IN THE HIGH COURT OF JUDICATURE AT PATNA
ELECTION PETITION No.20 of 2020

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Syed Abu Dojana, son of S. Rahmatullah, resident of House No. 322, Haroon Nagar, Sector 2, Khoja Imli Mazar, P.O. & P.S.- Phulwarisarif, District- Patna

... ... Petitioner/s

Versus

1. Dilip Ray Son Of Late Yogendra Ray Resident Of Village And Post - Runni Saidpur, P.S.- Runni Saidpur, District- Sitamarhi-843328
2. Election Commission Of India Through The Chief Election Commissioner, Nirvachan Sadan, Ashoka Road, New Delhi-110001
3. The Chief Electoral Officer, Bihar, 7 Sardar Patel Marg, Mangles Road, Patna-800015
4. Sri Prabhat Bhushan the then Returning Officer, 26, Sursand Assembly Constituency, District- Sitamarhi

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sarvendra Kumar Verma Mr. Jai Vardhan Narayan
For the Respondent/s	:	Mr. S.B.K. Mangalam Mr. Awnish Kumar Mr. Bandana Singh Mr. Sudhir Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT

Date : 05-07-2024

Heard the parties.

2. The present Election Petition has been filed under Sections 80, 80-A, 81 and 100 of the Representation of the People's Act, 1951 (hereinafter referred to as 'the R.P. Act) questioning the election of the respondent No. 1 as the Member of Bihar Legislative Assembly from 26, Sursand Assembly Constituency in

the District of Sitamarhi in the election held on 07.11.2020.

3. The pleadings on record shows that the following schedule was fixed for conducting the said election.

Last date for filing the nomination paper	:	20.10.2020
Date of presentation of nomination paper by returned candidate Sri. Dilip Roy	:	19.10.2020
Date of scrutiny of nomination paper	:	21.10.2020
Date of withdrawal of the candidature	:	23.10.2020
Date of poll	:	07.11.2020
Date of declaration of result	:	10.11.2020
Date before which the election shall be completed	:	12.11.2020

4. Altogether 16 candidates had contested in the said election of 26 Sursand Assembly Constituency. The returned candidate Sri. Dilip Ray (respondent No. 1) was contesting from *Janta Dal United (JDU)* party and he had secured 67193 votes. The election petitioner was the contesting candidate of the aforesaid election from *Rashtriya Janda Dal (RJD)* party on election symbol *'Lantern'* and he was the next runner up having secured 58317 votes.

5. The present election petition has been filed by the election petitioner for setting aside the aforesaid election of 26 Sursand Assembly Constituency as the returned candidate, respondent No. 1 had suppressed the information in this regard to his assets (immovable) as well as the assets of his spouse/wife namely Smt. Shakuntla Devi in the affidavit filed by him along with the nomination paper in Column 7B of Form 26 whereas the returned candidate and his spouse owns several immovable assets worth rupees several crores.

6. The returned candidate had also failed to publish electronically the details of his criminal antecedent as provided by him in Clause 5(II) of the Nomination paper. The returned candidate was duty bound to publish his declaration in Format C1 as prescribed by the Election Commission of India and the commands of the Apex Court for at least on three different dates from the day following the last date of withdrawal of candidatures and up to two days before

the date of poll.

7. The returned candidate and his spouse namely Smt. Shakuntla Devi are the owners of the following immovable assets, the details of which have not been furnished by the returned candidate in his affidavit Column 7B of Form 26.

8. The details of assets standing in the name of the returned candidate Sri. Dilip Ray (respondent No.1) suppressed by him are extracted hereunder:

(i) Khata No. 1029, Plot No. 9404, Deed No. 5637 dated 18.07.2017, area 8 decimals, situated at Circle Runni Saidpur, Thana Rampur Runnisaidpur, District Sub-Registry Office, Belsand, Land Type-Residential

(ii) Khata No. 1029, Plot No. 9404, Deed No. 5634 dated 18.07.2017, area 8 decimals, situated at Circle Runni Saidpur, Thana Rampur Runnisaidpur, District Sub-Registry Office, Belsand, Land Type-Residential.

(iii) Khata No. 1029, Plot No. 9404, Deed No. 5633 dated 18.07.2017, area 8 decimals, situated at Circle Runni Saidpur, Thana Rampur Runnisaidpur, District Sub-Registry Office, Belsand, Land Type-Residential.

(iv) Khata No. 410, Plot No. 3580, Deed No. 3709 dated 18.07.2017, area 5 decimals, situated at Circle Dumra, District Sub-Registry Office, Sitamarhi Sadar, Land Type-Developing.

9. The details of assets standing in the name of the spouse of returned candidate Smt. Shakuntala Devi which have been suppressed by the returned candidate in the affidavit, are given below.

(i) Khata No. 2101, Plot No. 1471, Deed No. 11122 dated 06.12.2019, area 100 decimals, situated at Runni Saidpur, Thana Thumma, District Sub-Registry Office, Belsand

(ii) Khata No. 322, Plot No. 399, Deed No. 8981 dated 30.09.2019, area 5 decimals, situated at Circle Dumra, Thana Vishwanathpur, District Sub-Registry Office, Sitamarhi Sadar

(iii) Khata No. 1563, Plot No. 8872, Deed No. 9355 dated 28.09.2019, area 2.25 decimals, situated at Circle Runni Saidpur, Thana Rampur Runni Saidpur, District Sub-Registry Office, Belsand.

(iv) Khata No. 322, Plot No. 399, Deed No. 2528 dated 04.04.2018, area 3.25 decimals, situated at Circle Dumra, Thana Vishwanathpur, District Sub-Registry Office, Sitamarhi Sadar

(v) Khata No. 1029, Plot No. 9404, Deed No.

