



**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**I.A. No. 51 of 2025**  
**(ARISING OUT OF ELPET No.-6 of 2024)**

(An application under Order-VII Rule-11 of the Code of Civil  
Procedure)

**AFR**      **Pritiranjana Gharai**      ....      **Election Petitioner**

-Versus-

**Pradeep Bal Samant**      ....      **Respondent**

**Advocate(s) appeared in this case :-**

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**For Election Petitioner:** Mr. U K Samal, Sr. Advocate  
with M/s. M.R. Mohapatra,  
S.P. Patra & N. Samal, Advocates

**For Respondent**      : Mr. P.K. Rath, Senior Advocate  
with Mr. P.K. Satapathy, Advocate

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**CORAM:**

**JUSTICE SASHIKANTA MISHRA**

**JUDGMENT**

**27.02.2026**

**SASHIKANTA MISHRA, J.**

This application has been filed by the sole  
Respondent of the above Election Petition under Order VII  
Rule 11 of CPC read with Section 83 of the Representation



of People Act, 1951 to reject/dismiss the Election Petition in its entirety at the very threshold. It is stated that the pleadings in the election petition disclose no cause of action and are vague, baseless without any source of information or foundational pleadings so as to constitute material facts. