposition of law and ratio decidendi expounded by the Hon'ble Supreme Court in case of **Resurgence India** (supra) has been repeatedly followed and reiterated in **Krishnamoorthy Vs. Sivakumar & Ors. [(2015) 3 SCC 467]** and **Public Interest Foundation & Ors. Vs. Union of India [(2019) 3 SCC 224]**. The Para No.76 of the judgment passed in Krishnamoorthy's case (supra) reads as under:-

"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"

(emphasis supplied)

15. Petitioner apart from referring several judgments including mentioned hereinabove, has also referred and relied upon two judgments of Hon'ble High Court. One delivered by the Hon'ble Manipur High Court in case of **Shri Mayanglambam Rameshwar Singh Vs. Shri Yengkhom Surchandra Singh & Ors.** decided on 05.11.2020 [**MANU/MN/0113/2020**], wherein election of candidate was declared void. Para Nos.37 and 44 of the judgment reads as under:-

"37. The right of the voters to know of the relevant particulars of the candidates is very important as ultimately it is the voters who decide the fate of the candidates who will periodically exercise the political power. A citizen of this country has a fundamental right to receive information regarding the criminal activities of a candidate of the Parliament or the Lok Sabha or the Legislative Assemblies so as to make his choice effective and meaningful.

44. From the above decision, what transpires is that there is need to insist disclosure of assets and liabilities of the elected candidate together with those of the spouse or dependent children and the Parliament ought to have made a provision for furnishing this information at the time of filing the nomination. Failure to do so has resulted in the violation of guarantee under Article 19(1)(a) of the Constitution of India. Further, the inference which can be drawn is that failure to furnish information as regards the non-disclosure of correct assets and liabilities by a candidate would be a serious lapse on the part of the candidate, as it would violate the right of the voters."

(emphasis supplied)

Another judgment is of Hon'ble Karnataka High Court in case of **Smt. S. Rukmini Madegowda Vs. The State Election Commission and Ors.** delivered on 26.05.2021, which has been stated to be affirmed by the Hon'ble Supreme Court and wherein

as well, the election of elected candidate was declared void. Para No.103 of the judgment reads as under:-

"103. If the purpose of disclosing all assets and liabilities is to ensure that the voter's fundamental right of information guaranteed under Article 19 (1) (a) of the Constitution of India to be informed of the complete details of the candidates contesting for election, then, obviously the non disclosure of the assets would be a direct contravention of this fundamental right, which can neither be overlooked, ignored nor condoned. Thus, the argument of a bona fide error or the act being unintentional cannot be accepted in the case of an allegation of corrupt practice."

Several other judgments of other High Courts referred by petitioner in his written submissions are mere multiplication of case laws and do not expound any additional or new proposition.

16. The Hon'ble Supreme Court, recently in case of **Ajmera Shyam Vs. Smt. Kova Laxmi and Ors. [(2026) 3 SCC 373]**, having waded through several previous decisions, has concluded and observed that the right to know full particulars of the candidates is also a vital part of Article 19(1)(a) of the Constitution of India. In this judgment, in respect of the requirement of disclosure of the Assets and Educational Qualification in Form-26 affidavit, it has finally been held and observed in Para Nos. 8.23, 8.24, 8.25, 9.5, 9.6 & 9.7 which read as under:-

"8.23 *It is significant to note that Section 33A of the Act referred to above, introduced in the year 2002 pursuant to the decision of this Court in Association for Democratic Reforms (supra), which mandatorily requires disclosure of criminal antecedents of the candidate does not provide for disclosure of assets and educational qualifications.*

The requirement of disclosure of the assets and education qualification is to be found not on any Section/provision of the Act, but in the Form 26 Affidavit required to be filed under Rule 4A of the Conduct of Election Rules, 1961. Rule 4A merely provides that the candidate or his proposer, as the case may be, shall, at the time of delivering to the Returning Officer the nomination paper also deliver to him an affidavit sworn by the candidate before a Magistrate or a Notary in Form 26.

8.24 Reference to the said judicial discourse is essential to appreciate that the obligation to disclose information regarding criminal antecedents, assets and educational qualifications has been shaped and strengthened through judicial directions to promote transparency in the electoral process. These requirements, as incorporated into the relevant rules, are thus a result of judicial evolution complementing the existing legislative framework, rather than arising solely from an original statutory mandate.

8.25 This foray into judicial pronouncements provides the contextual perspective of the requirement to provide information about assets of the candidates in contradistinction to the requirement to disclose the criminal antecedents, and how the issue should be dealt with by the courts.

9.5 However, regarding voidance of the election of the returned candidates due to non-disclosure of assets, it is not explicitly stated in the Act. It has become part of election law through judicial intervention and it is to be mentioned as part of the Form 26 Affidavit filed during the nomination process, as discussed above.

9.6. At the same time, it has to be kept in mind that considering the evolution of law concerning disclosure of information relating to criminal antecedents and assets and the "raison d'etre" for the same, these considerations cannot be placed at the same pedestal. By its very nature, the requirement to disclose criminal antecedents has to be examined more scrupulously and dealt with more strictly as the involvement of criminals is a bane in our electoral system, which was the prime focus of judicial intervention which is reflected in the

insertion of Section 33A of the Act. On the other hand, disclosure of information about assets and educational qualification were attending requirements to improve the quality of the electoral process and the elected members for which no specific statutory provision has been made in the Act, but forms part of the information required to be mentioned in the Form 26 Affidavit in terms of Rule 4A.

9.7. *Certainly, there was concern also about assets when it was noticed that apart from criminal acts of the candidates, money was being misused by the candidates to influence the voters. Further, it was also observed that there is a tendency of the elected members to misuse their official positions to enrich themselves at the expense of public funds while in office. It is for these reasons that it was felt that candidates must disclose their assets when seeking re-election.*

(emphasis supplied)

17. It has clearly been noted by Hon'ble Supreme Court in decision of *Ajmera Shyam's* case (supra) that disclosure of information about assets and educational qualification were attending requirements intended to improve the quality of the electoral process and the elected members, for which no specific statutory provision has been made in the Act, but which forms part of the information required to be mentioned in Form-26 affidavit in terms of Rule 4A. *The purpose of disclosure of assets and liabilities of the candidate is not to associate the same with the prospect or eligibility of his candidature or his capacity to spend money in the electoral process, but primarily to evaluate at a specific point in time after the election, whether there has been a disproportionate increase in wealth by misusing official position and by self aggrandizement.*

18. The Rule 4A of the Rules of 1961, provides that the candidate or his proposer, as the case may be, at the time of delivering the nomination form under Section 33(1) of the RP Act, to the Returning Officer, shall also deliver to him an affidavit sworn by the candidate before a Magistrate of First Class or a Notary Public in Form-26.

19. Section 36 of the RP Act, deals with scrutiny of nomination. Scrutiny of nomination papers shall be made by Returning Officer and after examining the nomination papers of the candidate, if any objections are noticed either on his own motion or on raising any objection, it is for the Returning Officer to decide all objections. Nevertheless, it is envisaged under Sub Section 4 of Section 36 that "the Returning Officer shall not reject any nomination paper on the ground of any defect, which is not of a substantial character". Meaning thereby, the statutory mandate is that, if the defect in nomination papers is not considered to be of material and substantial character, the nomination cannot be rejected by the Returning Officer and acceptance of even such defective nomination cannot be held to be improper.

20. Section 100 of the RP Act deals with the grounds for declaring an election to be void. It would not be out of place to reproduce Section 100 here for ready reference, 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, in so far 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.]

[(2)] If in the opinion of [the High Court], a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice *** but [the High Court] is satisfied—

- (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and [without the consent], of the candidate or his election agent;
[* * * * *]
- (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt *** practices at the election; and
- (d) that in all other respects the election was free from any corrupt *** practice on the part of the candidate or any of his agents, then [the High Court] may decide that the election of the returned candidate is not void.”

21. In this election petition, petitioner has invoked ground of corrupt practices, to seek declaration of election of respondent No.1 as null and void. “Corrupt Practice” is defined under Section 123 of the RP Act. Sub Sections 2 & 4 of Section 123 are relevant here in his petition, which stipulates as under:-

“Sub Sections (2) & (4) of Section 123:

(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 interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or*
- (ii) induces or attempts 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 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 clause.*

(4) The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election."

22. The Hon'ble Supreme Court, in its various decisions, has held and observed that non-disclosure of assets by candidates and/or their spouse and dependents or providing false or misleading information or concealing the correct information, which are not found to be in conformity with the provisions of RP Act and Rules,

would certainly entail rendering the acceptance of the nomination papers improper and such kind of non-disclosure or declaration of false information has been held to amount to a corrupt practice, which attracts Section 100(1)(b) & (d) to declare the election void.

The caveat is that the non-disclosure of assets or the nature of providing erroneous information or hiding the correct information must be of a material and substantial character that would have an impact on the candidature of candidate or on the result of an election.

23. In case of **Lok Prahari Vs. Union of India [(2018) 4 SCC 699]**, the Hon'ble Supreme Court summarized the legal and contextual position regarding non-disclosure of assets as amounting to a corrupt practice under Section 123(2) of the Act.

The relevant portion and paragraphs of judgment are as under:-

"79. We shall now deal with Prayer 2 which seeks a declaration that non-disclosure of assets and sources of income would amount to "undue influence" – a corrupt practice under Section 123(2) of the 1951 RP Act. In this behalf, heavy reliance is placed by the petitioner on a judgment of this Court in Krishnamoorthy v. Sivakumar [Krishnamoorthy v. Sivakumar, (2015) 3 SCC 467: (2015) 2 SCC (Cri) 359: AIR 2015 SC 1921]. It was a case arising under the Tamil Nadu Panchayats Act, 1994. A notification was issued by the State Election Commission stipulating that every candidate at an election to any panchayat is required to disclose information, inter alia, whether the candidate was accused in any pending criminal case of any offence punishable with imprisonment for two years or more and in which charges have been framed or cognizance has been taken by a court of law. In an election petition, it was alleged that there were certain criminal cases pending falling in the above mentioned categories but the said information was not disclosed by the returned candidate at the time of filing his nomination. One of the questions before this Court was

whether such non-disclosure amounted to "undue influence" — a corrupt practice under the Panchayats Act. It may be mentioned that the Panchayats Act simply adopted the definition of a corrupt practice as contained in Section 123 of the 1951 RP Act.

80. *On an elaborate consideration of various aspects of the matter, this Court in Krishnamoorthy case [Krishnamoorthy v. Sivakumar, (2015) 3 SCC 467: (2015) 2 SCC (Cri) 359: AIR 2015 SC 1921] held as follows: (SCC p. 522, para 91)*

"91. ... While filing the nomination form, if the requisite information, as has been highlighted by us, relating to criminal antecedents, is 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. ..."

81. *For the very same logic as adopted by this Court in Krishnamoorthy we are also of the opinion that the non-disclosure of assets and sources of income of the candidates and their associates would constitute a corrupt practice falling under heading "undue influence" as defined under Section 123(2) of the 1951 RP Act. We, therefore, allow Prayer 2."*

(emphasis supplied)

24. In case of **S. Rukmani Madegowda Vs. State Election Commission [(2022) 18 SCC 1]**, the Hon'ble Supreme Court concluded that false declaration about assets would constitute a corrupt practice and it was observed that if a false declaration with regard to the assets of a candidate, his/her spouse or dependents is made, it shall be presumed that the false declaration impacts the election.

25. In case of **Karikho Kri Vs. Nuney Tayang [(2024) 15 SCC 112]**, the Hon'ble Supreme Court noted that whether the non-disclosure of assets is of a substantial character or not, must

be determined by the Court based on the particular facts of each case. For ready reference, relevant paragraph Nos. 37, 40 & 44 of this judgment are being referred hereunder:-

"37. In *Association for Democratic Reforms and Anr. v. Union of India and Ors.* 1, a Constitution Bench affirmed that, in terms of the earlier judgments in *Association for Democratic Reforms and Anr. (supra)* and *People's Union for Civil Liberties (PUCL) and Anr. v. Union of India and Anr.*, the right of voters to information, which is traceable to Article 19(1)(a) of the Constitution, is built upon the jurisprudence that information which furthers democratic participation must be provided to citizens and voters have a right to information which would enable them to cast their votes rationally and intelligently because voting is one of the foremost forms of democratic participation. It was further observed that voters have a right to the disclosure of information which is 'essential' for choosing the candidate for whom a vote should be cast.

40. Having considered the issue, we are of the firm view that every defect in the nomination cannot straightaway be termed to be of such character as to render its acceptance improper and each case would have to turn on its own individual facts, in so far as that aspect is concerned. The case law on the subject also manifests that this Court has always drawn a distinction between non-disclosure of substantial issues as opposed to insubstantial issues, which may not impact one's candidature or the result of an election. The very fact that Section 36 (4) of the Act of 1951 speaks of the Returning Officer not rejecting a nomination unless he is of the opinion that the defect is of a substantial nature demonstrates that this distinction must always be kept in mind and there is no absolute mandate that every non-disclosure, irrespective of its gravity and impact, would automatically amount to a defect of substantial nature, thereby materially affecting the result of the election or amounting to 'undue influence' so as to qualify as a corrupt practice."

It was further observed that,

"44. Though it has been strenuously contended before us that the voter's 'right to know' is absolute and a candidate contesting the election must be forthright about all his particulars, we are not inclined to accept the blanket proposition that a candidate is required to lay his life out threadbare for examination by the electorate. Every case would have to turn on its own peculiarities and there can be no hard and fast or straitjacketed rule as to when the nondisclosure of a particular movable asset by a candidate would amount to a defect of a substantial character....."

