A RESURGENCE INDIA

v.

ELECTION COMMISSION OF INDIA & ANR.

(Writ Petition (Civil) No. 121 of 2008)

SEPTEMBER 13, 2013

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[P. SATHASIVAM, CJI, RANJANA PRAKASH DESAI AND RANJAN GOGOI, JJ.]

Constitution of India, 1950:

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Art. 19(1)(a) – Freedom of speech and expression – Right to know – Voter's right to know about the candidate contesting the election – Explained – Held: Citizen's right to know of the candidate who represents him in Parliament/State Assembly will constitute an integral part of Art.19(1)(a); and any act, which is derogative of the fundamental rights is ultra vires — Purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizen under Art.19(1)(a) — The citizens are entitled to have the necessary information at the time of filing of the nomination paper in order to make a choice of their voting.

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Representation of the People Act, 1951:

s.33-A read with ss. 36 and 125-A – Right to information – Candidates contesting the election – Filing of nomination paper – Affidavit with particulars left blank – Furnishing of information as required under sub-s.(1) of s.33-A and as laid down in the judgments of Supreme Court in Association for Democratic Reforms and People's Union for Civil Liberties – Principles culled out and directions issued – Held: Every candidate is obligated to file an affidavit with relevant information with regard to his/her criminal antecedents, assets and liabilities and educational qualifications — Filing of affidavit with particulars left blank will render the affidavit

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nugatory – If a candidate fails to fill the blanks even after reminder by Returning Officer, the nomination paper is fit to be rejected – Power of Returning Officer to reject nomination paper must be exercised very sparingly but the bar should not be laid so high that justice itself is prejudiced – It is clarified that Para 73 of the judgment in People's Union for Civil Liberties will not come in the way of Returning Officer to reject the nomination paper when affidavit is filed with particulars left blank.

s.36 read with s.33-A – Scrutiny of nomination – Duty of Returning Officer – Explained – Furnishing of relevant information – Held: Returning Officer can compel a candidate to furnish information relevant on the date of scrutiny — Election Commission already has a standard draft format for reminding the candidates to file an affidavit as stipulated – Another clause may be inserted in the format for reminding the candidates to fill the blanks with relevant information thereby conveying the message that no affidavit with particulars left blank will be entertained.

s.125 A(i) – Filing of false affidavit and filing of affidavit with particulars left blank – Held: Filing of affidavit with particulars left blank will be directly hit by s.125A(i) — However, as the nomination paper itself is rejected by Returning Officer, there is no reason to penalize the candidate again for the same act by prosecuting him/her — If the candidate who has filed an affidavit with false information as well as the candidate who has filed an affidavit with particulars left blank are treated at par, it will result in breach of fundamental right guaranteed under Art.19(1)(a) of the Constitution, viz., 'right to know', which is inclusive of freedom of speech and expression.

During the Punjab Legislative Assembly Elections, 2007, the petitioner-organization noticed large scale irregularities in most of the affidavits filed by the candidates of different political parties as regards

A **furnishing of information relating to candidate's conviction/acquittal/discharge in any criminal offence in the past, any criminal case pending against him, information regarding assets of the candidate as well as of his/her spouse and dependants etc. as was required**
B **consequent upon judgments of the Supreme Court in** *Association for Democratic Reforms*[1] ***and*** *People's Union for Civil Liberties*[2] ***(PUCL).*** **The petitioner, therefore, made a representation to the Election Commission of India regarding large number of non-disclosures in the**
C **affidavits filed by the contestants in the State and poor level of scrutiny by the Returning Officers. The Election Commission of India expressed its inability in rejecting the nomination papers solely due to furnishing of false/ incomplete information in the affidavits, in view of the**
D **judgment in *PUCL.* The petitioner filed the instant writ petition for issuance of specific directions to effectuate meaningful implementation of the judgments in.** *Association for Democratic Reforms* **and *PUCL,* and also to direct the respondents to make it compulsory for the**
E **Returning Officers to ensure that the affidavits filed by the contestants are complete in all respects and to reject the affidavits having blanks.**

Disposing of the petition, the Court

F **HELD: 1.1. The Returning Officers derive the power to reject the nomination papers on the ground that the contents to be filled in the affidavits are essential to effectuate the intent of the provisions of the Representation of the People Act, 1951 and as a**
G **consequence, leaving the affidavit blank will in fact make it impossible for the Returning Officer to verify whether**

