IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPLICATION IN E.P. (L) NO.30947 OF 2024
IN
ELECTION PETITION NO.3 OF 2024

Naresh Ganpat Mhaske …Applicant / Respondent No.1

In the matter between

Rajan Baburao Vichare …Petitioner

Versus

Naresh Ganpat Mhaske & Ors. …Respondents

WITH

APPLICATION IN E.P. (L) NO.31834 OF 2024

Gurudev Narsingh Suryavanshi …Applicant / Respondent No.14

In the matter between

Rajan Baburao Vichare …Petitioner

Versus

Naresh Ganpat Mhaske & Ors. …Respondents

Mr. Darius Khambata, Senior Counsel, Mr. Pankaj Savant, Senior Counsel, Ms. Shreenandini Mukhopadhyay, Ms. Joshna D'Souza i/b. Mr. Sanjay Gawde for the Petitioner.

Mr. Vikram Nankani, Senior Counsel, Mr. Chirag Shah, Mr. Vishal Acharya, Mr. Shyamsundar Jadhav, Mr. Bhavya Shah and Mr. Mehul Talera i/b. Mr. Chirag Shah for Respondent No.1 / Applicant in AEP No.30947 of 2024.

Mr. Hare Krishna Mishra i/b. Law Global for Respondent No.14 and Applicant in AEP No.31834 of 2024.

CORAM : R.I. CHAGLA J.
Reserved on : 13TH JUNE, 2025
Pronounced on : 9TH SEPTEMBER, 2025

J U D G M E N T:-

1. By these Applications, the Respondent Nos.1 and 14 have sought rejection of the Election Petition under Order VII Rule 11 of the Code of Civil Procedure, 1908 as not being maintainable on the ground that the same does not disclose any cause of action.

2. The case of the Petitioner in the Election Petition is that in terms of Sr. No.6 of Form 26 as amended by Notification No. SO 5196 (E) dated 10th October, 2018, the Respondent No.1 ought to have disclosed his conviction in a criminal offence in which he has been convicted and his failure to disclose his conviction has rendered his election liable to be set aside.

3. The Respondent No.1 had been convicted by an Order dated 29th February, 2016 passed by the learned Chief Judicial Magistrate, Thane which Order was upheld in Appeal vide Order dated 9th February, 2017 passed by the learned Additional District Judge – II, Thane but despite the same, the Respondent No.1 put a tick mark against Sr. No.6(i) and stated “Not Applicable” against Sr. No.6(ii) of Form 26. Sr.No.6(ii) requires details of cases in which the candidate has been convicted for the offences as required thereunder.

4. The case of Respondent No.1 is that only if his conviction resulted in imprisonment of one year or more, is he required to make a disclosure in Form 26. Accordingly, the disclosure of Respondent No.1 in Form 26 is true and correct since Respondent No.1 was released on the basis of good conduct under the Probation of Offenders Act, 1958 with no imprisonment.

5. Mr. Vikram Nankani, the learned Senior Counsel appearing for the Respondent No.1 has submitted that Rule 4A of the Election Rules, 1961 ("the 1961 Rules" or "Election Rules") was inserted on 3rd September, 2002 vide Notification No.SO 935(E) issued by the Central Government in exercise of powers conferred by Section 169 of the Representation of People Act, 1951 ("1951 Act"). He has submitted that Form 26 is in the form of an Affidavit to be filed at the time of delivering nomination paper and which has also been referred to in Section 33A (2) of the 1951 Act. He has submitted that Section 33A was introduced with effect from 24th August, 2002, first by an Ordinance, which was replaced by Amendment Act, 1972. He has submitted that in case of conviction of a candidate of an offence and he being sentenced to imprisonment for one year or more then the candidate shall furnish the information

under Section 33A (1) (ii). Section 33A (ii) provides that where a candidate has been convicted of an offence (other than any offence referred to in sub-section (I) or sub-section (2), or covered in sub-section (3) of Section (8)) and sentenced to imprisonment for one year or more then the candidate is required to furnish the information. Under Section 33A (2), this shall be by way of Affidavit sworn by the candidate in a prescribed form verifying the information as above. Further, under Section 33-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 to a constituency for which the nomination paper is delivered. The same procedure is to be followed as provided in Section 33A (1)(i) for a pending case where the candidate is accused of an offence punishable with imprisonment of two years or more and in which a charge has been framed by the Court of competent jurisdiction.

6. Mr. Nankani has submitted that Section 33A is based on the principle that a voter has a right to information about the

candidate, and that such a right is enshrined in Article 19(1)(a) of the Constitution, which deals with freedom of speech and expression.

7. Mr. Nankani has submitted that the first judgment on the subject is in the case of ***Union of India Vs. Association for Democratic Reform, (ADR Judgment)[1],*** which arose out of a Writ Petition filed under Article 226 of the Constitution of India before the Delhi High Court, for direction to implement the recommendation made in the 170th Report of the Law Commission and make necessary change in Rule 4 of the 1961 Rules. The Delhi High Court had dismissed the Writ Petition holding that it was the function of Parliament to make necessary amendments in the 1951 Act including the nomination papers in prescribed Forms 2-A to 2-E. The Delhi High Court directed the Election Commission to secure to voters certain information pertaining to each candidate, which inter alia included whether the candidate is accused of an offence punishable with imprisonment. The Supreme Court had framed the following questions :-

(i) Whether the Election Commission is empowered to issue directions as Ordered by the High Court?

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1 ***(2002) 5 SCC 294***

(ii) Whether right to know exists about the candidates contesting elections?

8. Mr. Nankani has submitted that on the first question, the Supreme Court held that the Constitution has made comprehensive provisions under Article 324 and it operates in areas left unoccupied by legislation and that the only limitation of plenary character of the power of the Election Commission is when the Parliament or the State Legislature has made a law relating to or in connection with elections. The Supreme Court has further held that where the law is silent, the Election Commission can issue orders under Article 324(1) of the Constitution. The Supreme Court has thereafter modified the directions given by the High Court and directed the Election Commission to call for information on Affidavit by giving necessary Orders under Article 324 of the Constitution.

9. Mr. Nankani has in particular referred to paragraphs 48 and 49 of the aforementioned ADR Judgment, where the Supreme Court has directed the Election Commission to call for information on Affidavit by issuing necessary Order in exercise of powers under Article 324 of the Constitution of India. One such information on the

aspect in relation to his / her candidature is, "Whether the candidate is convicted / acquitted / discharged of any criminal offence in the past - if any, whether he is punished with imprisonment or fine". Another information is that, prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the Court of law. If so, the details thereof.

10. Mr. Nankani has submitted that following the directions of the Supreme Court in the ADR Judgment, the Election Commission issued an Order dated 28th June, 2002, whereby the Election Commission prescribed the format in which an Affidavit was to be furnished by a candidate along with the nomination paper. The format of the Affidavit prepared by the Election Commission required the candidate to disclose the past conviction with imprisonment and / or quantum of fine imposed, and insofar as pending criminal cases were concerned, the Election Commission required disclosure of cases in the period ending six months prior to the filing of the nomination paper, where the candidate was accused of an offence punishable with imprisonment with two years or more and in which

a charge had been framed or cognizance taken by the Court. Insofar as past convictions are concerned, the Affidavit prescribed by the Election Commission required disclosures of those cases where the candidate was convicted with punishment in the form of imprisonment or fine imposed.

11. Mr. Nankani has submitted that on 24th August, 2002, the Representation of People (Amendment) Ordinance, 2002 was issued whereby, as aforesaid, Section 33-A and Section 33-B were inserted. This ordinance was replaced by the Representation of the People (Third Amendment) Act, 2002 on 28th December, 2002.

12. Mr. Nankani has submitted that vide Notification dated 3rd September, 2002, the Central Government inserted Rule 4-A in the Election Rules and prescribed the format of the Affidavit in Form 26. As far as past convictions are concerned, Form 26 as prescribed then, required the candidate to disclose cases where the candidate was convicted of an offence (other than those under Section 8) and sentenced to imprisonment for one year or more. As far as pending criminal cases are concerned, the prescribed Form 26, required the candidate to disclose those cases where the offence was punishable

with imprisonment for two years or more and in which the charges have been framed by the Court of competent jurisdiction. He has submitted that Form 26 as prescribed by the Central Government, did not require disclosure of pending criminal cases in which cognizance was also taken by the competent Court, although that was the requirement in the Affidavit as prescribed by the Election Commission. This meant that the candidate had to file two separate Affidavits, one in the format prescribed by the Election Commission vide Order dated 28th June, 2002 and the other prescribed by the Central Government in Form 26 as notified on 3rd September, 2002.

13. Mr. Nankani has submitted that the next landmark case decided by the Supreme Court was the case of the ***People's Union for Civil Liberties Vs. Union of India[2] (referred to as "PUCL Judgment") .*** He has submitted that the Supreme Court in the ***PUCL Judgment*** was considering challenge to the constitutional validity of Section 33A and Section 33B of the 1951 Act. The Supreme Court delivered three separate opinions of their Lordships Mr. Justice M.B. Shah, Mr. Justice Venkatarama Reddi and Mr. Justice D.M. Dharmadhikari. The Supreme Court by a unanimous verdict of all the three Hon'ble

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2 ***(2003) 4 SCC 399.***

Judges struck down Section 33-B being violative of Article 19(1)(a) of the Constitution. He has submitted that it is pertinent to note that Justice Venkatarama Reddi in paragraph 116 expressly upholds the validity of Section 33-A (1)(ii). He has submitted that in the conclusions, as recorded in paragraph 123 of the PUCL Judgment, Justice Reddi in sub paragraph (6) held that Right to Information provided for by Parliament under Section 33-A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the Right to Information vested in the voter / citizen. However, there is no good reason for excluding the pending cases in which cognizance has been taken by the Court from the ambit of disclosure.

14. Mr. Nankani has submitted that Justice Dharmadhikari agreed with the conclusion of Justice Reddi recorded in the aforesaid paragraph 123(6) of the ***PUCL Judgment (Supra)***. He has submitted that it therefore, follows that the ***PUCL Judgment (Supra)*** expressly upholds the constitutional validity of Section 33A(1)(ii). Significantly, insofar as pending criminal cases are concerned, the Supreme Court added that there is no reason to exclude the pending cases in which cognizance has been taken by the Court of competent

jurisdiction from the ambit of disclosures required as a Right to Information provided under Section 33A (1)(i). However, no additional requirement was imposed by the Supreme Court in the ***PUCL Judgment*** insofar as disclosures relating to past convictions under Section 33A (1)(ii) is concerned.

15. Mr. Nankani has submitted that the Election Commission issued Notice dated 24th August, 2012 proposing amalgamation of the two Affidavits into one form, the first being the form prescribed by the Election Commission on 28th June, 2012 and the other being the form prescribed by the Central Government under Rule 4A of the 1961 Rules. Acting on the proposal of the Election Commission, the Central Government issued a Notification dated 1st August, 2012 in exercise of powers under Section 169 of the 1951 Act. Insofar as past convictions are concerned, Sr. No.6 of Form 26 as revised in 2012 was in conformity with Section 33-A(I) (ii) viz. the candidate had to disclose whether he has been or not been convicted of an offence (other than any offence referred to in sub-section (1) or sub- section (2) or cover in sub-section (3) of Section 8 of the Representation of the People Act, 1951) and sentenced to imprisonment for one year or more.

16. Mr. Nankani has submitted that changes were made in Form 26 on 10th October, 2018. The Election Commission in its Press Release also dated 10th October, 2018 attributed the changes in Form 26 to two judgments of the Supreme Court. The first is the judgment in ***Krishnamoorthy Vs. Sivakumar***[3] and the second judgment is in the case of ***Lok Prahari Vs. Union of India***[4]***.*** He has submitted that none of these cases had anything to do with past convictions.

17. Mr. Nankani has submitted that the observations in paragraph 91 of ***Krishnamoorthy (Supra)*** which has been relied upon by the Petitioner to the effect that once the candidate is held to have made an incorrect disclosure, the same would deem to be a corrupt practice under Section 123 of the 1951 Act, are not applicable in the present case, at least at this stage, when the corrupt practice is yet to be proved in the trial. Insofar as past convictions are concerned, as aforementioned, the requirement under Section 33A (1)(ii) of the 1951 Act has been upheld as constitutional by the Supreme Court in ***PUCL Judgment (Supra)***.

18. Mr. Nankani has submitted that the second case, which

3 **(2015) 3 SCC 467.**
4 **(2018) 4 SCC 699.**

led to the revision of Form 26 on 10th October, 2018, is the judgment in ***Lok Prahari (Supra).*** It dealt with the disclosures in relation to the financial condition or financial status of the candidate and his dependents. He has submitted that this is a two Judge Bench which heard a Writ Petition filed under Article 32 of the Constitution. He has submitted that all observations and the findings of the Supreme Court are purely and only in the context of non-disclosure of assets and sources of income. Shortly put, ***Lok Prahari (Supra)*** did not deal with the disclosures of past convictions.

19. Mr. Nankani has submitted that the judgments of the Supreme Court in ***Krishnamoorthy (Supra)*** and ***Lok Prahari (Supra)*** must be read harmoniously with the judgments of the Supreme Court in ***ADR (Supra)*** and ***PUCL Judgment (Supra).***

20. Mr. Nankani has submitted that the judgment cannot be read as *Euclid's Theorem.* A small factual difference will also result in the judgment not being a precedent. He has submitted that it is settled law that the Courts should not place reliance on the decisions without discussing as to how the factual situation fits in with the factual situation of the decision on which reliance has been placed.

21. Mr. Nankani has submitted that after the revision of Form 26, came the judgment of the Supreme Court in ***Public Interest Foundation Vs. Union of India***[5]. In the said judgment, the Supreme Court considered whether the conditions of disqualification / disclosure can be laid down by the Supreme Court beyond Article 102(a) to (d) and the law made by Parliament under Article 102 (e). After referring to the judgment in ***Lily Thomas Vs. Union of India***[6], the Supreme Court held that "We have no hesitation in saying that the view expressed above in ***Lily Thomas (Supra)*** is correct, for Parliament has the exclusive power to lay down disqualification for membership" (Paragraph 8).

22. Mr. Nankani has submitted that the Supreme Court was dealing with pending cases as is evident from the directions in paragraph 116 of the said judgment. He has submitted that the Supreme Court in ***Public Interest Foundation (Supra)*** issued directions insofar as pending criminal cases are concerned, relating the concerns which were highlighted by the Law Commission in its 244th Report exclusively referred to therein. No directions with regard to past convictions were given.

5 ***(2019) 3 SCC 224.***
6 ***(2013) 7 SCC 653.***

23. Mr. Nankani has submitted that the Petitioner has heavily relied upon the judgment of the Supreme Court in ***Satish Ukey Vs. Devendra Gangadhar Fadanvis***[7]. He has submitted that although it is true that the Supreme Court in paragraph 23 of ***Satish Ukey (Supra)*** gave a wide meaning to the word 'information' as contained in Section 33A, but these findings have to be restricted to the facts of the case before the Supreme Court. In ***Satish Ukey (Supra)*** the Supreme Court was concerned with the disclosures relating to pending criminal cases and not past convictions. He has submitted that it is in this context the Supreme Court held that information relating to pending cases would go beyond the requirements of Clause (i) of sub-section (1) of Section 33A. He has submitted that this finding must be read on the same lines as contained in the ***ADR Judgment (Supra)*** and the ***PUCL Judgment (Supra).***

24. Mr. Nankani has submitted that the findings in paragraph 24 of the judgment in ***Satish Ukey (Supra)*** must be read as confined only to Entry 5(ii) of Form 26, as prescribed prior to 10th October, 2018. He has submitted that in the last sentence of paragraph 24, the Supreme Court has only reiterated the contents of

7 ***2019 9 SCC 1.***

Entry 5(i) and 6 without directing disclosure of any additional information. He has submitted that the judgment of the Supreme Court in ***Satish Ukey (Supra)*** supports the Applicant / Respondent No.1's case herein.

25. Mr. Nankani has submitted that the ***PUCL Judgment (Supra)*** was noticed and considered in ***Satish Ukey (Supra)***. He has submitted that the Supreme Court in ***Satish Ukey (Supra)*** in paragraphs 12, 13 and 14 has reproduced paragraphs 114, 115 and paragraph 123 sub-paragraphs (4), (6) and (9) all from the opinion of Justice Venkatarama Reddi, to the extent relevant to pending criminal cases. This was in the context of there being no reason for excluding pending cases in which cognizance has been taken by the Court from the ambit of disclosure. He has submitted that it is therefore, *exfacie* apparent that the entire focus in ***Satish Ukey (Supra)*** was with reference to pending criminal cases.

26. Mr. Nankani has submitted that the ***PUCL Judgment (Supra)*** and ***Satish Ukey (Supra)*** are both decisions of three Judges Bench. He has submitted that it is impermissible to read ***Satish Ukey (Supra)*** as taking a view contrary to and / or overturning ***PUCL***

Judgment (Supra). He has submitted that ***PUCL Judgment (Supra)*** and ***Satish Ukey (Supra)*** must be read in harmony and reconciled with the latter judgment in ***Satish Ukey (Supra)*** being confined only to pending criminal cases in which cognizance had been taken by the Court.

27. Mr. Nankani has submitted that the Petitioner has failed to comply with the mandatory provisions in Section 83 (a) of the 1951 Act by failing to plead the necessary and material particulars / facts qua concise statement to support his grounds for alleged corrupt practice by Applicant / Respondent No.1. He has submitted that as per Section 83(b) of the Act, the onus is put on the party alleging the corrupt practice to set forth full particulars of the corrupt practice. However, the Petitioner in his Petition has merely made bald and vague statements against the Applicant / Respondent No.1 without corroborating them with complete chain of events / documents.

28. Mr. Nankani has submitted that except for vague averment of alleged violation of Section 123 (2) of the 1951 Act, the Petitioner has failed to disclose and aver any violation and particulars of so-called corrupt practice under Section 100(1) (b), Section

100(d)(i), (ii) and (iv) of the 1951 Act against the Respondent No.1 as alleged in the Affidavit filed by the Petitioner in compliance of proviso to Section 83(1) of the 1951 Act (Form 25 of Rule 94-A of the Conduct of Election Rules, 1961).

29. Mr. Nankani has submitted that the Petitioner has failed to state as to which facts led to undue influence i.e. direct or indirect interference or attempt to interfere in election by the Applicant / Respondent No.1, under Section 123(2) of the 1951 Act. The Petitioner has also failed to state as to how there was non-compliance of the provisions of the Constitution or of the 1951 Act or the Rules made thereunder, which had materially affected the result of the election. He has submitted that the Petitioner fails to make out any ground / fact material to the cause of action in favour of the Petitioner to file the present Petition to declare the election to be void.

30. Mr. Nankani has submitted that the material facts are required to be stated as those facts can be considered as material supporting the allegations made. Failure to plead “material facts” is fatal to the Election Petition and no amendment of the pleadings is

permissible to introduce such material facts after the time limit prescribed for filing the Election Petition. He has in this context placed reliance upon the judgment of the Supreme Court in ***Hari Shankar Jain Vs. Sonia Gandhi***[8]. He has submitted that the Supreme Court while dealing with similar allegations raised in Election Petition for suppression of information under Form 26, reiterated the relevance of material facts in ***Kanimozhi Karunanidhi Vs. A. Santhana Kumar***[9]***.*** He has submitted that the election and result cannot be set aside merely on bald and vague allegations raised by the Petitioner, who had lost the election by margin of more than two lakh vote. He has in this context placed reliance upon the judgment in the case of ***C.P. John Vs. Babu M Palissery***[10]***,*** at paragraphs 18, 19, 20, 21 and 38.

31. Mr. Nankani has submitted that the Supreme Court in a catena of decisions has held that in the absence of any proper pleading that the result of the election, insofar as it concerns a returned candidate, has been materially affected, the Election Petition cannot be allowed to proceed further and deserves to be rejected at the threshold itself. This is a fatal and incurable defect

8 ***(2001) 8 SCC 233.***
9 ***(2023) SCC OnLine SC 573.***
10 ***(2014) 10 SCC 547.***

which goes to the root of the matter.

32. Mr. Nankani has submitted that it is imperative that an election petitioner taking the ground of Section 100(1) (d)(iv) of the 1951 Act has to necessarily aver that the result of the election of the returned candidate has been materially affected. He has placed reliance upon the judgment of the Supreme Court in ***Karikho Kri Vs. Nuney Tayang***[11].

33. Mr. Nankani has submitted that the Supreme Court while allowing the Appeal of the returned candidate and consequently allowing the application under Order VII Rule 11 of the CPC held that in the absence of any pleading in the Election Petition that the result of the election of the returned candidate was materially affected by improper acceptance of nomination under Section 100(1) (d)(i) of the 1951 Act, the Election Petition cannot go to trial. (***Karim Uddin Barbhuiya Vs. Aminul Haque Laskar***[12]; paragraphs 22 and 23).

34. Mr. Nankani has submitted that where there is an allegation that candidates other than the returned candidate had not

11 (2024) SCC OnLine SC 519.
12 (2024) SCC OnLine SC 509.

submitted their Affidavits in a proper format, the Election Petitioner had to necessarily assert that, the election of the returned candidate had been materially affected by such acceptance. Non assertion of that material fact has been held to 'not disclose a cause of action to call for a trial of Election Petition on merits". (***Shambhu Prasad Sharma Vs. Charandas Mahant***[13]; paragraph 20).

35. Mr. Nankani has submitted that for the purpose of invalidating an election under 100(1)(d)(iv) of the 1951 Act, it is essential for the Election Petitioner to aver by pleading material facts that the result of the election insofar as it is concerned the returned candidate has been materially affected. (***Mangani Lal Mandal Vs. Bishnu Deo Bhandari***[14] at paragraphs 10 – 12).

36. Mr. Nankani has submitted that upshot of all the relevant judgments starting with the Judgment in **ADR** to the Constitutional Bench Judgment of the ***Public Interest Foundation (Supra)*** is that the sources of the law in relation to disclosures by the candidate are as under-

13 (2012) 11 SCC 390.
14 (2012) 3 SCC 314.

(i) Law made by the Parliament as contemplated under Article 102(e) of the Constitution;

(ii) Orders and directions issued by the Election Commission under Article 324 of the Constitution;

(iii) Directions given by the Constitutional Courts i.e. the Supreme Court under Article 32 and the High Court under Article 226 of the Constitution.

37. Mr. Nankani has submitted that the Election Rules have been made by the Central Government in exercise of powers under Section 169 of the 1951 Act. These Election Rules are therefore, in the nature of subordinate or delegated legislation.

38. Mr. Nankani has submitted that the Rules made by the Central Government in exercise of rule making powers under Section 169 of the 1951 Act are amenable to challenge not only if the same violates the constitutional provisions, but also if the rules go beyond the rule making powers conferred by the Parliament on its delegatee, i.e. the Central Government in the present case. He has in this

context placed reliance upon the Supreme Court judgments in ***Indian Express Newspaper (Bombay) Pvt. Ltd. Vs. Union of India***[15] and ***Cellular Operations' Association of India Vs. Telecom and Regulatory Authority of India***[16]***.***

39. Mr. Nankani has submitted that the law made by the Parliament under Article 102(e) must conform to other constitutional safeguards. The Election Commission must also act in conformity with the law made by the Parliament. This legal position has been laid down in paragraph 71 of ***Public Interest Foundation (Supra)***.

40. Mr. Nankani has submitted that a challenge to the law as contained in Section 33A (1)(ii) was rejected in the ***PUCL Judgment (Supra).*** Form 26, as it stands, even post the 2018 amendment cannot, therefore, be read wider than what is provided in Section 33A (1)(ii) of the 1951 Act.

41. Mr. Nankani has submitted that the revised and / or amended Form 26 as changed on 10th October, 2018 does not enlarge the scope of disclosures as compared to the disclosures required in Form 26 as amended on 1st August, 2012 or prior

15 (1985) 1 SCC 641.
16 (2016) 7 SCC 703.

thereto. He has submitted that Sr. No.6 of Form 26, as amended in 2018, must be read in sync and / or harmony with the law laid down by the Supreme Court as well as the statutory provisions contained in Section 33A(1)(ii) of the 1951 Act. There is absolutely no reason or warrant or justification for enlarging the meaning of the disclosure required under Sr. No.6 of Form 26 as amended in 2018, when there is no change whatsoever in law either as declared by the Supreme Court or as enacted by the Parliament.

42. Mr. Nankani has submitted that Form 26 is part of subordinate legislation and has been referred to in Rule 4-A of the Election Rules. He has submitted that the Subordinate Legislature cannot travel beyond the main or the parent legislation. The Election Rules, including Rule 4A, must be given a meaning which corresponds to Section 33A (1)(ii). Entry 6 of Form 26, which comes under Rule 4A, cannot transgress or breach the provisions of Section 33A (1)(ii). Entry 6 of Form 26 must be read to mean only those cases of past conviction, where there is a sentence of imprisonment of one year or more, must be disclosed by the candidate. Any other meaning or interpretation given to Entry 6 of Form 26 would result in making Entry 6 of Form 26 unconstitutional and violative of not only

Section 33A (1)(ii) of the 1951 Act, but also the law laid down by the Supreme Court in ***ADR Judgment (Supra) and PUCL Judgment (Supra)***. He has submitted that the doctrine of reading down is well known and the Courts have often resorted to reading down the provisions to avoid the same from being rendered unconstitutional. He has placed reliance upon the judgments of the Supreme Court in ***Bhim Singhji Vs. Union of India***[17] at paragraph 17 and ***Delhi Transport Corporation Vs. DTC Mazdoor Congress***[18] at paragraph 255.

43. Mr. Nankani has submitted that it is settled law that the Form must invariably yield to the substantive provision of law. The Form cannot go beyond the provisions of the statute. This has been held in following judgments:-

(i) ***Ramchandra Shelat Vs. Pranlal Jayanand Thakkar***[19] ***at paragraph 15;***

(ii) CIT Vs. Tulsyan NEC Ltd.[20] ***at paragraph 20;***

(iii) Ghaziabad Zila Sahakarni Bank Ltd. Vs. Addl. Labour Commissioner[21] ***at paragraph 72.***

17 (1981) 1 SCC 166.
18 (1991) Supp (1) SCC 600.
19 (1974) 2 SCC 323.
20 (2011) 2 SCC 1.
21 (2007) 11 SCC 756.

(iv) Pramod Prabhakar Kulkarni Vs. Balasaheb Desai Sahakari Sakhar Karkhana Ltd.[22] at paragraph 22.

44. Mr. Nankani has submitted that Form 26, as amended in 2018, must be read harmoniously with Section 33A (1)(ii). He has submitted that this is in view of Section 33A (1)(ii) having received the imprimatur of the Supreme Court.

45. Mr. Nankani has submitted that there is no breach of Section 100 and / or Section 123 of the 1951 Act as Respondent No.1 has correctly filed Form 26. Since there was no conviction with imprisonment of one year or more, there is no violation or breach of the provisions of Section 100(1)(b) and (d)(i), (ii) and (iv) of the 1951 Act.

46. Mr. Nankani has submitted that Form 26 has been correctly filed by Respondent No.1 and there being no corrupt practice committed under Section 100(1)(d)(ii), the question of corrupt practice as defined in Section 123(2) of the 1951 Act also does not arise at all.

47. Mr. Nankani has submitted that Section 12 of the Probation of Offenders Act provides for removal or disqualification

22 (2000) SCC OnLine Bom.875.

attaching to conviction. It is provided that the offender shall not suffer disqualification, if any, attaching to a conviction of an offence under such law. This makes it evident that no person shall suffer any consequence if probation is granted to such person under the Probation of Offenders Act. The conviction of the Applicant / Respondent No.1 by the learned Chief Judicial Magistrate, Thane vide Order dated 29th February, 2016 will have to be disregarded for the purpose of any enactment, particularly under the 1951 Act, or the regulations under which any disqualification is imposed upon convicted persons. He has submitted that the Supreme Court has observed that Section 12 of the Probation of Offenders Act evidently directs that the offender shall not suffer disqualification attaching to a conviction. He has placed reliance upon the judgment of the Supreme Court in ***Union of India Vs. Bakshi Ram***[23] at paragraph 13.

48. Mr. Nankani has submitted that the present Election Petition has been filed with malafide intention to gain political mileage by the Petitioner. He has submitted that the Petitioner being aware that the Applicant / Respondent No.1 is not liable to disclose the information of conviction where Applicant / Respondent No.1

23 (1990) 2 SCC 426.

was not sentenced with any imprisonment willfully chose to not raise objection or file any representation till lapse of 43 days after announcing the results of election. He has submitted that the present Election Petition filed by the Petitioner is sheer waste of precious judicial time, which is evident from the fact that the Petitioner even after having the knowledge about conviction of the answering Respondent chose not to take any action by raising objection / representation to the returning officer under Section 36 of the 1951 Act.

49. Mr. Nankani has submitted that the Applicant has made out a very good case on merits which entitles the Respondent No.1 to the reliefs qua dismissal of the present Election Petition based on preliminary objections raised by the Applicant / Respondent No.1 with respect to maintainability of the Petition on the grounds inter alia non compliance of the mandatory requisitions contained in the 1951 Act. He has submitted that the balance of convenience lies in favour of the Applicant / Respondent No.1 and against the Petitioner. He has accordingly submitted that the present Application under Order VII Rule 11 of the CPC should be allowed in terms of the prayer clauses as set out therein and Election Petition be rejected.

50. Mr. Darius Khambata, the learned Senior Counsel appearing for the Petitioner has submitted that the present Applications filed by Respondent Nos.1 and 14 under Clause(a) and (d) of the Order VII Rule 11 of the CPC does not plead nor demonstrate any incurable defect in the above Election Petition to reject if at the threshold.

51. Mr. Khambata has submitted that the scope of inquiry of this Court in an application under Order VII Rule 11 is limited. He has placed reliance upon the judgment of the Supreme Court in ***T. Arivandandam Vs. T. V. Satyapal & Anr.***[24] at paragraph 5. The Petition can be rejected on a meaningful, not formal, reading of the Plaint if it is found to be manifestly vexatious and meritless.

52. Mr. Khambata has further placed reliance upon ***F.A. Sapa Vs. Union of India***[25] at paragraph 19 where the Supreme Court held that under election law, an Election Petition can be dismissed under Clause (a) of Order VII Rule 11 of the CPC only for an incurable defect i.e. for non-disclosure of material facts.

53. Mr. Khambata has further placed reliance upon ***Roop***

24 (1977) 4 SCC 467.
25 (1991) 3 SCC 375.

Lala Sathi Vs/. Nachhattar Singh Gill[26] at paragraph 24 where the Supreme Court has held that the application must proceed on a demurrer and accept all averments in the Petition.

54. Mr. Khambata has submitted that in order to satisfy Clause (d) of Order VII Rule 11 of the CPC, this Application ought to demonstrate a bar by law on the face of the Petition. He has placed reliance upon ***Pawan Kumar Vs. Babulal***[27] at paragraph 13. He has submitted that this cannot arise in case of disputed questions of law as has been held by the Supreme Court in ***Popat and Kotecha Property Vs. SBI Staff Association***[28] at paragraph 10. Accordingly, the present Election Petition faces no such bar in law.

55. Mr. Khambata has submitted that it has been held by the Supreme Court in ***Bhim Rao Baswanath Rao Patil Vs. K. Madan Mohan Rao & Ors.***[29] at paragraph 29, that in an Election Petition the legal effect of non complying with statutory regulations on disclosures under the 1951 Act cannot be gone into at the stage of Order VII Rule 11 of the CPC.