5636 dated 18.07.2017, area 8 decimals, situated at Circle Runni Saidpur, Thana Rampur Runni Saidpur, District Sub-Registry Office, Belsand

(vi) Khata No. 1029, Plot No. 9404, Deed No. 5635 dated 18.07.2017, area 8 decimals, situated at Circle Runni Saidpur, Thana Rampur Runni Saidpur, District Sub-Registry Office, Belsand

(vii) Khata No. 458, Plot No. 1267, Deed No. 7271 dated 16.07.2007, area 8 decimals, situated at Circle Dumra, Thana Runni Saidpur, District Sub-Registry Office, Sitamarhi Sadar

(viii) Khata No. 600, Plot No. 1563 and 1564, Deed No. 11753 dated 27.10.2011, area 19.50 decimals, situated at Circle Dumra, Thana Lagma, District Sub-Registry Office, Sitamarhi Sadar

(ix) Khata No. 322, Plot No. 399, Deed No. 10138 dated 21.12.2015, area 6.50 decimals, situated at Circle Dumra, Thana Vishwanathpur, District Sub-Registry Office, Sitamarhi Sadar

(x) Khata No. 315, Plot No. 1004, Deed No. 9339 dated 16.07.2010, area 8 decimals, situated at Circle Dumra, Thana Bhagwatipur Amghata, District Sub-Registry Office, Sitamarhi Sadar

(xi) Khata No. 143, Plot No. 1619, Deed No. 23939 dated 20.10.2011, area 8 decimals, situated at Circle Mushahari, Thana Bhikhanpura, District Sub-Registry Office, Muzaffarpur

(xii) Khata No. 2101, 1585, Plot No. 1471, 1466, Deed No. 2294 dated 01.01.2017, area 158 decimals, situated at Circle Runni Saidpur, Thana Thumma, District Sub-Registry Office, Belsand

10. The returned candidate (respondent No. 1) had mentioned two pending criminal cases against him and it is submitted for consideration that the returned candidate had failed to comply the commands of the Apex Court as well as the notification issued by the Election Commission of India in regard to publication and broadcasting of his criminal antecedents and thereby the voters of the constituency have been deprived of their fundamental rights which have been guaranteed by the Constitution of India vide Article 19(1)(a) in as much as the voters of the constituency are required to be properly informed regarding criminal antecedents in the manner prescribed by the Election Commission of India under the commands of the Apex Court's celebrated judgments. The details of the pending criminal cases against the returned candidate are given as under:

(i) Bajpatti P.S. Case No. 171/15 registered under Section 188 IPC, 127 of the RP Act and Section 3 of the Bihar Prevention of Defacement of Property Act, 1985

(ii) Sachivalaya P.S. Case No. 64/20 registered under Sections 188, 269 and 270 of the IPC, Section 3 of the Epidemic Disease and Section 51 of the Disaster Management Act

11. It is pertinent to mention here that as per the postal ballot counting sheet, as provided by the authorities, total 891 votes have been received and out of which 206 votes have been rejected without disclosing any valid reason for rejecting the same.

12. It is to be noted that non-compliance of the Constitutional provisions and the Representation of the People's Act 1951 and the Rules and the Orders of the said Act, the election of the returned candidate may be declared void and thereby the result of the election of 26 Sursand Assembly Constituency held in November, 2020 in so far as it concerns the returned candidate Shri Dilip Ray (respondent No. 1) which had been materially affected by the improper acceptance of his nomination

paper by withholding his information regarding assets and had not publishing the details of his criminal antecedent as provided by him in Clause 5(II) of the Nomination paper as also the entire counting process which have been illegally conducted by the Returning Officer by flouting the statutory provisions and the instructions of the Election Commission of India in the interest of the returned Candidate by the improper reception of votes which is void.

13. The written statement filed on behalf of the respondent No. 1, mentioning therein that the election petition, so framed, filed, does not merit any consideration and is, therefore, fit to be dismissed at the thrash-hold since the pleadings of the election petition does not constitute any triable issue as contemplated under Section 100(1) of the Representation of People's Act, 1951 (hereinafter referred to as the R.P. Act, 1951) for setting aside the election of the deponent/ Respondent No.1. If the pleadings of an election petition

does not constitute a triable issue as contemplated under Sections 100 and 101 of the R.P. Act, 1951, such election petitions are fit to be dismissed.

14. The election petition is further fit to be dismissed for non-compliance of the provisions contained under Section 100(1)(d)(iv) of the R.P. Act, 1951 since even when the election petitioner has filed for setting aside the election of the deponent on the ground that his nomination paper was improperly accepted by the Returning Officer but he has utterly failed to plead as to how it had materially affected the result of election. The election petitioner had even ignored the public notices published in the daily Hindi News Papers regarding pendency of criminal cases against the deponent. He has not suppressed any relevant information which he was supposed to have declared in the Affidavit filed by him in Form-26 before the Returning Officer along with his nomination. The details of the criminal cases pending against the deponent on the date of his filing the

nomination to contest the election was duly published in the daily Hindi News Paper *"Prabhat Khabar"* on 25.10.2020, 30.10.2020 and 04.11.2020 and the information in this regard was also sought to be given to the public at large through the electronic media as would be evident from the Tax Invoice of Electronic News Channel "Kashish News" dated 20.10.2020.

15. The statements made by the election petitioner in Paragraph No.8 of the election petition where the details of immovable assets in the name of his spouse Sakuntla Devi, are patently false and, therefore, denied. The deponent had given details of all the immovable assets standing in his name and in the name of his wife Smt. Sakuntla Devi.

16. The deponent had purchased an area of 24 decimals of Khata No.1029, Plot No.9404 through different sale-deeds. 16 decimals of land of the aforesaid Khata number and Plot number was purchased in the name of his spouse as stated in paragraph Nos. 8(v) and

8(vi) of the election petition but since the total purchased area of Khata No.1029, Plot No.9404 was already sold through different sale-deeds to other persons before filing the nomination to contest the Assembly Election, 2020 from 26, Sursand Assembly Constituency, the description of the aforesaid plot was not mentioned in the Affidavit (Form-26) filed before the Returning Officer.

17. So far as, an area of 5 decimals of Khata No.410, Plot No. 3580 purchased by the deponent vide Deed No. 3709 dated 18.07.2017 is concerned, the said property was not purchased by the deponent on 18.07.2017. He had however, purchased an area of 5 decimals of Khata No.410, Plot No.3580 on 18.07.2007 but since the deponent had already sold the aforesaid property in the name of Smt. Sudha Devi vide registered sale-deed dated 13.11.2009, therefore, there was no requirement of disclosure about that property in the affidavit filed in Form-26 before the Returning Officer.

18. As regards purchase of an area of 100 decimals of Khata No.2101, Plot No.1471 and the area of 158 decimals of Plot No.1471 and 1466 as mentioned in paragraph no. (i) and (xii) of the details of assets standing in the name of spouse of deponent are concerned, the statement made therein are totally wrong and, therefore, denied. No such area of Khata No.2101, plot no.1471 and 1466 was ever purchased in the name of deponent's spouse. In respect of purchase of Plot No. 1470, relevant information is there in the affidavit filed by the deponent in Form-26 along with his nomination paper.

19. So far as, Plot No.399 of Khata no.322 and Plot No. 8872 of Khata No.1563 are concerned, the information in this regard is already there in paragraph No.6 (*kha*)(iv) of the affidavit in Form-26 and therefore, to that effect, the allegations are precisely false and it was deliberately stated in the election petition in order to mislead this Hon'ble Court.