1. *Union of India v. Association for Democratic Refroms* 2002 (3) SCR 696.
2. *People's Union for Civil Liberties (PUCL) and Another vs. Union of India &*
H *Anr.* 2003 (2) SCR 1136.

the candidate is qualified or disqualified which indeed will frustrate the object behind filing the same. [Para 16] [376-C-E]

Shaligram Shrivastava vs. Naresh Singh Patel **2002 (5) Suppl. SCR 585 = (2003) 2 SCC 176 – relied on.**

1.2. This Court, in *Association for Democratic Reforms,* held that a voter has the elementary right to know full particulars of a candidate who is to represent him in Parliament and such right to get information is universally recognized natural right flowing from the concept of democracy and is an integral part of Art.19(1)(a) of the Constitution of India. It was further held that the voter's speech or expression in case of election would include casting of votes, as voter speaks out or expresses by casting of vote. For this purpose, information about the candidate to be selected is a must. Thus, in unequivocal terms, it is recognized that the citizen's right to know of the candidate who represents him in Parliament/State Assembly will constitute an integral part of Art.19(1)(a) of the Constitution; and any act, which is derogative of the fundamental rights is at the very outset *ultra vires.* With this background, s.33A was inserted in the Representation of the People Act, 1951 with effect from 24.08.2002, the purpose being to effectuate the right contemplated in *Association for Democratic Reforms.* All the candidates were mandated to disclose the criminal antecedents u/s.33A by filing an affidavit as prescribed along with the nomination paper filed u/s.33(1) of the RP Act so that the citizens must be aware of the criminal antecedents of the candidate before they can exercise their freedom of choice by casting of votes as guaranteed under the Constitution of India. As a result, every candidate is obligated to file an affidavit with relevant information with regard to his/her criminal antecedents, assets and liabilities and educational qualifications. [Paras 17, 18 and 19] [376-E, 378-B-H; 379-A]

A *Union of India vs. Association for Democratic Reforms and Another* **2002 (3) SCR 696 = (2002) 5 SCC 294– relied on.**

1.3. Filing of affidavit stating that the information given in the affidavit is correct, but leaving the contents blank would not fulfill the objective behind filing the same. The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizen under Art.19(1)(a) of the Constitution. For that purpose, the Returning Officer can compel a candidate to furnish information relevant on the date of scrutiny. The Election Commission already has a standard draft format for reminding the candidates to file an affidavit as stipulated. Another clause may be inserted in the format for reminding the candidates to fill the blanks with the relevant information thereby conveying the message that no affidavit with particulars left blank will be entertained. If the Election Commission accepts the nomination papers in spite of particulars left blank in the affidavits, it will directly violate the fundamental right of the citizen to know the criminal antecedents, assets and liabilities and educational qualification of the candidate, and will rescind the verdict in *Association for Democratic Reforms.* Para 73 of the in *People's Union for Civil Liberties* judgment nowhere contemplates a situation where it bars the Returning Officer to reject the nomination paper on account of filing affidavit with particulars left blank. [Paras 20, 21, 23 and 26] [379-B-C, D-E; 380-H; 381-A, G-H]

People's Union for Civil Liberties (PUCL) and Another vs. Union of India & Anr. **2003 (2) SCR 1136 = (2003) 4 SCC 399 – relied on.**

2.1. Section 125A of the RP Act lays down that the act of failure on the part of the candidate to furnish relevant information, as mandated by s.33A will result in

prosecution of the candidate. If the candidate who has filed an affidavit with false information as well as the candidate who has filed an affidavit with particulars left blank are treated at par, it will result in breach of fundamental right guaranteed under Art.19(1)(a) of the Constitution, viz., 'right to know', which is inclusive of freedom of speech and expression as interpreted in *Association for Democratic Reforms.* [para 24 and 25] [381-C-D, E-F]

2.2. The principles that emerge from the enunciation of law in the judgments of this Court can be summarized in the form of following directions:

(i) The voter has the elementary right to know full particulars of a candidate who is to represent him in 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 Art.19(1)(a) of the Constitution.

(ii) The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizens under Art.19(1)(a) of the Constitution of India. The citizens are supposed to have the necessary information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information.