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26 (1982) 3 SCC 487.
27 (2019) 4 SCC 367.
28 (2005) 7 SCC 510.
29 2023 SCC OnLine SC 871.

56. Mr. Khambata has submitted that the standard of disclosure pertaining to criminal antecedents under the 1951 Act cannot be examined at this stage. It is only whether the Petition is manifestly meritless ought to be considered. It is submitted that the Petition sets out a clear cause of action to challenge Respondent No.1's election under the 1951 Act.

57. Mr. Khambata has submitted that the Petition alleges that Form 26 Affidavit as referred to in Rule 4A of the 1961 Rules and applicable to the 2024 Lok Sabha Elections wherein the Petitioner and Respondent No.1 were contesting candidates from the 25 – Thane Parliamentary Constituency was not duly complied with by Respondent No.1, which under Section 100 of the 1951 Act voids his election as the returned candidate from the Thane Constituency.

58. Mr. Khambata has submitted that the Petition complies with all required pleadings under the Act. He has placed reliance upon Section 83(1) which lays down the requirements of contents of an Election Petition, requiring the pleadings under the sub-sections thereto. Further, as per the Proviso to Section 83(1), in case the Petition alleges a corrupt practice, the Petition shall also be

accompanied by an Affidavit in the prescribed form i.e. as per Rule 94-A in the format of Form 25. He has submitted that the Petition challenges the Respondent No.1's election under Section 100(1)(b) read with Section 123(2) and / or Section 100(1)(d)(i) and / or Section 100(1)(d)(ii) and / or Section 100(1)(d)(iv) of the 1951 Act. He has submitted that the Petition complies with all the requirements of Section 83 (1) of the 1951 Act.

59. Mr. Khambata has submitted that the Petition pleads a concise statement of material facts complying with Section 83(1)(a) of the 1951 Act. He has placed reliance upon the material facts which have been stated in paragraph 5, page 11 of the Petition. He has submitted that from the averments in the Petition it is clear that the Petition sets out an elaborate statement of facts including particulars not mandated under the Act. Such particulars have been pleaded out of abundant caution and to aid Respondent No.1 in meeting the case brought against him. He has submitted that the grounds set out in inter alia paragraphs 5 and 9 of the application alleging that the Petition does not plead material facts is wholly unfounded and ought to be dismissed by this Court.

60. Mr. Khambata has submitted that the Petition complies with the requirements of Section 83(1)(b) of the Act by pleading a corrupt practice under Section 100(1)(b) and 100(1)(d)(ii) of the 1951 Act. The particulars of defining the corrupt practice, date of corrupt practice, name of person committing corrupt practice have been pleaded in the Election Petition. He has submitted that there is an express pleading that the Respondent No.1 filed a false Form 26 Affidavit suppressing his criminal antecedents which amounts to undue influence under Section 123(2) of the 1951 Act which is defined as the "said corrupt practice".

61. Mr. Khambata has submitted that the Petition also seeks to set aside the Respondent No.1's election under Section 100(1)(d)(ii) of the 1951 Act on the basis of members of Respondent No.1's election team committing / abetting in the said corrupt practice who were present during the scrutiny of Respondent No.1's false Form 26 Affidavit.

62. Mr. Khambata has submitted that the Petition fulfils all requirements to bring a case under Section 100(1)(d)(i) of the 1951 Act.

63. Mr. Khamabta has submitted that the Election Petition also fulfills all requirements to bring a case under Section 100(1)(d)(iv) of the 1951 Act.

64. Mr. Khambata has submitted that the Election Petition sets out a clear cause of action challenging Respondent No.1's election. He has submitted that the Petitioner alleges that Form 26 Affidavit was not duly complied with by Respondent No.1, for which his election is void under certain grounds under Section 100 of the 1951 Act. He has submitted that Clause 6 of the Form 26 Affidavit required candidates to disclose all past convictions. However, the Respondent No.1 inspite of being convicted under Section 147, 143, 323 and Section 506 read with Section 149 of the Indian Penal Code by the Chief Judicial Magistrate, Thane vide its Order dated 29th February, 2016 and Appeal against the same being rejected by the Sessions Court, Thane on 9th February, 2017, did not disclose this in his Form 26 Affidavit. He has submitted that the Petition alleges that the Respondent No.1 made a false statement declaring that he has not been convicted of any criminal offence.

65. Mr. Khambata has submitted that the Supreme Court in

Krishnamoorthy (Supra) has held that if the requisite information relating to criminal antecedents is not given by a candidate, this suppression is undeniably undue influence under Section 123(2) of the 1951 Act, which amounts to corrupt practice. Once corrupt practice is established, the election has to be declared void. No other condition is attached to it. He has submitted that the Petition is squarely covered by this decision, as well as decisions wherein this logic has been extended and applied to non-disclosure of other information i.e. assets and sources of income, namely, ***Lok Prahari (Supra).*** He has accordingly submitted that the Petition discloses a clear cause of action.

66. Mr. Khambata has submitted that the Petition pleads the material effect of Respondent No.1's suppression on the election of the returned candidate i.e. Respondent No.1. He has submitted that it has been held that this pleading is not required and for which he has placed reliance upon the judgment of this Court in ***Arun Dattatray Sawant Vs. Kisan Shankar Kathore, Election Petition No.10 of 2004 decided on 16th August, 2007, Bom.*** which holds, that the corollary of the finding that the nomination of the returned candidate has been improperly accepted on the account of an invalid Affidavit, is that his

election has been materially affected. Therefore, there is no requirement to plead or prove that the returned candidate's election has been materially affected. The Appeal against this judgment was dismissed by the Supreme Court in ***Kisan Shankar Kathore Vs. Arun Dattatray Sawant & Ors. (2014) 14 SCC 162.*** Further, the Supreme Court in ***Amrit Lal Ambalal Patel Vs. Himathbhai Gomanbhai Patel & Anr. 1968 SCC OnLine SC 262*** held that the consequence of improper acceptance of the nomination of the returned candidate is that the result of the election was materially affected.

67. Mr. Khambata has submitted that under Section 100(1)(b) of the 1951 Act, the corrupt practice committed by the returned candidate, does not require material effect on the election of the returned candidate to be shown. In the context of non-disclosure of criminal antecedents amounting to a corrupt practice, the Supreme Court has held in ***Krishnamoorthy (Supra)*** that the question whether the election has been material affected or not will not arise. Hence, the Petition did not need to plead material effect on the election.

68. Mr. Khambata has submitted that inspite of the Petition not requiring to plead material effect on the returned candidate,

there is a pleading in conformity with Section 100(i) (d) (ii) of the 1951 Act that by the corrupt practice committed in the interest of the returned candidate, the entire voter demographic of the Thane constituency has been misinformed about Respondent No.1's criminal record thereby affecting their right to make an informed decision.

69. Mr. Khambata has submitted that there is pleading on the material effect on the election of Respondent No.1 by stating that Respondent No.1's Form 26 Affidavit suppresses information leading to the misinformation of voters. The Respondent No.1's suppression of his criminal antecedents is a direct / indirect interference with right to vote of the electorate as they exercised this right with a misinformed mind. He has in this context placed reliance upon Section 100(1)(d)(iv) and has submitted that it has been violated thereby.

70. Mr. Khambata has submitted that the contention of Respondent No.1 that the scope of disclosure laid down by Section 33A has never been challenged is irrelevant. He has submitted that the text of Section 33A of the Act contains two portions, (i) A substantive portion in Section 33A (1) stating, "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..." and (ii) The indicative portion requiring specific disclosure as per Section 33A (1)(i) and (ii) of the Act. He has submitted that while Section 33A (1)(i) and (ii) lays down specific requirements, the broad ambit of Section 33A (1) cannot be restricted by it.

71. Mr. Khambata has submitted that Form 26 Affidavit is in consonance with the 1951 Act and Rules, therefore, Respondent No.1's contention that Form 26 Affidavit cannot travel beyond 1951 Act is misconceived.