20. An area of 8 decimals bearing Plot No.1267, Khata No.458 which was said to have been purchased in the name of deponent's spouse is also included in the total measurement as mentioned in paragraph No. 6 (*Kha*) (iv) of the affidavit in Form-26, however, by way of mistake, though other plot numbers were mentioned at the relevant place but inadvertently plot No. 1267 could not be mentioned. Total measurement is there and even if 8 decimals of plot No.1267 is added to it, it will not change the total measurement.

21. It is further submitted that so far Plot Nos. 1563 and 1564 of Khata Nos. 600 and 599 respectively are concerned, since the deponent's wife had already received the consideration money for its sale from Abhinit Kumar son of Jitendra Prasad Singh, Village-Ramnauli, P.O. -Bindupur Bazar, District -Vaishali but she has not executed any sale-deed in his favour because of certain restrictions imposed by the District

Magistrate in respect of the aforesaid land and only because of that, the details of those lands could not be mentioned in the Affidavit in Form-26.

22. So far as Plot No. 104 of Khata No. 315 is concerned, since this property was already sold by the deponent's wife to Smt. Urmila Devi vide sale-deed dated 15.09.2015, there is no requirement of giving details of the said property in the affidavit in Form-26.

23. Plot No. 1619 of Khata No.143 has also been sold on 12.06.2019. An area of Plot No. 1466 of Khata No.1585 is also there in the total area of the land in the name of deponent's spouse, however, due to inadvertence, the Plot No.1466 was overlooked to be mentioned.

24. While filing affidavit in Form-26, respondent No. 1 has complied with the directions of the Hon'ble Supreme Court and had published his criminal antecedent in the print media and it was also broadcast on the electronic media, there is no violation of the

Hon'ble Supreme Court in the election of the deponent.

25. The statements made in paragraph No.23 of the election petition under reply are false and, therefore, denied. The counting of all the postal ballots was concluded before counting of votes polled in the Electronic Voting Machine. Assuming, not admitting for the purposes of instant election petition that the postal ballot papers were counted at the last by itself would not be sufficient for declaring the election void in view of the provisions contained under Section 100(1) (d) (iv) of the R.P. Act, 1951, if it is not the case of the election petitioner that because of counting of postal ballots at the last, the result of election was materially affected. The statements made in paragraph No. 26 of the election petition under reply are again false and, therefore, denied.

26. Even if what has been stated in paragraph No. 26 by the election petitioner is accepted to be correct, improper rejection of 206 votes has since no

material affect on the result of election, in view of the provisions contained under Sections 100(1)(d)(iv) of the R.P. Act, 1951, hence, the statement made in paragraph No. 26 of the election petition is fit to be rejected.

27. It is further submitted that in paragraph No. 28 of the election petition under reply, the election petitioner has simply quoted the revised instruction issued by the Election Commission of India regarding verification of rejected ballot papers when the margin of victory is less than the number of rejected ballot papers. In this case, since the margin of victory is more than ten times of total votes polled through the postal ballot papers, the revised instructions issued by the election Commission of India was not applicable in the counting of votes of 26, Sursand Assembly Constituency.

28. The statements made in paragraph No. 38 of the election petition under reply are again false and misleading and therefore, deserves to be rejected as nothing has been suppressed by the deponent from the

voters of 26, Sursand Assembly Constituency as alleged by the election petitioner except the declaration of two plot numbers of his house, though the total measurement of immovable properties including the are of those two plots has been clearly mentioned in the affidavit of deponent in Form-26. Since the voters of Constituency were duly informed about all relevant information with regard to the deponent, it is totally false to contend that the fundamental rights of the voters guaranteed by Article 19(1)(a) of the Constitution of India had been infringed or violated.

29. Having heard learned counsel for both the parties, the issues posted for contest are being framed which are as follows :-

(i) Whether the suppression of the assets (immovable) in Form 26 of Respondent No. 1 and his spouse would result his election as null and void?

(ii) Whether the respondent No. 1 has failed to publish and broadcast electronically the details of his criminal antecedents on at least three different

dates as required under the commands of the Apex Court ?

(iii) Whether the counting of the votes and counting of postal ballots have been properly done in accordance with law ?

(iv) Whether the election petition is fit to be dismissed under Section 86 of the Representation of the Peoples Act, 1951 for non-compliance of Section 82(a) of the Representation of the Peoples Act, 1951 ?

(v) Whether the election petition is fit to be rejected in exercise of power under Order-6, Rule-16 read with Order-7, Rule-11(a) of the Code of Civil Procedure for non-compliance of the provisions contained under Section 83(1)(a) read with proviso to Section 83 of the Representation of the Peoples Act, 1951 and read with Rule-94A of the Conduct of Election Rules, 1961 if after striking out the vexatious and scandalous pleading from the election petition, rest of the pleadings does not constitute a triable issue for declaring the election void ?

(vi) Whether, in absence of any pleading in the election petition regarding material effect of non-compliance on the election of returned candidate, the election of a returned candidate can be declared void under Section 100(1)(d)(iv) of the Representation of the Peoples Act, 1951 ?

30. On behalf of the election petitioner, following exhibits have been exhibited:-

Exhibit 1- Original Nomination Paper of Sri Dilip Ray (Returned Candidate)

Exhibit 2- Khata No. 1029, Plot No. 9404, Deed No. 5637 dated 18.07.2017, area 8 decimals, situated at Circle Runni Saidpur, Thana Rampur Runnisaidpur, District Sub-Registry Office, Belsand, Land Type-Residential

Exhibit 3- Khata No. 1029, Plot No. 9404, Deed No. 5634 dated 18.07.2017, area 8 decimals, situated at Circle Runni Saidpur, Thana Rampur Runnisaidpur, District Sub-Registry Office, Belsand, Land Type-Residential.

Exhibit 4- Khata No. 1029, Plot No. 9404, Deed No. 5633 dated 18.07.2017, area 8 decimals, situated at Circle Runni Saidpur, Thana Rampur Runnisaidpur, District Sub-Registry Office, Belsand, Land Type-Residential.

Exhibit 5- Khata No. 410, Plot No. 3580, Deed No. 3709 dated 18.07.2017, area 5 decimals, situated at Circle Dumra, District Sub-Registry Office, Sitamarhi Sadar, Land Type-Developing.

Exhibit 6- Khata No. 2101, Plot No. 1471, Deed No. 11122 dated 06.12.2019, area 100 decimals, situated at Runni Saidpur, Thana Thumma,

District Sub-Registry Office, Belsand

Exhibit 7- Khata No. 322, Plot No. 399, Deed No. 8981 dated 30.09.2019, area 5 decimals, situated at Circle Dumra, Thana Vishwanathpur, District Sub-Registry Office, Sitamarhi Sadar

Exhibit 8- Khata No. 1563, Plot No. 8872, Deed No. 9355 dated 28.09.2019, area 2.25 decimals, situated at Circle Runni Saidpur, Thana Rampur Runni Saidpur, District Sub-Registry Office, Belsand.