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

(iv) It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect

A **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. The power of Returning Officer to reject the nomination paper must be exercised very sparingly**
B **but the bar should not be laid so high that the justice itself is prejudiced.**

(v) It is clarified that Para 73 of the judgment in *People's Union for Civil Liberties* case will not come
C **in the way of the Returning Officer to reject the nomination paper when affidavit is filed with particulars left blank.**

(vi) The candidate must take the minimum effort to explicitly remark as 'NIL' or 'Not Applicable' or 'Not
D **known' in the columns and not to leave the particulars blank.**

(vii) Filing of affidavit with particulars left blank will be directly hit by s.125A(i) of the RP Act. However,
E **as the nomination paper itself is rejected by the Returning Officer, there is no reason to penalize the candidate again for the same act by prosecuting him/ her. [Para 27] [382-B-H; 383-A-C]**

Case Law Reference:

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2002 (3) SCR 696	**relied on**	**Para 1**
2003 (2) SCR 1136	**relied on**	**Para 1**
2002 (5) Suppl. SCR 585	**relied on**	**Para 14**

G CIVIL ORIGINAL JURISDICTION : Under Article 32 of the Constitution of India.

Writ Petition (Civil) No. 121 of 2008.

A. Mariarputham, Prashant Bhushan, Rohit K. Singh,
H Meenakshi Arora, A. Radhakrishna, Yusuf Khan, B. Krishna

Prasad, Ritu Bhardwaj for the appearing parties. A

The Judgment of the Court was delivered by

P. SATHASIVAM, CJI. 1. This writ petition, under Article 32 of the Constitution of India, has been filed to issue specific directions to effectuate meaningful implementation of the judgments rendered by this Court in *Union of India vs. Association for Democratic Reforms and Another* (2002) 5 SCC 294 and *People's Union for Civil Liberties (PUCL) and Another vs. Union of India & Anr.* (2003) 4 SCC 399 and also to direct the respondents herein to make it compulsory for the Returning Officers to ensure that the affidavits filed by the contestants are complete in all respects and to reject the affidavits having blank particulars. B C

Background: D

2. In order to maintain purity of elections and to bring transparency in the process of election, this Court, in *Association for Democratic Reforms* (supra), directed the Election Commission of India-Respondent No. 1 herein to issue necessary orders, in exercise of its power under Article 324 of the Constitution, to call for information on affidavit from each candidate seeking election to the Parliament or a State Legislature as a necessary part of his nomination paper furnishing therein information relating to his conviction/acquittal/ discharge in any criminal offence in the past, any case pending against him of any offence punishable with imprisonment for 2 years or more, information regarding assets (movable, immovable, bank balance etc.) of the candidate as well as of his/her spouse and that of dependants, liability, if any, and the educational qualification of the candidate. E F G

3. Pursuant to the above order, the Election Commission, vide order dated 28.06.2002, issued certain directions to the candidates to furnish full and complete information in the form of an affidavit, duly sworn before a Magistrate of the First H

A Class, with regard to the matters specified in *Association for Democratic Reforms* (supra). It was also directed that non-furnishing of the affidavit by any candidate or furnishing of any wrong or incomplete information or suppression of any material information will result in the rejection of the nomination paper, B apart from inviting penal consequences under the Indian Penal Code, 1860. It was further clarified that only such information shall be considered to be wrong or incomplete or suppression of material information which is found to be a defect of substantial character by the Returning Officer in the summary C inquiry conducted by him at the time of scrutiny of nomination papers.

4. In *People's Union for Civil Liberties (PUCL)* (supra), though this Court reaffirmed the aforementioned decision but also held that the direction to reject the nomination papers for D furnishing wrong information or concealing material information and verification of assets and liabilities by means of a summary inquiry at the time of scrutiny of the nominations cannot be justified.

E 5. Pursuant to the above, the Election Commission, vide order dated 27.03.2003, held its earlier order dated 28.06.2002 non-enforceable with regard to verification of assets and liabilities by means of summary inquiry and rejection of nomination papers on the ground of furnishing wrong F information or suppression of material information.

6. Again, the Election Commission of India, vide letter dated 02.06.2004 directed the Chief Electoral Officers of all the States and Union Territories that where any complaint regarding furnishing of false information by any candidate is submitted by G anyone, supported by some documentary evidence, the Returning Officer concerned should initiate action to prosecute the candidate concerned by filing formal complaint before the appropriate authority.

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Brief facts:

7. In the above backdrop, the brief facts of the case in hand are as under:- Resurgence India-the petitioner herein is a non-governmental organization (NGO) registered under the Societies Registration Act, 1860 and is working for social awakening, social empowerment, human rights and dignity. During Punjab Legislative Assembly Elections, 2007, the petitioner-organization undertook a massive exercise under the banner "Punjab Election Watch' and affidavits pertaining to the candidates of six major political parties in the State were analyzed in order to verify their completeness. During such campaign, large scale irregularities were found in most of the affidavits filed by the candidates.