72. Mr. Khambata has submitted that the disclosure of criminal antecedents are not confined to Section 33A (1)(i) and (ii) of the 1951 Act. He has in this context placed reliance upon the judgment of the Supreme Court in ***ADR Judgment (Supra)*** which has directed that every candidate ought to be called to make substantive disclosures covering his / her criminal antecedents (not fettered by any thresholds of imprisonment or fines, as even acquittals had to be

disclosed) income, liabilities and education qualifications. He has submitted that these directions were carried out by the Election Commission of India by prescribing an Affidavit dated 28th June, 2008 requiring candidates to disclose details of not only past convictions but also acquittal or discharge cases.

73. Mr. Khambata has submitted that the Supreme Court in ***PUCL (Supra)*** while recognizing the dynamic nature of citizen's right to information on candidates, observed that there is no good reason for which disclosing pending cases wherein cognizance has been taken was not required by Section 33A (1)(i). It observed the need for additional information to be required from candidates in the future and held Section 33B to be unconstitutional for placing a blanket ban on the same. It also noted that Section 33B was unconstitutional for restricting disclosures in the ambit of Section 33A, which concerned criminal antecedents alone, as it ignored a crucial aspect of disclosure on income, assets and liabilities.

74. Mr. Khambata has submitted that the Election Commission of India under Article 324 powers issued a new format of an Affidavit dated 27th March, 2003 stating that all candidates to

disclose details of pending offences wherein cognizance has been taken as well as to disclose information on assets and liabilities. He has submitted that this shows even the Election Commission of India at the helm of governing elections, interpreted that disclosure requirements under the 1951 Act could not be confined to merely Section 33A (1)(i) and (ii).

75. Mr. Khambata has submitted that in 2012 when Central Government felt it necessary to amalgamate the two formats i.e. 2002 Form 26 Affidavit and Election Commission of India Affidavit dated 27th March, 2003, it introduced a new format which mandated disclosure of pending offences for those offences which are not only punishable with imprisonment of two year or more and wherein the charges have been framed but also pending offences where cognizance has been taken, irrespective of the punishment. It further required disclosure from all candidates of their income, assets, liabilities etc. He has submitted that these entries thus go beyond the express entries of Section 33A (1)(i) and (ii).

76. Mr. Khambata has submitted that the Supreme Court in ***Lok prahari (Supra)*** recognized the fundamental right of voters to

know while observing that candidates have no fundamental right to contest. The Supreme Court observed that since there cannot be an embargo placed on the voter's right to know, even stipulations laid down by Section 33A and Form 26 are inexhaustive and no legal bar can be placed on the Central Government rule making power to make additional information available to the public. Following this interpretation, 2012 Form 26 Affidavit was amended, as the Central Government introduced the following changes to the disclosures on pending and convicted cases on 10th October, 2018: (i) Disclosure of all pending cases, instead of those wherein charges have been framed / cognizance has been taken / imprisonment term under Clause 5; (ii) Disclosure of all convicted cases irrespective of punishment / sentence under Clause 6.

77. Mr. Khambata has submitted that Form 26 Affidavit go beyond the express requirements of Section 33A (1)(i) and (ii) but are nevertheless required to be filled out by all candidates.

78. Mr. Khambata has submitted that the 2012 Form 26 Affidavit has been upheld by the Supreme Court in ***Krishnamoorthy (Supra).*** It has been held that the amended Form 26 Affidavit is in

consonance with Section 33A of the 1951 Act as information given as per Section 33A (1) is in addition to the information furnished under Section 33A (1)(i) and (ii) of the 1951 Act.

79. Mr. Khambata has submitted that it is completely erroneous for Respondent No.1 to contend that disclosures on past convictions ought to be only as per Section 33A (1)(i) and (ii) requirements and not as the Form 26 Affidavit had stipulated.

80. Mr. Khambata has submitted that the view in ***Krishnamoorthy (Supra)*** was upheld by a three bench judgment of the Supreme Court in ***Satish Ukey (Supra)*** which dealt with the question squarely covering the primary question before this Court. It considered whether the information required by 2012 Form 26 Affidavit has to be confined to requirements under Section 33A (1)(i) alone. He has submitted that the Supreme Court upheld the additional requirement imposed by Clause 5(ii) of the 2012 Form 26 Affidavit on the basis of a cumulative reading of Section 33A, Rule 4A and the 2012 Form 26 Affidavit. He has submitted that the ratio of ***Satish Ukey (Supra)*** that disclosure requirements are not limited to the scope of Section 33A (1)(i) and (ii) is squarely applicable to the

present case. The present case concerns a change in disclosure requirements of merely another type i.e. from the 2012 Form 26 Affidavit requiring disclosure of past convictions wherein the candidate has been sentenced to imprisonment for one year, as compared to the amendment brought on 10th October, 2018 requiring disclosure of all past convictions.

81. Mr. Khambata has submitted that Respondent No.1's attempt to distinguish ***Satish Ukey (Supra)*** is misconceived and untenable. He has submitted that the Supreme Court expressly considered convictions in ***Satish Ukey (Supra)*** holding that information is not confined to Section 33A (1)(i) and (ii), thereby prescribing a 'cumulative reading' of Section 33A, Rule 4A, Form 26 and letters issued by the Election Commission of India.

82. Mr. Khamabta has submitted that the 2012 Form 26 Affidavit required candidates to disclose information on pending cases, wherein the cognizance has been taken irrespective of the quantum of punishment. He has submitted that the 2012 Form 26 Affidavit in addition to Section 33A (1)(i) and (ii) of the 1951 Act also requires candidates to disclose pending offences wherein the

cognizance has been taken. Thus, the 2012 Form 26 Affidavit as interpreted by the Supreme Court requires additional disclosures beyond offences punished with imprisonment. Similarly, the 2018 Form 26 Affidavit requires candidates to disclose information on all criminal convictions, in addition to offences punished with imprisonment of one year or more. He has submitted that the ratio in ***Satish Ukey (Supra)*** i.e. information required under Section 33A of the 1951 Act includes not only information under Section 33A (1)(i) and (ii) but also information under the Act, Rules and Form 26 is clearly applicable to the present case. Further, it is also a binding interpretation on the 2018 Form 26 Affidavit, for being similar to the 2012 Form 26 Affidavit in terms of requiring disclosures in addition to Section 33A (1)(i) and (ii) of 1951 Act.

83. Mr. Khambata has submitted that the judgment of the Supreme Court in ***Satish Ukey (Supra)*** has made no reference to ***PUCL (Supra)*** or ***ADR (Supra)*** and instead refers to the view taken by the Supreme Court in ***Krishnamoorthy (Supra)*** holding that Section 33A envisages information to be given in accordance with the Rules, this is in addition to the information to be provided as per Section 33A (1)(i) and (ii). He has submitted that the interpretation of

Respondent No. 1 on the judgment of the Supreme Court in ***Satish Ukey (Supra)*** that it considers only pending cases wherein cognizance has been taken is wholly misconceived. He has referred to the question framed in paragraph 17 of the said judgment and the answer given therein that information is not confined to Section 33A (1) (i) and (ii) and prescribes 'cumulative reading' of Section 33A, Rule 4A, Form 26 and letters issued by the Election Commission of India. He has submitted that the Supreme Court considers the meaning of the term 'information' under Section 33A opening and substantive part and not merely Section 33A (1) (i).

84. Mr. Khambata has submitted that the 2018 amendment has neither been struck down nor challenged. The 2018 amendment has been in force for seven years since and was further amended in 2019 wherein the requirement on disclosures of criminal cases remained unchanged. Further, the Respondent No.1 has not challenged the constitutionality of the 2018 amendment or Form 26.