Exhibit 9- Khata No. 322, Plot No. 399, Deed No. 2528 dated 04.04.2018, area 3.25 decimals, situated at Circle Dumra, Thana Vishwanathpur, District Sub-Registry Office, Sitamarhi Sadar

Exhibit 10- Khata No. 1029, Plot No. 9404, Deed No. 5636 dated 18.07.2017, area 8 decimals, situated at Circle Runni Saidpur, Thana Rampur Runni Saidpur, District Sub-Registry Office, Belsand

Exhibit 11- Khata No. 1029, Plot No. 9404, Deed No. 5635 dated 18.07.2017, area 8 decimals, situated at Circle Runni Saidpur, Thana Rampur Runni Saidpur, District Sub-Registry Office, Belsand

Exhibit 12- Khata No. 458, Plot No. 1267, Deed No. 7271 dated 16.07.2007, area 8 decimals, situated at Circle Dumra, Thana Runni Saidpur, District Sub-Registry Office, Sitamarhi Sadar

Exhibit 13- Khata Nos. 600 and 599, Plot No. 1563 and 1564, Deed No. 11753 dated 27.10.2011, area 19.50 decimals, situated at Circle Dumra, Thana Lagma, District Sub-Registry Office, Sitamarhi Sadar

Exhibit 14- Khata No. 322, Plot No. 399, Deed No. 10138 dated 21.12.2015, area 6.50 decimals, situated at Circle Dumra, Thana Vishwanathpur, District Sub-Registry Office, Sitamarhi Sadar

Exhibit 15- Khata No. 315, Plot No. 1004, Deed No. 9339 dated 16.07.2010, area 8 decimals, situated at Circle Dumra, Thana Bhagwatipur Amghata, District Sub-Registry Office, Sitamarhi Sadar

Exhibit 16- Khata No. 143, Plot No. 1619, Deed No. 23939 dated 20.10.2011, area 8 decimals, situated at Circle Mushahari, Thana Bhikhanpura, District Sub-Registry Office, Muzaffarpur

Exhibit 17- Khata No. 2101, 1585, Plot No. 1471, 1466, Deed No. 2294 dated 01.01.2017, area 158 decimals, situated at Circle Runni Saidpur, Thana Thumma, District Sub-Registry Office, Belsand

Exhibit 18- Original Complaint of the Election Petitioner of dated 10.11.2020 which was not received by the Returning Officer.

Identification X- Web copy of abstract of

expenses dated 07.12.2020 submitted by respondent No. 1, Total 13 Pages (from page nos.- 162 to 174).

Identification X1- Postal Ballot declaration form of Election Commission of India signed & issued by the Returning Officer and the observer on 10.11.2020 and the same was received by the election petitioner (Page no.-175).

Identification X2- Copy of tabulating trends/results dated 10.11.2020 issued by the Returning Officer and the same was received by the election petitioner (Page nos.-176 to 229).

Identification X3- Copy of counting sheets prepared by counting agents dated 10.11.2020 (Page nos.- 230 to 249).

31. On behalf of the respondent No. 1, following exhibits have been exhibited:-

Exhibit A- Certified Copy of agreement for sale of land pertaining to Thana no.-333 Khata no.-599 and 600 Khesra no.- 1563 and 1564, Total Area 19.5 Decimal, which was executed by Smt. Sakuntla Devi, spouse of Sri. Dilip Ray (Returned Candidate) in favour of Abhinit Kumar son of Sri. Jitendra Prasad Singh, along with reply to the RTI application contained in

Letter no.- 1117 dated 13.04.2023.

Exhibit B- Certified Copy of sale deed no.-222 pertaining to Thana no.-218 Khata no.- 1029, Khesra no.- 9404, Total Area 2.00 Decimal, which was executed by Smt. Sakuntla Devi, spouse of Sri. Dilip Ray (Returned Candidate) in favour of Teju Thakur son of Sri. Chandeshwar Thakur.

Exhibit C- Certified Copy of Sale deed no.-224 pertaining to Thana no.-218 Khata no.- 1029, Khesra no.- 9404, Total Area 2.00 Decimal, which was executed by Smt. Sakuntla Devi, spouse of Sri. Dilip Ray (Returned Candidate) in favour of Sanjay Thakur son of Sri. Chandeshwar Thakur

Exhibit D- Certified Copy of registered lease deed no.-2294 pertaining to thana no.- 91, Khata no.- 2101 and 1585, Khesra no.- 1471 and 1466, Total Area 1.58 Decimal which was executed by Sri. Dharmendra Kumar son of Late Vijay Rai in favour of Smt. Sakuntla Devi, spouse of Sri. Dilip Ray (Returned Candidate).

Exhibit E- Certified Copy of registered lease deed no.-11122 pertaining to Thana no.- 91, Khata no.- 2101, Survey (Khesra) no.-1471, Total Area 100.00 Decimal, which was executed by Smt. Sakuntla Devi, spouse of Sri. Dilip Ray

(Returned Candidate) in favour of Sri. Sanjay Kumar Singh son of Late Suryadeo Singh

Exhibit F- Certified Copy of Sale deed no.-3322 pertaining to Thana no.- 218, Khata no.- 1029, Khesra no.- 9404, Total Area 2.00 Decimal, which was executed by Smt. Sakuntla Devi, spouse of Sri. Dilip Ray (Returned Candidate) in favour of Smt. Rupam Kumari, wife of Sri. Sumit Raushan

Exhibit G- Certified Copy of Sale deed no.-5784 pertaining to Thana no.- 218, Khata no.- 1029, Khesra no.- 9404, Total Area 11.00 Decimal, which was executed by Sri. Dilip Ray (Returned Candidate) in favour of Rajesh Kumar son of Sri. Ramdeo Sah

Exhibit H- Certified Copy of Sale deed no.-223 pertaining to Thana no.- 218, Khata no.- 1029, Khesra no.- 9404, Total Area 2.00 Decimal, which was executed by Smt. Sakuntla Devi, spouse of Sri. Dilip Ray (Returned Candidate) in favour of Naresh Thakur son of Sri. Dinesh Thakur

Exhibit I- Certified Copy of Sale deed no.-2751 pertaining to Thana no.- 660, Khata no.- 143, Khesra no.- 1619, Total Area 3.05 Decimal, which was executed by Smt. Sakuntla Devi, spouse of Sri. Dilip Ray (Returned Candidate) in

favour of Indal Rai son of Sri. Rudal Rai

Exhibit J- Certified Copy of Sale deed no.-9961 pertaining to thana no.- 660, Khata no.- 143, Khesra no.- 1619, Total Area 4.80 Decimal, which was executed by Smt. Sakuntla Devi, spouse of Sri. Dilip Ray (Returned Candidate) in favour of Smt. Ram Kumari Devi, wife of Sri. Mahendra Sah

Exhibit K- Certified Copy of Sale deed no.-215, dated 11.04.2009 which was executed by Sri. Dilip Kumar, son of Sri. Yogendra Ray in favour of Smt. Sudha Devi.

Exhibit L- Certified Copy of Sale deed no.-5540, dated 26.02.2019, which was executed by Sri. Dilip Ray (Returned Candidate) in favour of Smt. Suman Kumari, wife of Vinit Kumar

Exhibit M- Certified Copy of Sale deed no.-5535, dated 25.02.2019 which was executed by Sri. Dilip Ray (Returned Candidate) in favour of Smt. Meena Devi.

Exhibit N- Certified Copy of Sale deed no.-2114, dated 24.02.2018 which was executed by Sri. Dilip Ray (Returned Candidate) in favour of Sri. Jawahar Sahi, son of Sri. Ramnandan Sahi

Exhibit O- Certified Copy of Sale deed no.-4383, dated 16.12.2018 which was executed by

Sri. Dilip Ray (Returned Candidate) in favour of Raja Thakur, son of Dinesh Thakur

Exhibit P- Certified Copy of Sale deed no.- 5322, dated 04.02.2019 which was executed by Sri. Dilip Ray (Returned Candidate) in favour of Smt. Pawan Devi, wife of Sri. Bablu Kumar

Exhibit Q- Certified Copy of Sale deed no.- 3506, dated 19.12.2019 which was executed by Sri. Dilip Ray (Returned Candidate) in favour of Smt. Abhilasha Kumari, wife of Sri. Neeraj Kumar

Exhibit R- Certified Copy of Sale deed no.- 5332, dated 04.02.2019 which was executed by Sri. Dilip Ray (Returned Candidate) in favour of Sri. Ram Babu Sah, son of Sri. Mahendra Sah

Exhibit S- Relevant Original page of daily Hindi newspaper "Prabhat Khabar" dated 25.10.2020.

Exhibit T- Relevant Original page of daily Hindi newspaper "Prabhat Khabar" dated 30.10.2020.

Exhibit U- Relevant Original page of daily Hindi newspaper "Prabhat Khabar" dated 04.11.2020.

32. The following witnesses have been

examined during the proceedings of the election petition.

33. P.W. 1, Syed Abu Dojana is the election petitioner who has filed the present election petition claiming that the election of respondent No. 1 namely Dilip Ray is bad and fit to be declared void on the grounds of suppression of assets of immovable properties in Form-26 of the respondent No. 1 and his spouse. The election of the respondent No. 1 is also fit to be declared void because he had failed to publish and broadcast electronically the details of his criminal antecedents on at least three different dates as required under the commands of the Apex Court and further the counting of votes and counting of postal ballots have not been done properly in accordance with law. In support of his claim, many documentary evidences were adduced on behalf of P.W. 1 which have already been extracted above.

34. R.W. 1, Dilip Ray is the returned candidate who has deposed in his examination-in-chief that he has

not suppressed any immovable properties registered either in his name or his spouse/wife and has mentioned the said property in Form-26 of the nomination paper. He further deposed that the criminal antecedents pending against him were duly published in the Print Media and broadcast in this regard was also made on the electric media in compliance of direction of the Hon'ble Supreme Court. In support of his claim, many documentary evidences were adduced on behalf of R.W. 1 which have already been extracted above.

35. R.W. 2, Rajesh Kumar is the purchaser/vendee of a piece of land of R.W. 1/Dilip Ray who has deposed in his examination-in-chief that he had purchased a piece of land bearing Sale deed no. 5784, pertaining to Thana no. 218, Khata no. 1029, Khesra no. 9404, measuring an area of 11.00 decimal. He has identified his signature on the sale deed which has already been exhibited as Exhibit-G.

36. R.W. 3, Sanjay Thakur is the

purchaser/vendee of a piece of land of Smt. Shakuntala Devi, spouse/wife of R.W. 1/Dilip Ray who has deposed in his examination-in-chief that he had purchased a piece of land bearing Sale deed no. 224, pertaining to Thana no. 218, Khata no. 1029, Khesra no. 9404, measuring an area of 02.00 decimal. He has identified his signature on the sale deed which has already been exhibited as Exhibit-C.

37. R.W. 4, Naresh Thakur is the purchaser/vendee of a piece of land of Smt. Shakuntala Devi, spouse/wife of R.W. 1/Dilip Ray who has deposed in his examination-in-chief that he had purchased a piece of land bearing Sale deed no. 223, pertaining to Thana no. 218, Khata no. 1029, Khesra no. 9404, measuring an area of 02.00 decimal. He has identified his signature on the sale deed which has already been exhibited as Exhibit-H.

38. R.W. 5, Teju Thakur is the purchaser/vendee of a piece of land of Smt. Shakuntala

Devi, spouse/wife of R.W. 1/Dilip Ray who has deposed in his examination-in-chief that he had purchased a piece of land bearing Sale deed no. 222, pertaining to Thana no. 218, Khata no. 1029, Khesra no. 9404, measuring an area of 02.00 decimal. He has identified his signature on the sale deed which has already been exhibited as Exhibit-B.

39. R.W. 6, Indal Rai is the purchaser/vendee of a piece of land of Smt. Shakuntala Devi, spouse/wife of R.W. 1/Dilip Ray who has deposed in his examination-in-chief that he had purchased a piece of land bearing Sale deed no. 2751, pertaining to Thana no. 660, Khata no. 143, Khesra no. 1619, measuring an area of 3.05 decimal. He has identified his signature on the sale deed which has already been exhibited as Exhibit-I.

40. R.W. 7, Kamlesh Kumar is the purchaser/vendee of a piece of land of Smt. Shakuntala Devi, spouse/wife of R.W. 1/Dilip Ray who has deposed in his examination-in-chief that he had purchased along

with R.W-6 the same piece of land which was mentioned by R.W.-6 in his examination-in-chief bearing Sale deed no. 2751, pertaining to Thana no. 660, Khata no. 143, Khesra no. 1619, measuring an area of 3.5 decimal. He has identified his signature on the sale deed which has already been exhibited as Exhibit-I.

41. It is submitted by learned counsel for the election petitioner that it is incumbent upon the respondent No. 1 to furnish an information with regard to immovable properties acquired by him or in the name of his spouse/wife in Column-7B of Form-26, otherwise the same information would result into violating the fundamental rights of the voters to know the complete bio-date of the contesting candidates and failure to such non-compliance would result into setting aside the election.