(emphasis added)

26. In case of *Ajmera Shyam* (supra), taking into account all the above referred decisions, Hon'ble Supreme Court reached to the conclusion that in cases of non-disclosure of information of assets or any concealment or misrepresentation of particulars of the candidate or false information about the candidate, what is required to be examined by the Court is whether such a defect, of whatsoever nature, on the part of candidate is of a substantial nature or not? and; whether candidate deliberately adopted such practice, with an intent to hide the correct information or provide erroneous information to defraud the voters and other contesting candidates. It was concluded by the Court that "the Court must determine whether there was substantial compliance with the legal requirements, or if the deficiency was merely technical or procedural, before the Court proceeds to interfere with the election."

27. Now in the light of above case law and dictum, this Court proceeds to decide issues, which fall for consideration in this petition.

Issue No.1:

28. In the case at hand, coming to issue No. I, which pertains to challenging the election of respondent No.1 by invoking the grounds envisaged under Section 100 (1)(b), (d)(i) and (iv) of the RP Act and seeking to cancel the nomination of respondent No.1 on the ground of its not being in conformity to Rule 4A of the Rules of 1961, petitioner has pointed out the following defects in the nomination papers, more particularly, in affidavit Form-26 of respondent No.1:-

Note:- *In order to maintain brevity of judgment and avoid prolixity and unnecessary repetition, this Court deems it appropriate, convenient and proper to discuss and deal with point-wise defects/objections then and there on merits, along with an analytical analysis of evidence adduced by parties so also to record conclusion of this Court while referring to the defects/objections as raised and pointed out by the petitioner in this election petition, seeking cancellation of nomination of respondent No.1 and to declare her election void.*

Nomination form submitted by respondent No.1 on 04.11.2023 is Exhibit-3 and Form-26 affidavit is Exhibit-4.

28.1 In the affidavit Form-26, particulars of social media accounts of respondent No.1, available on Facebook and Twitter, were not disclosed whereas both of her social media accounts were active and she had even posted videos on her social media accounts, on the date of nomination. Exhibits-6 & 7 have been produced by petitioner, to prove this defect.

Analysis and Conclusion:

28.1.1. In respect of non-disclosure of social media accounts of respondent No.1 in her affidavit Form-26, this Court has noticed that in the concerned column, mobile number and e-mail ID of respondent No.1 are mentioned. Although, her social media accounts, available on Facebook and Twitter are not specifically mentioned but a judicial notice may be taken that these social media accounts are not very secret rather, they can easily be traced and are accessible by any person by using name and e-mail ID of the person concerned. Respondent No.1 (DW-1) admits in her cross-examination that her social media accounts are linked and operative using her name, mobile number and email ID. Petitioner PW-1 himself in his cross examination admits that he got access to the Facebook account of respondent No.1 "Ritu Banawat" and Twitter account "@DrRituBanawat" on his own and that both were traced by him using her name, and that both accounts were linked with her mobile number as well. Further, DW-1 expressed her ignorance about any misuse of social media accounts by respondent No.1.

28.1.2. This Court has already noticed that neither any other contesting candidate nor any voter was produced or appeared before this Court as witness for and on behalf of petitioner, to establish that he/she was misled in any manner or that the election got affected for the reason of non-disclosure of social media accounts by respondent No.1.

28.1.3. Thus, it can be held that neither any candidate or voter was misled, nor did respondent No.1 gain any undue advantage,

nor did the non-disclosure of social media accounts of respondent No.1 affected the election in any manner.

28.1.4. Therefore, in the opinion of this Court, once respondent No.1 had disclosed her mobile number and email ID in affidavit Form-26, it is not desirable to conclude that non-disclosure of social media accounts by respondent No.1 was her deliberate act, amounting to adopting a corrupt practice by her, with an intent to achieve some ulterior motive or to conceal some material information about her, from voters, rather this Court finds that in the present facts, it may not be even inferred that the social media accounts by respondent No.1 were concealed, more particularly, when same are traceable by using her name or by applying her email ID etc, which were known to public at large.

28.1.5. Last but not least, this Court finds that mere non-disclosure of social media accounts specifically in affidavit Form-26 may not be considered to be of a of substantial character, more so when name, mobile number and email ID of respondent were duly disclosed, hence, such defect does not warrant cancellation of nomination nor does it affect the election of respondent No.1 in any manner.

28.2. In column No.7(a) of Form-26 affidavit, which requires details of movable assets, respondent No.1 did not disclose her Bank Accounts in SBI Bank bearing No.5100007515 and in the Canara Bank bearing No.5785101001986, so also she concealed the deposits in her both bank accounts. Documents Exhibit-7/A and 7/B and Exhibit-96/A have been produced by petitioner, in his

evidence, to show that SBI account of respondent No.1 was/is active and live.

Analysis and Conclusion:

28.2.1. In respect of non-disclosure of SBI Account, respondent No.1 in her evidence (DW-1) has made it clear that her SBI account number was non-operative and carried no liability or substantial balance, so it is not that she deliberately concealed it. Otherwise also, same is already indicated in her Income Tax Return for assessment year 2023-24 with disclosure of deposited amount therein Rs.1458/- only. She states that ITRs of previous five years were attached with the nomination and the amount deposited in this bank account is nominal, hence, same may not be considered concealment of a substantial character capable of influencing the voters' opinions or the election result.

28.2.2. In respect of bank account in Canara Bank, DW-1 states that this bank account was closed by her on 02.11.2023 i.e. prior to submission of nomination on 04.11.2023, hence, same was not an active bank account on that day. The document showing closure of this bank account and its statement have been produced by respondent No.1 in evidence as Exhibit-A/1 & A/2. It has also been stated that in this bank account, deposit of interest amount was only Rs. 83/-, which is a negligible amount.

28.2.3. Thus, this Court finds that in respect of non-disclosure of both bank accounts, respondent No.1 in her reply and evidence has explained, with justification that such non-disclosure is not deliberate and more importantly not of any material or substantial character nor has any nexus with the object and purpose, sought

to be achieved by disclosing the details of assets of candidate in affidavit Form-26.

28.2.4. Additionally, it is noteworthy that respondent No.1 had duly disclosed her total movable assets in affidavit Form-26 to the worth of Rs.8,13,125/-. This total worth certainly includes the trivial residual deposit of Rs.1458/- in SBI bank account and Rs.83/-, in Canara bank account, and these amounts are already indicated in ITR of respondent No.1. Even, if it is considered that the deposit in SBI account was of Rs.18,702.70/- as per Exhibit-165 (bank statement from 01.11.2023 to 30.11.2023) as stated by petitioner, then also, it may not be concluded by this Court that respondent No.1 deliberately concealed her SBI bank account specifically to hide the deposit therein from voters and her act of showing her deposits in the bank account as zero, in the relevant column of affidavit Form-26 amounts to adopting a corrupt practice.