85. Mr. Khambata has submitted that challenging the validity or legal effect of the 2018 amendment or Form 26 is not a ground under Order VII Rule 11 of the CPC and thereby immaterial to the

present case. He has submitted that the Petitioner's case is in line with the judgment in ***ADR (Supra)*** wherein the Supreme Court directed the Election Commission of India to require candidates to disclose not only information on all convicted cases but also acquittals and discharge cases. The Petitioner's case is also in line with ***PUCL (Supra)*** where although the Supreme Court found that Section 33A (1)(ii) was adequate, the ratio of the judgment was to strike down Section 33B of the 1951 Act as it imposed a blanket ban on requiring information from candidates other than that spelt out in the enactment. He has submitted that Respondent No.1's submission to restrict disclosure on conviction only to Section 33A (1)(ii) i.e. convictions punished with imprisonment of one year or more, despite the 2018 amendment requiring information on all cases of conviction, goes against the ratio of ***PUCL (Supra)*** of the Supreme Court.

86. Mr. Khambtata has submitted that the Respondent No.1's contention that disclosure on pending offences and conviction are subject to distinct judicial treatment is flawed. He has submitted that the sequitur to Respondent No.1's contention is untenable for submitting that pending offences wherein only charges have been

framed / cognizance has been taken requires higher disclosure as compared to cases resulting in a conviction. A case resulting in a conviction is a final finding of criminal guilt unlike at the stage wherein cognizance is taken. This goes against Respondent No.1's submission that politicians often face false criminal cases due to party rivalry therefore, disclosure on criminal antecedents ought to be qualified.

87. Mr. Khambata has submitted that the Respondent No.1's contention that disclosure on convictions without imprisonment has no judicial sanction is erroneous in law. He has submitted that the Supreme Court in ***ADR (Supra)*** had directed the Election Commission of India to require candidates to disclose information on all convictions, including cases of acquittals / discharge. Further, the Supreme Court in ***Lok Prahari (Supra)*** held that stipulations laid down by Section 33A are not exhaustive. This judgment led to the 2018 Form 26 Affidavit. Therefore, the requirement of disclosure of all convictions has judicial sanction.

88. Mr. Khambata has submitted that the disclosure requirements under Section 33A of the 1951 Act and Form 26

Affidavit are not exhaustive. He has submitted that there cannot be an embargo placed on the voter's right to know, even stipulations laid down by Section 33A and Form 26 have been held to be inexhaustive. He has placed reliance on ***Lok Prahari (Supra)*** in this context.

89. Mr. Khambata has submitted that the Petitioner has not brought a case of disqualification but of setting aside the Respondent No.1's election under Section 100 of the 1951 Act which incurs a distinct legal consequence under the Act. He has submitted that the Respondent No.1's reliance on Section 12 of the Probation of Offenders Act, 1958 is accordingly misplaced. He has submitted that there is a difference in law between corrupt practice and disqualification. This has been held by the Supreme Court in ***Krishnamoorthy (Supra)*** at paragraph 91. Further, the Supreme Court in ***Raja Ram Pal Vs. Hon'ble Speaker, Lok Sabha***[30] at paragraph 144 highlighted the difference between the terms 'expulsion' and 'disqualification' observing that 'disqualification' operates to prevent a candidate from re-election, but expulsion places no such bar on re-election and can only terminate an elected candidate's term.

30 **(2007) 3 SCC 184**

90. Mr. Khambata has submitted that Section 12 of the Probation of Offenders Act, 1958 is inapplicable in the present case. Section 12 is only applicable to statutory disqualification. The Petitioner's case under Section 100 of the Act, i.e. grounds to set aside an election does not concern a statutory disqualification under the 1951 Act, but legal consequences of non-disclosure of criminal antecedents which can set aside Respondent No.1's election which can only be a result of a trial conducted by this Court.

91. Mr. Khambata has submitted that without prejudice to the above submissions, the Petitioner was unable to raise an objection at the time of scrutiny as he did not have access to Respondent No.1's nomination forms at the time of scrutiny on 4th May, 2024. However, the Petitioner had no mandatory obligation under any provision of the Act, direction, or rules to raise an objection before the returning officer. There is nothing which prevents the Petitioner from raising these objections in the present Petition and has no bearing on the Petitioner's right to bring an Election Petition under Section 81 of the 1951 Act.

92. Mr. Khambata has submitted that the Respondent No.1's

suppression of his past conviction has affected the democratic will of the voters in the Thane Constituency. This affects their right to make a free and informed choice while voting. Such a suppression has been recognized to mean undue influence under Section 123(2) of the 1951 Act, amounting to defrauding the voter demographic in ***Krishnamoorthy (Supra)***.

93. Mr. Khambata has submitted that the Respondent No.1's application demonstrates full knowledge of the case brought against him for which the Petition passes the test of pleadings.

94. Mr. Khambata has submitted that the grounds in the application are not grounds demonstrating a lack of cause of action in the Petition or incurable infirmities in the Petition. Instead, the above mentioned grounds are defences taken by Respondent No.1 which would be open for him to take even at the stage of trial. This demonstrates that Respondent No.1 understands the case as brought against him by the Petition and the issues at the stage of trial. He has submitted that the Petition is complete and cannot be dismissed in limine under Order VII Rule 11 of the CPC. He has submitted that for the above reasons, it is clear that the Application satisfies no grounds

under Order VII Rule 11 of the CPC and the Application ought to be dismissed by this Court with costs.

95. Having considered the submissions in the present Application under Order VII Rule 11, it would be necessary to determine whether the Election Petition discloses a cause of action. The cause of action as pleaded by the Petitioner is that the Respondent No.1 by failing to disclose his conviction of a criminal offence has rendered his election liable to be set aside. This is in the context of Sr. No.6 From 26 as amended vide Notification No. SO 5196 (E) dated 10th October, 2018. Sr. No.6(i) of Form 26, reads as: "I declare that I have not been convicted for in any criminal offence." The Respondent No.1 has put a tick mark against Sr. No.6 (i) and stated "Not Applicable" against Sr. No6(ii), which requires details of cases in which the candidate has been convicted for the offences as required thereunder.

96. In order to consider whether the Election Petition at all discloses a cause of action, it is necessary to consider whether the Respondent No.1 was at all required to make the disclosure in terms of Sr. No.6 (i) of Form 26 and / or whether the said Sr. No.6 (i) of

Form 26 went beyond the purview of the 1951 Act read with the orders and directions issued by the Election Commission of India under Article 324 of the Constitution of India and the directions given by the Supreme Court under Section 32 of the Constitution.

97. Considering the judgments of the Supreme Court which have been relied upon by the Petitioner as well as Respondent No.1 during their submissions, it is apparent that the sources of Election Law in relation to disclosures to be made by a candidate are as under:-

(i) the law made by Parliament as contemplated under Article 102E of the Constitution;

(ii) Orders and directions issued by the Election Commission under Article 324 of the Constitution;

(iii) Directions given by the Constitutional Courts i.e. the Supreme Court under Article 32 and the High Court under Article 226 of the Constitution.

98. In ***PUCL (Supra),*** the Supreme Court had considered the constitution validity of Section 33A and 33B of the 1951 Act. It is pertinent to refer to the opinion of Justice Reddi who was one of the

three Judges of the Supreme Court who delivered three separate opinions. In paragraph 116, Justice Reddi expressly upholds the validity of Section 33A (1)(ii) of the 1951 Act by holding as under:

> *"116. Coming to clause (ii) of Section 33-A(1), Parliament broadly followed the pattern shown by the Court itself. This Court thought it fit to draw a line between major/serious offences and minor/non-serious offences while giving Direction 2 (vide para 48). If so, the legislative thinking that this distinction should also hold good in regard to past cases cannot be faulted on the ground that the said clause fails to provide adequate information about the candidate. If Parliament felt that the convictions and sentences of the long past relating to petty/non-serious offences need not be made available to the electorate, it cannot be definitely said that the valuable right to information becomes a casualty. Very often, such offences by and large may not involve moral turpitude. It is not uncommon, as one of the learned Senior Counsel pointed out that the political personalities are prosecuted for politically related activities such as holding demonstrations and visited with the punishment of fine or short imprisonment. Information regarding such instances may not be of real importance to the electorate in judging the worth of the relative merits of the candidates. At any rate, it is a matter of perception and balancing of various factors, as observed supra. The legislative judgment cannot be faulted merely for the reason that the pro tempore directions of this Court have not been scrupulously followed. As regards acquittals, it is reasonable to take the view that such information will not be of much relevance inasmuch as acquittal prima facie implied that the accused is not connected with the crime or the prosecution has no legs to stand. It is*