42. The lands sold by the returned candidate and his spouse having been executed by them as being furnished by way of certified copies in his Exhibits and

after having considered with the certified copies of the aforesaid sale-deeds exhibited by the election petitioner results that it was *prima-facie* established that the returned candidate has suppressed the immovable properties purchased by him and his spouse.

43. The Exhibits of election petitioner regarding purchase of immovable property of the returned candidate and his wife as well as Exhibits of returned candidate in regard to details of land sold by him and his wife *prima-facie* establishes that the returned candidate and his wife had suppressed the full details of the landed property which were existing on the date of filing of nomination paper of the aforesaid election.

44. It is also relevant to submit for consideration that the descriptions of the lands mentioned by the returned candidate in Column 7B of Form-26 without giving the details of area separately corresponding to the plot numbers which *prima-facie*

established that the returned candidate has not given the actual lands owned by himself and his spouse rather he has actually suppressed his properties for himself and his wife by not fulfilling the prescribed format for disclosure of the property for himself and his spouse.

45. So far as the issue with regard to criminal antecedents is concerned, the returned candidate has failed to publish at least on three different dates from the day following the last day of withdrawal of candidature and up to two days before the date of poll in regard to his criminal antecedents as mentioned by him in Clause-5 of the affidavit.

46. It is relevant to submit for consideration that on the day of counting i.e. on 10.11.2020, the entire counting of 26 Sursand Assembly Constituency have been done in utter violation of the statutory provisions and instructions of the Election Commission of India.

47. It is also relevant to submit for consideration that the counting of the Postal Ballot had been done at last which is against the statutory provisions and instructions and guidelines of the Election Commission of India. The Counting Agents have repeatedly urged the authorities present to start the counting of the Postal Ballots first but no heed was paid and rather the counting through EVM was forcibly started by ignoring and flouting the statutory provisions.

48. It is further submitted that the case of election petitioner is squarely covered by the judgments rendered by the Hon'ble Apex Court in the case of ***Union of India versus Association for Democratic Reforms*** **and Another** reported in ***(2002) 5 SCC 294*****,** **and** ***Kisan Shankar Kathore vs Arun Dattatraya Sawant & Ors*** **reported in** ***AIR 2014 SC 2069*** which gives a complete forceful command that it was incumbent upon every candidate who is contesting election, to give information about his assets and other

affairs which is essential part of fair and free election as every voter has a right to know about these details of returned candidate.

49. In contra, learned counsel appearing on behalf of the respondent No. 1 has objected in support of his case that the election petition is fit to be dismissed for non-compliance of statutory provisions contained under Section 100(i)(d)(iv) of the R.P. Act, 1951. The election petitioner has utterly failed to plead as to how it had materially affected the result of the election.

50. In compliance of the direction of the Hon'ble Supreme Court and the Election Commission of India, the details of the criminal cases pending against the deponent/respondent No. 1 on the date of his filing the nomination to contest the election was duly published in the daily Hindi News Paper *"Prabhat Khabar"* on 25.10.2020, 30.10.2020 and 04.11.2020 and the information in this regard was also sought to be given to the public at large through the electronic media

as would be evident from the Tax Invoice of Electronic News Channel "Kashish News" dated 20.10.2020. True photo stat copies of the publication regarding details of criminal cases pending against the deponent in the Hindi News Paper *"Prabhat Khabar"* dated 30.10.2020, 04.11.2020 and 25.10.2020 as also the Tax Invoice of Electronic News Channel *"Kashish News"* dated 20.10.2020 are annexed herewith and marked as Exhibits- S.T.U and as Annexure-"R-4" respectively for identification forming part of this written statement.

51. The allegation of the election petitioner that the returned candidate/respondent No. 1 has suppressed the details of the immovable assets which was registered either in his name or in the name of his spouse/wife Smt. Shakuntala Devi are patently false. The returned candidate had given details of all the immovable assets standing in his name and in the name of his spouse/wife.

52. He has further submitted that it is the

settled principle of law that it could depend upon the facts and circumstances of each case as to whether such non- disclosure would amount to material lapses by the returned candidate or not.

53. Recently in ***Civil Appeal No. 4615 of 2023, Karikho Kri Vs. Nuney Tayang and Another***, the Hon'ble Supreme Court vide its judgment and order dated 09.04.2024 has been pleased to hold that every defect in nomination cannot straight way be termed to be of such character as to render its acceptance improper and each case could have to turn on its individual facts, in so far as that aspect is concerned. The Hon'ble Supreme Court further observed that the case law on subject also manifests that this Court has always drawn a distinction between non-disclosure of substantial issues as opposed insubstantial issues which may not impact once candidature or the deserve of an election.

54. While deciding the similar issues, the

Hon'ble Supreme Court had clearly held that the success of winning candidate at election should not be likely interfered with.

55. It is further submitted that in the circumstances, if nothing has been suppressed by the returned candidate/respondent No. 1 in his affidavit in Form-26, the present election petition does not merit any consideration and is fit to be dismissed.

56. I have gone through the pleadings, oral and documentary evidence adduced on behalf of the respective parties and rival submissions of both the parties.

57. There exist the following issues in the present election petition (i) suppression of information as to the assets of respondent No. 1 and his spouse (ii) failure to publish criminal antecedents (iii) improper counting of votes. For proper adjudication of this election petition, all these issues require thorough discussion.

Suppression of information as to the assets.

58. Under Section 100 of Representation of People Act, 1951 (hereinafter referred to as R.P. Act), 1951, the Hon'ble High Court has jurisdiction to declare an election void. There could be several grounds for setting aside an election. One of such ground is enshrined under Section 100(I)(d) of R.P. Act, 1951. It says that an election can be set aside where the result of the election, in so far as it concerns a returned candidate, has been materially affected by any non-compliance with the provisions of this Act.

59. Section 100 of the 1951 Act provides for grounds for declaring election to be void. As we are concerned with Section 100(1) (d) (iv), the same is reproduced which reads as under:-

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

(a)-(c)

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

(1)-(iii)

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

60. The alleged non-compliance may be in reference to Section 33 A of R.P Act 1951. At present every candidate under Section 33A of the RP Act is obligated to file an affidavit with relevant information with regard to their assets and liabilities. If candidate suppresses any information with regard to his assets, it may amount to non-compliance, with in the meaning of Section 33A of R.P Act. However, it is necessary that, such suppression must materially affect the election result.

61. Now the question arises, whether

respondent No.1 has voluntarily suppressed the information as regards to his assets, so as to declare his election void. In such cases, burden of proof lies upon the petitioner. While discharging the burden, petitioner has to show that due to non disclosure of assets, result of an election has been materially affected.