28.2.5. Hence, on this count, respondent No.1 may not be held guilty of adopting corrupt practice or concealing any movable assets of substantial value, neither it can be concluded that, due to non-disclosure of bank accounts and deposits therein, the right to information of the other contesting candidates or voters was infringed, nor has it been established that election got affected in any manner.

28.3 (a) In column No.7 of Form-26 affidavit while mentioning details of five bank accounts of husband of respondent No.1, name of Bank of Account No.61057442435 has not been indicated; Account Number of PNB Bank has wrongly been mentioned and

amount deposited in such five bank accounts have not been disclosed separately and specifically.

(b) In addition, petitioner has also pointed out defect of making false and incorrect valuation of three vehicles belonging to husband of respondent No.1. According to petitioner, actual valuation of vehicles as indicated in their purchase bills/documents (Exhibit-122/A, 122/B and 122/C, 129, 130, 133 and 134) is much higher than mentioned in column 7(vi) of Form-26 and further the valuation of vehicles does not match the valuation mentioned in nomination form filled by respondent No.1 in General Assembly Election, 2023.

Analysis and Conclusion:

28.3.1. In respect of this defect, having gone through the evidence of PW-1 and DW-1 and as per the pleadings and documents, it has transpired to this Court that in the relevant column where the details of five bank accounts of husband of respondent No.1 are mentioned, on the top, name of bank SBI, Jaipur has been written and two bank account numbers at Sr. No. (i) & (ii) belong to one and same bank.

28.3.2. As far as the incorrect mention of the bank account number of PNB Bank is concerned, correct bank account No. is 9814000100009376, but it appears that while mentioning this bank account by hand, digit "3" in the last four digits was inadvertently omitted and instead of "9376", only digit "976" came to be mentioned. This error has been stated to be a bonafide and human error committed inadvertently, while mentioning the long digits of bank account number by hand.

28.3.3. As far as non-disclosure of deposits in each bank account separately and specifically is concerned, it has been noticed that the total worth of movable assets of husband of respondent No.1 has been mentioned, in the last column at bottom, to the tune of Rs.49,09,862/- which includes all deposits in his five bank accounts as well.

28.3.4. It is noteworthy here that petitioner has not been able to establish that the amount deposited in five bank accounts of husband of respondent No.1 exceeds or travels beyond the total worth of movable assets as disclosed by respondent No.1 in the Form-26.

28.3.5. This Court finds that petitioner has not produced any iota of evidence to show that the actual amount, deposited in these five bank accounts have been concealed, rather on the contrary, as per details of deposited amount as on 4th November, 2023 i.e. at the time of submission of nomination form, in the ICICI bank account, balance was of Rs.26,377.17/- (Exhibit-A/3) and in PNB account, balance was of Rs.14,486.30/- (Exhibit-A/4), it is, *prima facie*, established that the total value of movable assets belonging to husband of respondent No.1 as disclosed in Form-26 is correct and there is no concealment by respondent No.1 in regard to five bank accounts of her husband.

28.3.6. Otherwise also, it is well established principle of law that in an election petition involving the charge of corrupt practice, the person charged with the corrupt practice enjoys the presumption of innocence. The charge of adopting corrupt practice, levelled by election petitioner must be proved "to the

hilt" i.e. by proof beyond reasonable doubt and not merely on the basis of preponderance of probabilities.

28.3.7. As far as objection in respect of mentioning less valuation of three vehicles belonging to husband of respondent No.1 is concerned, petitioner PW-1 admits in his cross-examination that vehicle Fortuner Car- RJ-05-UA-4888 was purchased by husband of respondent No.1 in resale from one Shri Anupam Singh in the year 2023. Value of vehicle in re-sale has not been disclosed by petitioner. PW-1 does not deny the fact of depreciation of value of vehicles with passage of time, when vehicle becomes older after using the same.

28.3.8. In the opinion of this Court, by no stretch of imagination, the value of vehicles may not be assessed, same as indicated in the purchase bills at the time of purchasing the vehicles, especially after the vehicles have been used for year.

28.3.9. In the relevant column, year of purchase of other two vehicles Scorpio Car – RJ-14-UD-0200 and Tata Hydra – RJ-05-GB-4579 is mentioned of year 2011, therefore, their current valuation in the year 2023 would not remain static or same, rather would certainly depreciate.

28.3.10. Further, this Court has noticed that the objection of assessing and mentioning a lower valuation of three vehicles, as raised by petitioner is not based on any inquiry of current and correct market valuation of three vehicles and no material evidence of the present market valuation of three vehicles have been placed on record by petitioner. Hence, the objection, on its face value appears to be hypothetical and may not be appreciated.

28.4. Few defects have been pointed out by petitioner for not disclosing the details of immovable assets belonging to respondent No.1 and her husband, in the relevant column 7(b) of Form-26 affidavit:-

(a) Petitioner states that respondent No.1 disclosed her agricultural lands at Uchchain and Roondh Roopwas, but Khasra numbers of lands have not been disclosed and measurement of lands has incorrectly been mentioned as 0.05 acre in column 7(b)(i). According to petitioner, respondent No.1 is recorded khatedar of agriculture land at Village Jugla Patti, measuring 0.22 hectare and in Village Roondh Roopwas, measuring 0.16 hectare, hence, measurement of her agriculture land come about 0.938 acre, but she falsely mentioned measurement of her agriculture land as 0.05 acre only. In support of such objection, letter issued by Tehsildar, Uchchain (Exhibit-96/C), Jamabandi of Samwat 2075-78 of agriculture land at Village Jugla Patti (Exhibit-97) and Jamabandi and Girdawari of Samwat 2075-78 for the agriculture land of respondent No.1 in Village Jugla Patti and Roondh Roopwas of Khata No.210 & 331 respectively have been placed on record and exhibited in cross-examination of respondent No.1 (DW-1) as Exhibit-147, 148, 149 to 155.

Analysis and Conclusion:

28.4.1. In this respect, respondent No.1 has replied that since there is no separate column in Form-26 to indicate Khasra numbers of agriculture lands, same were not mentioned and as far as measurement is concerned, same has correctly been mentioned in the relevant column. It has been replied that Village Jugla Patti

is situated within Tehsil Uchchain, hence, there is no concealment by respondent No.1 about details of her agriculture lands.

28.4.2. This Court finds that in cross-examination, PW-1 admits that village Jugla Patti falls within Panchayat Samiti Uchchain. Further, when petitioner put questions to respondent No.1 in her cross-examination, about the alleged mismatch of measurement of agriculture land, she replied that she has not concealed her agriculture land and if some technical defect in mentioning the measurement of land in Form-26 has appeared, same appears to have occurred due to a miscalculation in measurement of agriculture lands in Bigha, Hectare or Acre, which is insignificant and has no nexus with object sought to be achieved.