8. On 09.02.2007, the petitioner-organization made a representation to the Election Commission of India regarding large number of non-disclosures in the affidavits filed by the contestants in the State of Punjab and poor level of scrutiny by the Returning Officers. Vide letter dated 20.02.2007, the Election Commission of India expressed its inability in rejecting the nomination papers of the candidates solely due to furnishing of false/incomplete information in the affidavits in view of the judgment in *People's Union for Civil Liberties (PUCL)* (supra).

9. Being aggrieved of the same, the petitioner-organization has preferred this petition for the issuance of a writ of *mandamus* to make it compulsory for the Returning Officers to ensure that the affidavits filed by the contestants should be complete in all respects and to reject those nomination papers which are accompanied by incomplete/blank affidavits. The petitioner-organization also prayed for deterrent action against the Returning Officers in case of acceptance of such incomplete affidavits in order to remove deficiencies in the format of the prescribed affidavit.

10. Heard Mr. Prashant Bhushan, learned counsel for the petitioner-organization, Ms. Meenakshi Arora, learned counsel

A for the Election Commission of India-Respondent No. 1 herein and Mr. A. Mariarputham, learned senior counsel for the Union of India.

Prayer/Relief Sought for:

B **Stand of the Petitioner-Organization:**

11. The Petitioner-organization pleaded for issuance of appropriate writ/direction including the writ of *mandamus* directing the respondents herein to make it compulsory for the C Returning Officers to ensure that the affidavits filed by the candidates are complete in all respects and to reject those nomination papers, which are accompanied by blank affidavits.

Stand of the Election Commission of India:

D It is the stand of the Election Commission of India that the judgment in *People's Union for Civil Liberties (PUCL)* (supra) does not empower the Returning Officers to reject the nomination papers solely due to furnishing of false/incomplete/ blank information in the affidavits signed by the candidates. In E succinct, they put forth the argument that they do not have any latitude for rejecting the nomination papers in view of the above mentioned judgment. However, learned counsel for the Election Commission of India made an assertion that the Election Commission too is of the opinion that incomplete nomination F papers must be rejected. Hence, the Election Commission of India sought for clarification in that regard.

Stand of the Union of India:

The Union of India also put forth the similar contention as G raised by the Election Commission. Interestingly, the Union of India also raised a query as to how this Court will be justified in accepting the nomination paper with false information but rejecting the nomination paper for filing affidavit with particulars left blank and hence prayed that both the abovesaid situations H must be treated at par.

Discussion:

12. Both the petitioner-organisation and the respondent/ UOI sought divergent remedies against the same situation viz., wherein the affidavit filed by the candidate stating the information given as correct but the particulars of the same are left blank. The petitioner-organisation is seeking for rejection of nomination paper in such a situation whereas the Union of India is pleading for treating it at par with filing false affidavit and to prosecute the candidate under Section 125A of the Representation of the People Act, 1951 (in short 'the RP Act').

13. In order to appreciate the issue involved, it is desirable to refer the relevant provisions of the RP Act. Sections 33A, 36 and 125A of the RP Act read as under:

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

A (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 B to a constituency for which the nomination paper is delivered.

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

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

F (a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely: Articles 84, 102, 173 and 191,

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

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

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

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

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

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

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

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

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

A disqualification mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950).

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

125A. Penalty for filing false affidavit, etc.—A C candidate who himself or through his proposer, with intent to be elected in an election,-

(i) fails to furnish information relating to sub-section (1) of section 33A; or

D (ii) gives false information which he knows or has reason to believe to be false; or

(iii) conceals any information, in his nomination paper delivered under sub-section (1) of section 33 or in his E affidavit which is required to be delivered under sub-section (2) of section 33A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with F both."