62. In order to discharge his burden, petitioner has given description of immovable assets belonging to Respondent No.1 and his spouse namely Smt. Shakuntala Devi. In para 8 of election petition the petitioner has raised the plea that Respondent No.1 and his wife are owners of the alleged immovable assets. The details of which have not been furnished by the returned candidate in his affidavit (Column-7B of Form-26). Moreover as part of Annexure-3, he has filed photo-state copies of deed details.

63. The respondent No. 1 had purchased an area of 24 decimals of Khata No.1029, Plot No,9404 through different sale-deeds. 16 decimals of land of the

aforesaid Khata number and Plot number was purchased in the name of his spouse as stated in paragraph no. 8(v) and 8(vi) of the election petition but since the total purchased area of Khata No.1029, Plot No.9404 was already sold through different sale-deeds to others before filing the nomination to contest the Assembly Election, 2020 from 26, Sursand Assembly Constituency, the description of the aforesaid plot was not mentioned in the Affidavit (Form-26) filed before the Returning Officer. This fact is corroborated by Exhibits B, C, F, G, H, L, M, N, O, P, Q, R. These documents show that returned candidate has not suppressed the details of immovable properties.

64. So far as the allegations regarding existence of an area of 5 decimals of Khata No. 410, Plot No.3580 purchased by the deponent vide Deed No. 3709 dated 18.07.2017 is concerned, the statements are totally false and, therefore, denied. The deponent had never purchased that area on 18.07.2017. He had

however, purchased an area of 5 decimals of Khata No.410, Plot No.3580 on 18.07.2007 but since the deponent had already sold the aforesaid property in the name of Smt. Sudha Devi vide registered sale-deed dated 13.11.2009, there was no requirement of disclosure about that property in the affidavit filed in Form-26 before the Returning Officer. This fact has been proved by the respondent No. 1 by way of Exhibit-K.

65. So far Plot no. 399 of Khata no.322 and Plot no.8872 of Khata no. 1563 are concerned, the information in this regard is already there in Form-26.

66. I found much force in the submission of respondent No. 1 that an area of 8 decimals bearing Plot No.1267, Khata No.458 said to have been purchased in the name of deponent's spouse is also included in total measurement as mentioned in Form-26, however, by way of mistake, though other plot numbers were mentioned at the relevant place but inadvertently plot no.1267 could not be mentioned. Total measurement is

there and even if 8 decimals of plot no.1267 is added to it, it will not change the total measurement.

67. It is argued on behalf of the returned candidate/respondent No. 1 in response to the objection of the election petitioner that non-disclosure of plot No. 1267, measuring an area of 8 decimal of Khata No. 458, that in paragraph No. 7 (b)(i) of the affidavit in Form-26, in the column of spouse, five plot numbers have been disclosed bearing plot Nos. 1470, 1467, 9393, 9507, 9685 and total area of the aforesaid land has been mentioned as 314 decimals. In the 4th column of paragraph No. 7 (b)(i), in the column of spouse a date has been mentioned as 16.07.2007 which is in respect of plot No. 1267 of Khata No. 458 measuring an area of 8 decimal and therefore, it is not that there was any intention of respondent No. 1 to suppress the disclosure of any immovable property. The area of five plots mentioned in paragraph No. 7 (b)(i) without adding the area of plot No. 1267 is 306 decimals only. Total area of

land mentioned in paragraph No. 7(b)(i) is 314 decimals and therefore, it is inclusive of 8 decimals of land of plot No. 1267.

68. So far as the allegation regarding non-disclosure of Plot nos. 1563 and 1564 of Plot nos. 600 and 599 respectively are concerned, the returned candidate has deposed in his evidence that his wife had already received the consideration money for its sale from, Abhinit Kumar, son of Jitendra Prasad Singh, resident of Ramnauli, P.O.-Bindupur Bazar, District-Vaishali, however, sale deed has not been executed in his favour because of restriction imposed by the District Magistrate. So, there was no requirement to declare the said property in the affidavit filed along with nomination paper. His wife has already executed the agreement for sale of the aforesaid land with Abhinit Kumar which has not been cancelled. The certified copy of the agreement deed for sale of land pertaining to Thana No. 333, Khata No. 599 and 600 Khesra No. 1563 and 1564, total area

19.5 decimal along with reply to the R.T.I application has been contained in Letter No. 1117 dated 13.04.2023. This agreement deed has been marked as Exhibit-A.

69. The allegations regarding existence of an area of 5 decimals of Khata No. 410, Plot No.3580 purchased by the deponent vide Deed No. 3709 dated 18.07.2017 is concerned, the deponent had never purchased that area on 18.07.2017. He had however, purchased an area of 5 decimals of Khata No.410, Plot No.3580 on 18.07.2007 but since the deponent had already sold the aforesaid property in the name of Smt. Sudha Devi vide registered sale-deed (Ext-K) dated 13.11.2009, there was no requirement of disclosure about that property in the affidavit filed in Form-26 before the Returning Officer.

70. As far as the allegation made with respect to purchase of plot No. 1471 of Khata No. 2101, measuring an area of 106 decimals (Ext-6) and the area

of 158 decimals of plot No. 1471 and 1466 (Ext-17) as mentioned in para No. (i) and (xii) of the details of assets standing in the name of spouse of respondent No. 1 is concerned, the R.W. 1 has deposed that it is a leased property. There was no transfer of title either in his name or in the name of his wife. In respect of plot No. 1470, the information is there in the affidavit filed by him in Form-26 with his nomination paper, hence, the allegations of concealment and suppression of this property is not correct.

71. So far as, failure to publish criminal antecedent is concerned, for the purpose of Section 33A of R.P Act, an electoral candidate is legally obliged to disclose his criminal antecedent. Failure to disclose criminal antecedents is a ground for disqualification under section 100 of R.P Act. Now, onus is on the Respondent No.1. It is for him to establish that he has published his criminal antecedents. He has mentioned in para 11 of written statement that he has duly publicized

his criminal antecedents. To substantiate this fact he has adduced documentary evidence. It includes photo-state copies of the publication in *hindi* News Paper " *Prabhat Khabar*" dated 25.10.2020, 30.10.2020 and 04.11.2020. Moreover Tax Invoice of Electronic News Channel *"Kashish News"* dated 20.10.2020, has also been adduced. These documents have been marked as Exhibits- S.T.U and as Annexure-"R-4" respectively for identification.

72. These exhibits show that respondent No. 1 has made of lawful publication of his criminal antecedents as per direction of Hon'ble Supreme Court and the instructions issued by the Election Commission of India.