28.4.3. As far as the issue of disclosing the assets by candidate is concerned, in the opinion of this Court as well, such minor defects may not be considered material or substantial defects if same do not have any impact on the election, nor same can be considered amounting to violation of the right to information of the other candidates or voters, hence, cannot be taken to fall within the ambit of adopting corrupt practice by respondent No.1.

(b) Petitioner pointed out that in the head of "Non-Agricultural Assets", a piece of land measuring 275 Sq. Meters situated in Anupam Vihar, Ajmer Road, Jaipur bearing No.C-598, belonging to respondent No.1, which was disclosed by respondent No.1 in her nomination- 2013 has not been disclosed in Form-26 submitted along with nomination- 2023.

Analysis and Conclusion:

28.4.4. In this respect, respondent No.1 has clarified that this piece of land was agreed to be sold by her through an agreement to sale dated 10.10.2023 i.e. prior to submission of nomination on 04.11.2023, hence, same was not mentioned. In evidence, respondent No.1 (DW-1) states that buyer of this plot namely Ravindra Kumar has filed a Civil Suit bearing No.416/25/25 for specific performance based on the agreement dated 10.10.2023. PW-1, in his cross-examination admits that in Form-26, there is no specific column to disclose the properties which have been agreed to be sold by the candidate.

28.4.5. Thus, in this way, this Court finds that non-mentioning of this piece of land by respondent No.1 in her affidavit Form-26 has duly been explained with justifiable reasons, hence, it may not be considered concealment of immovable assets on her part.

(c) Petitioner pointed out that in the column for details of residential properties, ancestral house of respondent No.1 belonging to her husband's family, situated at New Colony, Roopwas has not been disclosed, but in this respect, respondent No.1 has clarified that house of New Colony, Roopwas is not ancestral house of her husband, rather same is self-acquired property of her mother-in-law and is not even an HUF property. Sale deed of this property has been produced in evidence as Exhibit-A/6.

Analysis and Conclusion:

28.4.6. It is noteworthy here that petitioner PW-1 in his cross-examination admits that since in election identity card of

respondent No.1, address of New Colony, Roopwas was mentioned, hence, merely on that basis, he was under the impression that this house belongs to her husband but indeed he has no document or other proof to show that this house belongs to husband of respondent No.1. Thus, based on such evidence, it is apparent that this objection by petitioner has been raised in air baselessly and has no legs to stand.

(d) Petitioner also raised objection of concealment/non-disclosure of properties of commercial/residential nature belonging to husband of respondent No.1, stating *inter alia*, that husband of respondent No.1 owns a machine "Tata Hydra" bearing Registration No. RJ-05-GB-4579, hence, the property wheresoever this machine is parked/installed must belong to the of husband of respondent No.1, which has not been disclosed.

Analysis and Conclusion:

28.4.7. This objection, on its face value and apparently appears to be hypothetical because PW-1 himself admits that this objection has been raised by him merely based on registration of Tata Hydra machine in the name of husband of respondent No.1 and indeed he has no concrete information or proof about concealment of any commercial or residential property belonging to husband of respondent No.1.

28.4.8. In addition, it is noteworthy that no cross-examination relating to this objection was made by the petitioner from respondent No.1.

28.4.9. Therefore, it can easily be concluded that this objection has been raised by petitioner arbitrarily, without any basis and

just based on a hypothetical presumption, as such same does not survive at all.

28.5. Petitioner has raised a defect/objection of concealing of source of income by respondent No.1 in column No.9 & 9(a) of Form-26.

It has *inter alia* been stated that respondent No.1 showed her income from agriculture land only whereas in her previous nomination- 2013, she had disclosed her source of income from transportation and in ITR of assessment year 2023-24, her source of income has been indicated from wholesale and retail trade so also by way of savings and shares. Thus, according to petitioner, this is grave concealment on the part of respondent No.1, which makes her affidavit Form-26 false, incorrect and invalid.

Analysis and Conclusion:

28.5.1. Respondent No.1 in her reply, evidence and written arguments made it clear that indeed there is no inconsistency in referring source of income of respondent No.1 in the affidavit Form-26 submitted along with nomination 2023 and in her ITR for the assessment year 2023-24. In her affidavit Form-26, source of income has been disclosed as arising from agricultural land and in ITR, source of income has been disclosed as arising from wholesale and retail trade. Respondent No.1 submits that agriculture produce is sold in both ways, wholesale as also in retail, and such sale is a trade from agriculture produce.

28.5.2. That apart, income of Rs.6670/- showed in ITR 2023-24, from shares and savings is a negligible amount and its non-

disclosure in affidavit Form-26 may not be considered as of substantial character so as to impact the election.

28.5.3. In respect of showing source of income by way of transportation in the nomination form of 2013, same was also correct at the relevant point of time.

28.5.4. In view of reply and evidence of respondent No.1, in the opinion of this Court, objection of petitioner in respect of concealing the source of income by respondent No.1 does not sustain, hence, is hereby rejected.

28.6. Petitioner has also pointed out defects in affidavit Form-26 of respondent No.1 as pleaded by him in Para No.5(11), (12) & (13) of election petition that some columns in Clause 7 & 8 have left blank and unfilled, which itself goes to show that respondent No.1 is guilty of concealing/non-disclosing the required information, therefore, her nomination form deserves to be cancelled.

The relevant columns are under the caption "विकास, सनिर्माण आदि के माध्यम से भूमि पर कोई निविधान" clause 7 (iv) and "लोक वित्तीय संस्थाओ और सरकार के प्रति दायित्वों/कोरम को शोध्यों के ब्यौरे", which is at clause 8(i) related to husband or wife and "सरकारी शोध: सरकारी आवास से संबंधित विभागों के शोध" which is at clause 8(ii) in Form-26.

Analysis and Conclusion:

28.6.1. Having gone through the captions of relevant columns alleged to be left blank and unfilled and having adverted to the pleadings of parties and evidence, this Court finds that it is not correct to state that the columns have not been filled.

28.6.2. If relevant column 7(iv) is considered as a whole and in seriatim, same pertains to residential apartments and in the final column, the current market value of Apartment Nos.604 & 605, Jagatpura, Jaipur, measuring 1900 Sq. Feet and 1400 Sq. Feet respectively have been mentioned by respondent No.1 as 40 lacs and 30 lacs. Thus, the unfilled column is deemed to record zero value as is mentioned in the same caption of column belonging to agriculture properties. As per Section 119(1) of the Bharatiya Sakshya Adhinyam, 2023, Court may presume existence of certain facts which it thinks likely to have happened, regard being had to the common course of natural events and human conduct. Hence, in the opinion of Court, this may not be considered as leaving the column blank or unfilled, with an intent to defraud voters or to raise any benefit or gain.