14. In view of the above, the power to reject the nomination paper by the Returning Officer on the instance of candidate filing the affidavit with particulars left blank can be derived from the reasoning of a three-Judge Bench of this Court in *Shaligram* G *Shrivastava vs. Naresh Singh Patel* (2003) 2 SCC 176. In the aforesaid case, the nomination paper of a candidate got rejected at the time of scrutiny under Section 36(2) of the RP Act on the ground that he had not filled up the proforma prescribed by the Election Commission wherein the candidate H was required to state whether he had been convicted or not for

any offence mentioned in Section 8 of the RP Act. In actual, the candidate therein had filed an affidavit stating that the information given in the proforma was correct but the proforma itself was left blank. The candidate therein coincidentally raised somewhat similar contention as pleaded by the Union of India in the present case. The candidate pleaded that his nomination paper could not be rejected on the ground that he had not filled up the proforma prescribed since no such proforma was statutorily provided under the provisions of the Act or under the rules framed thereunder. It was contended that the Commission could not legislate to prescribe a proforma; at best it can only be an executive instruction of the Election Commission whereas the petitioner had filled the proforma prescribed under the Rules, which did not suffer from any defect.

15. Although, the grounds of contention may not be exactly similar to the case on hand but the reasoning rendered in that verdict will come in aid for arriving at a decision in the given case. In order to arrive at a conclusion in that case, this Court traversed through the objective behind filing the proforma. The proforma mandated in that case was required to be filed as to the necessary and relevant information with regard to the candidate in the light of Section 8 of the RP Act. This Court further held that at the time of scrutiny, the Returning Officer is entitled to satisfy himself whether the candidate is qualified and not disqualified, hence, the Returning Officer was authorized to seek such information to be furnished at the time or before scrutiny. It was further held that if the candidate fails to furnish such information and also absents himself at the time of the scrutiny of the nomination papers, then he is obviously avoiding a statutory inquiry being conducted by the Returning Officer under Section 36(2) of the RP Act relating to his being not qualified or disqualified in the light of Section 8 of the RP Act. It is bound to result in defect of a substantial character in the nomination. This Court further held as under:-

"17. In the case in hand the candidate had failed to furnish

A such information as sought on the pro forma given to him and had also failed to be present personally or through his representative at the time of scrutiny. The statutory duty/ power of Returning Officer for holding proper scrutiny of nomination paper was rendered nugatory. No scrutiny of
B the nomination paper could be made under Section 36(2) of the Act in the light of Section 8 of the Act. It certainly rendered the nomination paper suffering from defect of substantial character and the Returning Officer was within his rights in rejecting the same."

C 16. It is clear that the Returning Officers derive the power to reject the nomination papers on the ground that the contents to be filled in the affidavits are essential to effectuate the intent of the provisions of the RP Act and as a consequence, leaving the affidavit blank will in fact make it impossible for the
D Returning Officer to verify whether the candidate is qualified or disqualified which indeed will frustrate the object behind filing the same. In concise, this Court in *Shaligram* (supra) evaluated the purpose behind filing the proforma for advancing latitude to the Returning Officers to reject the nomination papers.

E 17. In the light of the above reasoning, now let us assess the facts of the given case. In *Association for Democratic Reforms* (supra), this Court arrived at a decision that the members of a democratic society should be sufficiently
F informed so that they may influence intelligently the decisions which may affect themselves and it would include their decision of casting votes in favour of a particular candidate. This Court further held that if there was a disclosure by a candidate with regard to his criminal antecedents, assets and liabilities and
G educational qualification, then it would strengthen the voters in taking appropriate decision of casting their votes. This Court further stated as under:-

"38. If right to telecast and right to view to sport games and right to impart such information is considered to be part
H and parcel of Article 19(1)(a), we fail to understand why

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

46. ...4. To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.

...7. Under our Constitution, Article 19(1)(a) provides for freedom of speech and expression. Voters'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

A 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** B **choice of electing law-breakers as law-makers."**

18. Thus, this Court held that a voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament and such right to get information is universally recognized natural right flowing from the concept of C democracy and is an integral part of Article 19(1)(a) of the Constitution. It was further held that the voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be D selected is a must. Thus, in unequivocal terms, it is recognized that the citizen's right to know of the candidate who represents him in the Parliament will constitute an integral part of Article 19(1)(a) of the Constitution of India and any act, which is derogative of the fundamental rights is at the very outset *ultra* E *vires*.