73. Now coming to the votes in violation of the statutory provisions.

74. From para 22 to para 36 of the election petition, there exist pleas pertaining to manipulation in

counting of votes. These pleas include counting of postal ballots away from the main counting hall, improper reception of ballots from door to door, rejection of votes without valid reasons and not supplying the accounting sheets.

75. In contra, respondent No. 1 has vehemently opposed the pleas raised by the petitioner. Respondent No. 1 in his written statement has furnished several pleas to establish his case. In para 37 to para 59 of the written statement, respondent No. 1 has stated that the statements made in the election petition are false and must be denied. His pleas rest on the ground that election result has not been materially affected.

76. In paragraph No. 28 of the election petition under reply, the election petitioner has simply quoted the revised instruction issued by the Election Commission of India regarding verification of rejected ballot papers when the margin of victory is less than the number of rejected ballot papers. In this case, since the

margin of victory is more than ten times of total votes polled through the postal ballot papers, the revised instructions issued by the Election Commission of India was not applicable in the counting of votes of 26, Sursand Assembly Constituency.

77. To set aside election on the ground of counting of votes, it must be seen that such counting has materially affected the election result. Whether counting of votes has materially affected the election result, is a question of fact. It has to be decided on the basis of cogent evidence. But the election petitioner has failed to adduce such evidence.

78. In the present case, there are procedural irregularities on the basis of which, it can not be presumed that the election result has been materially affected. Moreover, there is no violation of statutory provisions in relation to counting of votes.

79. The Hon'ble Supreme Court in the case of

Mangani Lal Mandal versus Bishnu Deo Bhandari reported in ***(2012) 3 SCC 314*** has observed as follows:-

> ***9.*** *Section 100 of the 1951 Act provides for grounds for declaring election to be void. As we are concerned with Section 100(1) (d) (iv), the same is reproduced which reads as under:*
>
> ***"100. Grounds for declaring election to be void****.-(1) Subject to the provisions of sub-section (2) if the High Court is of opinion-*
>
> *(a)-(c)*
>
> *(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected-*
>
> *(1)-(iii)*
>
> *(iv) by any non-compliance with the provisions of the Constitution or of this Act or any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void."*
>
> *10. A reading of the above*

provision with Section 83 of the 1951 Act leaves no manner of doubt that where returned candidate is alleged to be guilty of non- manpliance with the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder and his election is sought to be declared void on such ground, It is essential for the election petitioner to aver by pleading material facts that the result of the election insofar as it concerned the returned candidate has been materially affected by such breach or non-observance. If the election petition goes to trial then the election petitioner has also to prove the charge of breach or non- compliance as well as establish that the result of the election has been materially affected. It is only on the basis of such pleading and proof that the Court may be in a position to form opinion and record a finding that breach or non-compliance with the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder has materially affected the result of the election before the election of the returned candidate could be declared void.

11. A mere non-compliance or

breach of the Constitution or the statutory provisions noticed above, by itself, does not result in invalidating the election of a returned candidate under Section 100(1) (d) (iv). The sine qua non for declaring the election of a returned candidate to be void on the ground under clause (iv) of Section 100(1)(d) is further proof of the fact that such breach or non-observance has resulted in materially affecting the result of the returned candidate. In other words, the violation or breach or non-observation or non-compliance with the provisions of the Constitution or the 1951 Act or the rules or the orders made thereunder, by itself, does not render the election of a returned candidate void Section 100(1)(d) (iv). For the election petitioner to succeed on such ground viz. Section 100(1)(d)(iv), he has not only to plead and prove the ground but also that the result of the election insofar as it concerned the returned candidate has been materially affected. The view that we have taken finds support from the three decisions of this Court in: (1) Jabar Singh v. Genda Lal; (2) L.R. Shivaramagowda v. T.M. Chandrashekar; and (3) Uma Ballav Rath v.

Maheshwar Mohanty.

80. The Hon'ble Supreme Court in the case of ***Karikho Kri Vs. Nuney Tayang and another*** *in* ***Civil Appeal No. 4615 of 2023,*** has observed thus*:-*

> *45. So far as the ground under Section 100(1)(d) (iv) of the Act of 1951 is concerned, the provision requires that the established non-compliance with the provisions of the Constitution or the Act of 1951 or any rules or orders made thereunder necessarily has to be shown to have materially affected the result of the election insofar as it concerns the returned candidate. Significantly, the High Court linked all the non-disclosures attributed to Karikho Kri to Section 100(1)(d) (i) of the Act of 1951 but ultimately concluded that his election stood invalidated under Section 100(1)(d) (iv) thereof. Surprisingly, there is no discussion whatsoever on what were the violations which qualified as non-compliance with the provisions of either the Constitution or the Act of 1951 or the rules and orders framed thereunder, for the purposes of Section 100(1)(d)(iv). and as to how the same materially affected the result*

of the election.

46. In ***Mangani Lal Mandal vs. Bishnu Deo Bhandari****, this Court held that where a returned candidate is alleged to be guilty of non-compliance with the provisions of the Constitution or the Act of 1951 or any rules or orders made thereunder and his election is sought to be declared void on that ground, it is essential for the election petitioner to aver, by pleading material facts, that the result of the election insofar as it concerned the returned candidate has been materially affected by such breach or non-observance. It was further held that it is only on the basis of such pleading and proof that the Court would be in a position to form an opinion and record a finding that such breach or non-compliance has materially affected the result of the election before election of the returned candidate could be declared void. It was further observed that mere non-compliance or breach of the Constitution or the statutory provisions, as stated above, would not result in invalidating the election of the returned candidate under Section 100 (1)(d)(iv) as the sine qua non for declaring the election*

> *of a returned candidate to be void on that ground under clause (iv) of Section 100 (1) (d) is further proof of the fact that such breach or non-observance has resulted in materially affecting the election of the returned candidate. For the election petitioner to succeed on such ground, viz., Section 100 (1)(d)(iv), he has not only to plead and prove the breach but also show that the result of the election, insofar as it concerned the returned candidate, has been materially affected thereby.*

81. The law as to the disqualification of a candidate demands that there must be substantial non-compliance of statuary provisions. Mere procedural regularities are not sufficient to declare an election void. However, if such irregularities lead to corruption, an election may be declared void.

82. The discussions on the issue above are sufficient to hold that the election of respondent No. 1 to the 26 Sursand Assembly Constituency in the District of Sitamarhi suffers no disqualification under Sections 80, 80A, 81 and 100 of the Representation of Peoples Act,

1951, requiring any interference.

83. Hence, the election petition is devoid of any merits and is fit to be dismissed.

84. In the result, the election petition is dismissed but without any order as to costs.

(Sunil Kumar Panwar, J)

Shageer/-

AFR/NAFR	AFR
CAV DATE	13/05/2024
Uploading Date	05/07/2024
Transmission Date	N/A