28.6.3. Similar is the position in respect of column 8(i) under caption "लोक वित्तीय संस्थाओ और सरकार के प्रति दायित्वों/कोरम को शोध्यों के ब्यौरे" in the head of husband or wife. Impliedly, this column too may be deemed to record zero entry as when no properties in the related upper columns, have been disclosed, it is obvious that the question of obtaining any loan from the bank or financial institution does not arise at all. Hence, same also needs to be ignored being inconsequential and insignificant having no impact on the election.

28.6.4. As far as column under caption "सरकारी शोध: सरकारी आवास से संबंधित विभागों के शोध" is concerned, which finds place at clause 8(ii), a close perusal of the required information goes to

show that the required information is in the nature whether candidate has been utilizing a Government house during last 10 years from the date of declaration of the election? The information required to be disclosed is only in 'yes' or 'no'. Since respondent No.1 is in occupation of her Government house/accommodation for less than 10 years or within 10 years period preceding the date of declaration of election, hence, she filled in this column "No" which may not be assumed to be incorrect, false or misleading in any way.

28.6.5. Therefore, in the considered opinion of this Court, these objections of petitioner are inconsequential and insignificant, which have been raised only for the sake of pointing out defects in affidavit Form-26. Indeed such defect/objection, considering their character, gravity and relevance to the issue of adopting corrupt practice or to declare the affidavit Form-26 of respondent No.1 invalid, do not inspire any confidence and are worthy of rejection only, hence, are hereby rejected.

29. This Court finds that, considering the object and purpose of disclosing the assets of a candidate in Form-26, which have been elaborately disclosed in Para Nos.119 and 120 of the judgment of Supreme Court in PUCL's case (supra), it is difficult to hold that any of the defect pointed out by petitioner is commensurate with that purpose and object sought to be achieved. This Court finds that all defects are insignificant, being of non-substantial character. It would be appropriate to refer Para No.119 & 120 of PUCL's judgment herein for ready reference, wherein the

justification for disclosure of information about assets of candidate has been explained:-

"IV. (2) Assets and liabilities

119. Disclosure of assets and liabilities is another thorny issue. If the right to information is to be meaningful and if it is to serve its avowed purpose, I am of the considered view that the candidate entering the electoral contest should be required to disclose the assets and liabilities (barring articles of household use). A Member of Parliament or State Legislature is an elected representative occupying high public office and at the same time, he is a "public servant" within the meaning of the Prevention of Corruption Act as ruled by this Court in the case of P.V. Narasimha Rao v. State [(1992) 3 SCC 637]. They are the repositories of public trust. They have public duties to perform. It is borne out by experience that by virtue of the office they hold there is a real potential for misuse. The public awareness of financial position of the candidate will go a long way in forming an opinion whether the candidate, after election to the office had amassed wealth either in his own name or in the name of family members viz. spouse and dependent children. At the time when the candidate seeks re-election, the citizens/voters can have a comparative idea of the assets before and after the election so as to assess whether the high public office had possibly been used for self-aggrandizement. Incidentally, the disclosure will serve as a check against misuse of power for making quick money, a malady which nobody can deny, has been pervading the political spectrum of our democratic nation. As regards liabilities, the disclosure will enable the voter to know, inter alia, whether the candidate has outstanding dues payable to public financial institutions or the Government. Such information has a relevant bearing on the antecedents and the propensities of the candidate in his dealings with public money. "Assets and liabilities" is one of the important aspects to which extensive reference has been made in Assn. For Democratic Reforms case. The Court did consider it, after an elaborate discussion, as a vital piece of information as far as the voter is concerned. But, unfortunately, the observations made by this Court in this regard have a been given a short shrift by Parliament with little realization that they have a significant bearing on the right to get information from

the contesting candidates and such information is necessary to give effect to the freedom of expression.

120. As regards the purpose of disclosure of assets and liabilities, I would like to make it clear that it is not meant to evaluate whether the candidate is financially sound or has sufficient money to spend in the election. Poor or rich are alike entitled to contest the election. Every citizen has equal accessibility in the public arena. If the information is meant to mobilize public opinion in favour of an affluent/financially sound candidate, the tenet of socialistic democracy and the concept of equality so firmly embedded in our Constitution will be distorted. I cannot also share the view that this information on assets would enable the public to verify whether unaccounted money played a part in contesting the election. So long as Explanation 1 to Section 77 of the RP Act, 1951 stands and the contributions can legitimately come from any source, it is not possible for a citizen/voter to cause a verification to be made on those lines. In my opinion, the real purposes of seeking information in regard to assets and liabilities are those which I adverted to in the preceding paragraph. It may serve other purposes also, but, I have confined myself to the relevancy of such disclosure vis-à-vis right to information only."

(emphasis added)

30. It is well known proposition of law and no more *res integra* that ordinarily and in a routine manner, the success of a winning candidate at an election should not be lightly interfered with by the Courts, unless the electoral process is found to be vitiated by gross irregularities that undermine electoral integrity. The intervention by Courts is certainly permissible, but when it is clearly established, beyond reasonable doubt that there has been a clear and blatant violation of the law that threatens fairness, legality and constitutional principles or that any directions of the Hon'ble Supreme Court have clearly been breached.

31. It can safely be observed that the Court, certainly plays a vital role in upholding the rule of law, but utmost care and caution must be undertaken by the Court to ensure that election results are not invalidated, merely based on subjective interpretation and on minor or technical irregularities that do not substantially impinge on the law and election results. An unwarranted interference by the Court, with the electoral process on account of insignificant and trivial nature of irregularities and consequent overturning of election results may lead to a result of eroding the public trust which forms a foremost factor in democratic institutions.

32. Thus, whenever the issue of invalidating people's mandate is raised before the Court, the Court must be very careful and circumspect. It is well settled that minor procedural errors or purely technical objections of inconsequential nature should not be allowed to override the mandate of electorate.

33. What is required to be kept in mind by the Court is that the will of people, exposed through the election result, should be respected by the Court as well because same is considered as sacrosanct, as conveyed by the latin maxim "*Vox populi, vox Dei*" i.e. the voice of people and collective wisdom should be respected. Although, it is true as well that simultaneously Courts are also under legal obligation to uphold the rule of law and to ensure free and fair elections in the country, so as to maintain the robust electoral system in the country to sustain democracy in India. Thus, a fine balance must be maintained by the Courts.

34. At the cost of repetition, it is hereby reiterated that no adverse inference against a returning candidate for adopting corrupt practice can be drawn and it is for the election petitioner, who made allegations of following corrupt practice, to prove such allegations "to the hilt" i.e. beyond reasonable doubt, not merely on the basis of principle of preponderance of probabilities. Indeed, the charge of corrupt practice falls of quasi judicial in nature, and the required standard of proof is same as in a criminal trial and not like civil cases.