19. With this background, Section 33A of the RP Act was enacted by Act 72 of 2002 with effect from 24.08.2002. Thus, the purpose of the Act 72 of 2002 was to effectuate the right F contemplated in *Association for Democratic Reforms* (supra). However, the legislators did not incorporate all the suggestions as directed by this Court in the above case but for mandating all the candidates to disclose the criminal antecedents under Section 33A by filing an affidavit as prescribed along with the nomination paper filed under Section 33(1) of the RP Act so G that the citizens must be aware of the criminal antecedents of the candidate before they can exercise their freedom of choice by casting of votes as guaranteed under the Constitution of India. As a result, at present, every candidate is obligated to file an affidavit with relevant information with regard to their H

criminal antecedents, assets and liabilities and educational qualifications. A

20. Let us now test whether the filing of affidavit stating that the information given in the affidavit is correct but leaving the contents blank would fulfill the objective behind filing the same. The reply to this question is a clear denial. The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizen under Article 19(1)(a) of the Constitution of India. The citizens are required to have the necessary information at the time of filing of the nomination paper in order to make a choice of their voting. When a candidate files an affidavit with blank particulars, it renders the affidavit itself nugatory. B C

21. For that purpose, the Returning Officer can very well compel a candidate to furnish information relevant on the date of scrutiny. We were appraised that the Election Commission already has a standard draft format for reminding the candidates to file an affidavit as stipulated. We are of the opinion that along with the above, another clause may be inserted for reminding the candidates to fill the blanks with the relevant information thereby conveying the message that no affidavit with blank particulars will be entertained. We reiterate that it is the duty of the Returning Officer to check whatever 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. D E F G

22. We also clarify to the extent that in our coherent opinion the above power of rejection by the Returning Officer is not barred by Para 73 of *People's Union for Civil Liberties (PUCL)* (supra) which reads as under:- H

A "73. While no exception can be taken to the insistence of affidavit with regard to the matters specified in the judgment in Assn for Democratic Reforms case, the direction to reject the nomination paper for furnishing wrong information or concealing material information and
B providing for a summary enquiry at the time of scrutiny of the nominations, cannot be justified. In the case of assets and liabilities, it would be very difficult for the Returning Officer to consider the truth or otherwise of the details furnished with reference to the 'documentary proof'. Very
C often, in such matters the documentary proof may not be clinching and the candidate concerned may be handicapped to rebut the allegation then and there. If sufficient time is provided, he may be able to produce proof to contradict the objector's version. It is true that the
D aforesaid directions issued by the Election Commission are not under challenge but at the same time prima facie it appears that the Election Commission is required to revise its instructions in the light of directions issued in Assn for Democratic Reforms case and as provided under the Representation of the People Act and its third
E Amendment."

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

the aforesaid judgment nowhere contemplates a situation where it bars the Returning Officer to reject the nomination paper on account of filing affidavit with particulars left blank. Therefore, we hereby clarify that the above said paragraph will not come in the way of the Returning Officer to reject the nomination paper if the said affidavit is filed with blank columns. 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, if he desires that his nomination paper be accepted by the Returning Officer.

24. At this juncture, it is vital to refer to Section 125A of the RP Act. As an outcome, the act of failure on the part of the candidate to furnish relevant information, as mandated by Section 33A of the RP Act, will result in prosecution of the candidate. Hence, filing of affidavit with blank space will be directly hit by Section 125A(i) of the RP Act. However, as the nomination paper itself is rejected by the Returning officer, we find no reason why the candidate must again be penalized for the same act by prosecuting him/her.

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

26. In succinct, if the Election Commission accepts the nomination papers in spite of blank particulars in the affidavits, it will directly violate the fundamental right of the citizen to know the criminal antecedents, assets and liabilities and educational qualification of the candidate. Therefore, accepting affidavit with blank particulars from the candidate will rescind the verdict in *Association for Democratic Reforms* (supra). Further, the subsequent act of prosecuting the candidate under Section

A 125A(i) will bear no significance as far as the breach of fundamental right of the citizen is concerned. For the aforesaid reasons, we are unable to accept the contention of the Union of India.

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

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

D (ii) The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizens under Article 19(1)(a) of the Constitution of India. The citizens are supposed to have the necessary information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish E the relevant information.

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

F (iv) It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the 'right to know' of the citizens. If a candidate fails to fill the blanks even after the reminder by the G Returning Officer, the nomination paper is fit to be rejected. We do comprehend that the power of Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced.

(v) We clarify to the extent that Para 73 of *People's Union* H *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. A

(vi) The candidate must take the minimum effort to explicitly remark as 'NIL' or 'Not Applicable' or 'Not known' in the columns and not to leave the particulars blank. B

(vii) Filing of affidavit with blanks will be directly hit by Section 125A(i) of the RP Act However, as the nomination paper itself is rejected by the Returning Officer, we find no reason why the candidate must be again penalized for the same act by prosecuting him/her. C

28. The Writ Petition is disposed of with the above directions.

R.P. Writ Petition disposed of.