> *not reasonable to expect that from the factum of prosecution resulting in acquittal, the voters/citizens would be able to judge the candidate better. On the other hand, such information in general has the potential to send misleading signals about the honesty and integrity of the candidate."*

99. The conclusions of Justice Reddi have been recorded in paragraph 123 of the said judgment and the relevant conclusions are as under:

> *"(4) The Court has to take a holistic view and adopt a balanced approach in examining the legislation providing for right to information and laying down the parameters of that right.*
>
> *(6) The right to information provided for by Parliament under Section 33-A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. However, there is no good reason for excluding the pending cases in which cognizance has been taken by the Court from the ambit of disclosure.*
>
> *(9) The Election Commission has to issue revised instructions to ensure implementation of Section 33-A subject to what is laid down in this judgment regarding the cases in which cognizance has been taken. The Election Commission's orders related to disclosure of assets and liabilities will still hold good and continue to be operative. However, Direction 4 of para 14 insofar as verification of nomination paper on the ground of furnishing wrong information or suppressing material information should not be enforced."*

100. Justice Dharmadhikari has agreed with the conclusion of Justice Reddi recorded in the aforesaid paragraph 123(6) of the judgment. Thus, ***PUCL (Supra)*** has expressly upheld the constitutional validity of Section 33A (1)(ii) of the 1951 Act. In conclusion at paragraph 123 (6), Justice Reddi held that insofar as Section 33A (1)(i) of the 1951 Act is concerned, there is no good reason for excluding the pending criminal cases in which cognizance has been taken by the Court from the ambit of disclosure. The Supreme Court although keeping the disclosure relating to past conviction under Section 33A (1)(ii) intact, has included cognizance taken by the Court within the ambit of disclosures of pending cases required as the Right to Information provided under Section 33A (1)(i).

101. The Petitioner has placed reliance on the first judgment of the Supreme Court on the present subject, viz. ***ADR (Supra).*** The Supreme Court had directed the Election Commission of India to call for information on Affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution from each candidate seeking election to Parliament or a State Legislature as a necessary part of the

nomination paper, and which inter alia included whether the candidate is convicted / acquitted /discharged of any criminal offence in the past – if any, whether he is punished with imprisonment or fine. This is in support of his contention that the disclosure required under the Sr. No.6 of Form 26 as amended vide Notification dated 10th October, 2018 is in conformity with the said judgment.

102. The aforesaid contention of the Petitioner is in my view misconceived. This upon considering that the additional requirement of imprisonment in such cases of past conviction of an offence has not been dispensed with. Further, after the ADR judgment, Sections 33A and 33B were inserted on 24th August, 2002 vide the issuance of the Representation of People (Amendment) Ordinance, 2002. This Ordinance was replaced by the Representation of the People (Third Amendment) Act, 2002 on 28th December, 2002. Under Section 33A (1)(ii) the disclosure insofar as past convictions are concerned was provided. The candidate was required to disclose those offences (other than those under Section 8), where the candidate was convicted and sentenced to imprisonment for one year or more.

This provision has as aforementioned been upheld by the Supreme Court in ***PUCL (Supra).***

103. Subsequently, by merger of the two Affidavits i.e. Affidavit prescribed by the Central Government and Affidavit prescribed by the Election Commission into one Form 26 as prescribed by Central Government under Rule 4A of the Election Rules, the Form 26 insofar as past convictions are concerned was brought in conformity with Section 33A (1) (ii) of the 1951 Act. Thus, there had been no additional requirement under Section 33A (1)(ii) which was imposed either by the Parliament as contemplated under Article 102 (e) of the Constitution and / or by the Orders and directions issued by the Election Commission under Article 324 of the Constitution; and / or by the directions given by the Constitutional Courts i.e., the Supreme Court under Article 32 and the High Court under Article 226 of the Constitution.

104. The judgment in ***PUCL (Supra)*** has thereafter held the field. The subsequent judgments of the Supreme Court in ***Krishnamoorthy (Supra), Lok Prahari (Supra); Public Interest***

Foundation (Supra) and ***Satish Ukey (Supra)*** have in my considered view not diluted the ratio of the Supreme Court in ***PUCL (Supra)*** i.e. in the context of the requirement of disclosure under Section 33A (1)(ii). The judgment in ***Lok Prahari (Supra),*** was concerned with the assets and source of income of the candidates required to be disclosed. Whereas the other judgments concerned pending criminal cases. Thus, the observations of the Supreme Court in these cases have to be read in the light of those facts decided therein which concerned either pending criminal cases and / or assets and sources of income required to be disclosed by the candidate.

105. I further find much merit in the submission on behalf of the Respondent No.1 that the subordinate legislature cannot travel beyond the main or the parent legislation. The Election Rules, including Rule 4A, must be given a meaning which must correspond to Section 33A (1)(ii). Further, Entry 6 of Form 26 as amended in 2018, which comes under Rule 4A, cannot transgress or breach the provisions of Section 33A (1)(ii). Accordingly, it must be read down to mean only those cases of past conviction, where there is a sentence of imprisonment of

one year or more and which must be disclosed by the candidate. Any other meaning or interpretation given to Entry 6 of Form 26 would result in making Entry 6 of Form 26 unconstitutional and violative of not only Section 33A (1)(ii) of the 1951 Act, but also the law laid down by the Supreme Court in ***PUCL (Supra)***. The judgments relied upon by the Respondent No.1 in this context are apposite.

106. It is settled law that a Form must invariably yield to the substantive provision of law. Thus, in the present case Form 26 must yield to Section 33A (1)(ii) of the 1951 Act. The judgments relied upon by the Respondent No.1 on the Form not going beyond the provisions of the statute are apposite. I do not find merit in the submission of the Petitioner that Section 33 A(1), which provides that "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…" is required to be given a meaning beyond that provided in Section 33A (1) (ii) of the 1951 Act. This would run contrary to the judgment of the Supreme Court in ***PUCL (Supra),***

which has upheld the law made by Parliament under Article 102(e) of the Constitution i.e. Section 33 A (1)(ii) of the 1951 Act.

107. In view thereof, the Respondent No.1 was not required to disclose his conviction of a criminal offence, particularly where the conviction had not resulted in imprisonment of one year or more. The Election Petition accordingly fails to disclose a cause of action. The Election Petition would suffer from an incurable defect and is barred by law on the face of the Petition. This having considered that the Petitioner's cause of action being failure on the part of the Respondent No.1 to disclose that he has been convicted of a criminal offence.

108. The contention of the Petitioner that the present Petition complies with all required pleadings under the 1951 Act would be irrelevant, particularly when the Election Petition is itself not maintainable on the ground that it fails to disclose a cause of action.

109. I also do not find merit in the submission on behalf

of the Petitioner that it is always open for the Respondent No.1 to take as defences at the stage of trial, the grounds raised in the present Applications. These grounds i.e. lack of cause of action and / or incurable infirmities can be raised in an Application under Order VII Rule 11 for rejection of Petition as given such grounds it would be an exercise in futility to allow the parties to go to trial. I am of the considered view that the Respondent No.1 has made out a case for dismissal of the Election Petition under Order VII Rule 11. The balance of convenience also lies in favour of the Respondent No.1 and against the Petitioner, considering that Respondent No.1 is the successful candidate in the elections. Thus, the present Applications under Order VII Rule 11 of the CPC are required to be allowed and the Election Petition rejected.

110. Accordingly, the Application (L) No.30947 of 2024 and Application (L) No.31834 of 2024 are allowed and the Election Petition is rejected on the ground that it fails to disclose any cause of action.

111. The Election Petition is disposed of in the above

terms.

112. The Applications, if any, which are pending in the Election Petition do not survive and are disposed of accordingly.

[R.I. CHAGLA J.]