35. In case of **Santosh Yadav Vs. Narendra Singh [(2002) 1 SCC 160]**, having considered dictum of law and ratio decidendi expounded by the Supreme Court in its previous pronouncements, on the issue of affecting the result of election based on improper acceptance of nomination, the legal position was summed up as under:-

"16. The law as regards the result of election having been materially affected in case of improper acceptance of nomination may be summed up as under:-

(1) A case of result of the election, in so far as it concerns the returned candidate, having been materially affected by the improper acceptance of any nomination, within the meaning of Section 100(1)(d) (i) of the Representation of the People Act, 1951 has to be made out by raising specific pleadings setting out all material facts and adducing cogent evidence so as to enable a clear finding being arrived at on the distribution of wasted votes, that is, the manner in which the votes would have been distributed if the candidate, whose nomination paper was improperly accepted, was not in the fray.

2. Merely because the wasted votes are more than the difference of votes secured by the returned candidate and the candidate securing the next highest number

of votes, an inference as to the result of the election having been materially affected cannot necessarily be drawn. The issue is one of fact and the onus of proving it lies upon the petitioner.

3. The burden of proving such material effect has to be discharged by the election petitioner by adducing positive, satisfactory and cogent evidence. If the petitioner is unable to adduce such evidence the burden is not discharged and the election must stand. This rule may operate harshly upon the petitioner seeking to set aside the election on the ground of improper acceptance of a nomination paper, but the Court is not concerned with the inconvenience resulting from the operation of the law. Difficulty of proof cannot obviate the need of strict proof or relax the rigour of required proof.

4. The burden of proof placed on the election petitioner is very strict and so difficult to discharge as nearing almost an impossibility. There is no room for any guesswork, speculation, surmises or conjectures i.e. acting on a mere possibility. It will not suffice merely to say that all or majority of wasted votes might have gone to the next highest candidate. The law requires proof. How far that proof should go or what it should contain is not provided by the legislature.

5. The casting of votes at an election depends upon a variety of factors and it is not possible for any one to predicate how many or which proportion of the votes will go to one or the other of the candidates. It is not permissible to accept the ipse dixit of witnesses coming from one side or the other to say that all or some of the votes would have gone to one or the other on some supposed or imaginary ground."

(emphasis supplied)

36. Following the legal position as summarized in *Santosh Yadav's* case (supra), in case of **Harsh Kumar Vs. Bhagwan Sahai & Ors. [(2003) 7 SCC 709]**, the Hon'ble Supreme Court clearly observed that the success of a winning candidate at an

election should not be lightly interfered with. The Court noted that in the scheme of Section 100 of the Act, special clause (d) of sub-section (1) thereof clearly prescribes that inspite of availability of grounds contemplated by sub Clauses (i) to (iv) of Clause (d), the election of a returned candidate shall not be avoided unless and until it is proved that the result of the election, insofar as it concerns a returned candidate was materially affected. It was also observed therein that the burden of proof of corrupt practice is very high and the standard of proof required is not the preponderance of probabilities but proof beyond doubt. It was also held and observed that the will of people cannot be lightly set aside, though, of course, it is necessary to protect the purity of the election.

37. Following the similar proposition of law, in case of *Ajmera Shyam* (supra), the Hon'ble Supreme Court again reiterated the following proposition and for ready reference, Para No. 9.10.6 is being reproduced hereunder:-

"9.10.6. Under the circumstances, once the people have spoken their mind by casting their votes through the ballot box and reposed their confidence in the elected candidate, whenever the issue of invalidating the people's mandate is raised before the court, the court must be very careful and circumspect.

A fine balance must be struck between holding free and fair election- which involves the fundamental right of voters to have information about the candidates- and maintaining the sanctity of the mandate of the voters upon the declaration of the result. After all, election result is the embodiment of the will of the people expressed through the exercise of the constitutional right of the people to vote.

The court, therefore, must keep in mind that declaring an election void solely for non-disclosure of assets, if it lacks substantiality, could undermine the

validity of the popular mandate. To nullify the choice of the people on a minor technicality and insignificant non-disclosure of assets by the elected candidate, would have serious repercussions on the democratic process.

Thus, while the court plays a vital role in upholding the Rule of law, utmost care must be taken to ensure that election results are not invalidated based on subjective interpretation and minor or technical irregularities that do not substantially impinge on the law, since unwarranted interference with the electoral process and overturning election results can erode public trust in democratic institutions."

(emphasis supplied)

38. In the judgments rendered by the Hon'ble Manipur High Court in case of **Shri Mayanglambam Rameshwar Singh** (supra) and the judgment delivered by Hon'ble Karnataka High Court in case of **Smt. S. Rukmini Madegowda** (supra) wherein the election of returned candidate was declared void, the said judgment do not lend any strength to the election petitioner seeking to declare the result of election of respondent No.1 as null and void. Upon an analytical discussion of each and every ground raised by the election petitioner, this Court does not find any force therein to held that respondent No.1 is guilty of adopting corrupt practice, or that her nomination was improperly accepted by the Returning Officer or her nomination suffers from a serious defect of substantive character which either violates the mandate of law or materially affected her election. The legal proposition in both these judgments is one and the same, as has been discussed and highlighted by this Court in foregoing paragraphs.

Other case laws, referred to by the counsel for both sides, are merely multiplication of the principles of law that have already been discussed elaborately hereinabove, therefore, this Court deems it unwarranted to discuss and refer to each judgment separately, as same will not provide any aid/assistance additionally to either parties. The case laws discussed hereinabove, encapsulate each and every point as raised by parties in their verbal and written submissions.

39. The conclusion of Court is that petitioner miserably failed to establish issue No.1 in his favour, hence, resultantly, there is no reason to declare the election of respondent No.1 null and void and issue No.1 is decided accordingly, against petitioner.

Issue No.2 and 3:

40. Issue no.2 pertains to seeking cancellation of nomination of other candidates, respondent Nos.2 to 10, who also contested elections for Member of Legislative Assembly from Constituency Bayana (076).

Issue No.3 is in the nature of a consequential declaration of election petitioners as unopposed elected Member of Legislative Assembly of Constituency Bayana (076) for Election- 2023, in case, the election of respondent No.1- Returned candidate is declared void and the nomination of other contesting candidates respondent Nos. 2 to 10, are cancelled by the Court.

41. As far as issues Nos.2 and 3 are concerned, undisputed position on record is that Form-21E (Exhibit-1) is an undisputed document and exposes data of votes polled in Constituency Bayana in General Assembly Election, 2023. This document

contains total number of electors, total number of valid votes polled, number of voters who opted for NOTA, number of rejected voters and number of voters polled in favour of each contesting candidate in the election of Rajasthan State Legislative Assembly Elections Constituency Bayana (076).

41.1. As per record, respondent No.1, in whose favour, the highest number of votes (105748) were polled, was declared elected and Returned Candidate for Constituency Bayana (076).

41.2. Respondent No.2 Bachchusingh received 14398 votes, respondent No.3 Amarsingh – 65107 votes, respondent No.4 Mukesh- 642 votes, respondent No.5 Madanmohan – 1620 votes, respondent No.6 Munniram- 431 votes, respondent No.7 Neetu- 527 votes, respondent No.8 Vijay Singh- 528 votes, respondent No.9 Ajay Singh- 634 votes, respondent No.10 Sudesh Kumari- 1167 votes and election petitioner-Purushottam got 689 votes.

41.3. Thus, it stands clear by calculation on tips that the total number of votes polled in favour of returned candidate respondent No.1, exceeds to the total votes cast in favour of election petitioner and other candidates respondent Nos.2 to 10 (total $689+85743=86432$ votes). Hence, considering the total number of votes polled in favour of respondent Nos. 2 to 10, individually or collectively, even if nomination of any of candidate out of respondent Nos.2 to 10 is cancelled as prayed by petitioner, same does not yield to any change in the final result of election of respondent No.1, nor does it place the petitioner in any advantageous position.

41.4. For such reason, this Court does not deem it just and proper, rather, finds it unwarranted to enter into the grounds on merits, as pleaded and raised by petitioner, to cancel the nomination of other unsuccessful nine contesting candidates (respondent Nos.2 to 10 herein), because even if issue is decided in favour of petitioner, same would remain inconsequential and insignificant, as far as the final result of election of respondent No.1 is concerned, more so when this Court has not declared the election of respondent No.1 void while deciding issue No.1.

41.5. Similarly, based on the outcome of issue No.1, the adjudication of issue No.3 as well becomes redundant and unwarranted.

42. Thus, in view of above reasoning, issue Nos.2 and 3 have been rendered redundant and stand decided accordingly.

43. Before parting with, this Court finds it desirable and necessary to take a serious note, which is apparent on the record that how and in what manner respondent No.1, knowingly and deliberately, adopted dilatory tactics for avoiding service of summons of this election petition, so as to escape from putting presence before this Court. In order to ensure service of summon and mark presence by respondent No.1 in this election petition, Court has to follow an unprecedented method of service, when it transpired to the Court that respondent No.1 is evading service of summon, sent by the Court through Process Server of Court so also by registered post.

Respondent No.1 is an elected Member of Legislative Assembly in General State Assembly Election, 2023 and holds a

constitutional position so also can be assumed to be a public figure in her Constituency Bayana, hence, she is not expected to play the game of hide and seek, to evade Court summons and thereby cannot be permitted to dishonor and disregard, the process of law because same would yield bad precedent. Such conduct of respondent No.1 deserves to be deprecated and suitable cost is liable to be imposed upon her.

44. From the record of this election petition, it appears that respondent No.1 was declared elected on 03.12.2023 and this petition was instituted before this High Court on 08.12.2023. Respondent No.1 marked her presence in this election petition for the first time through her Advocate on 10.10.2024.

44.1. The election petition was admitted and summons were issued to all the respondents including respondent No.1 vide order dated 22.12.2023. Summons were permitted to be served 'dasti' by way of Process Server of Court so also were sent through registered post. Petitioner submitted extra sets, PF and notices, mentioning the current residential address of respondent No.1, yet summons could not be served.

44.2. As per report of Process Server dated 12.01.2024, 17.01.2024 and 19.01.2024, though her given address on summons was correct, however, every time, it was reported that she is not available at home; her landlord and an another person, working in her office were asked to receive summon, but both refused to receive summon, hence, same was returned unserved.

44.3. Registered summon also came to be returned with the same remark that respondent No.1 was not found at her home on

either of dates i.e. 08.01.2024, 09.01.2024, 10.01.2024, 11.01.2024, 12.01.2024 & 15.01.2024.

44.4. Since according to election petitioner, respondent No.1 was knowingly avoiding service of summon, hence, he served summon upon respondent No.1 on her Whatsapp mobile number and email ID, proof of which with his affidavit has been placed on record by petitioner.

44.5. This Court, in order-sheet dated 21.09.2024 noted the conduct of respondent No.1, that how she is evading service of Court summons and again fresh notices were ordered to be issued. Simultaneously, a direction was also given to hold an enquiry through concerned District Judge.

44.6. In the Enquiry Report of District Judge, it revealed that Process Server visited several times at the residence and official address of respondent No.1 on 12.01.2024, 17.01.2024 & 19.01.2024 so also talked to her on telephone and gave information about the present election petition. In the Enquiry Report, it was also noticed that information to the landlord of respondent No.1 Mr. Rakesh Tiwari and one Office Assistant of respondent No.1 was also given by the Process Server, yet service could not be effected and since no witness was present at site, summons could not be pasted.

44.7. In such circumstances, this Court while issuing fresh notice to respondent No.1, directed to ensure service of notice through the Secretary, Rajasthan Legislative Assembly since respondent No.1 was an elected Member of Rajasthan State Legislative Assembly.

44.8. In this way, summons of election petition against respondent No.1 could serve upon her through Secretary, Rajasthan State Legislative Assembly on 08.10.2024 and then she put in appearance through Advocate.

45. In the considered opinion of this Court, respondent No.1 is main contesting party to this election petition as it is her election, which is under challenge herein and at stake, hence, without effecting proper service of summon upon her, the proceedings on election petition was not possible to proceed. Therefore, it is apparent that in order to protract the proceedings of this election petition, respondent No.1 took resort to passing a longer time by evading service of summon upon her and not responded, despite having information, through various modes, of presentation of this election petition against her.

In the opinion of this Court, respondent No.1 should not have adopted such *modus operandi* to delay and deter the proceedings of election petition, and she has been found, *prima facie*, guilty of circumventing the legal process of service of summons, that too, to achieve an ulterior motive, therefore, this Court finds it appropriate, just and proper, more particularly, in order to deter such methods of avoiding process of Court by a person, holding a constitutional position, to saddle the respondent No.1 with cost of Rs.1,00,000/-, which will be payable by her to election petitioner. Simultaneously, this Court strongly deprecates the conduct and practice followed by respondent No.1 to avoid her presence in this election petition for a long period of about 10 months.

Final Conclusion:

46. The upshot of discussion and enunciation made hereinabove, factually and legally, is that, this Court arrives at a conclusion that petitioner could not succeed in establishing any ground(s) to seek cancellation of the nomination of respondent No.1 and to declare her election as a Member of Legislative Assembly for Constituency of Bayana (076) in District Bharatpur in the General Assembly Election, 2023 in the State of Rajasthan, void and finally this election petition fails, hence, same is hereby dismissed.

47. However, respondent No.1 is saddled with cost of Rs.1,00,000/- (One Lakh Rupees) payable by her to the election petitioner within a period of thirty days, on account of following a wrong precedent to delay and deter the proceedings of this election petition by evading service of summons of election petition for a longer period as discussed by this Court in Para No.43-45 hereinabove.

48. All pending application(s), if any, stand(s) disposed of.

(SUDESH BANSAL), J

Nitin/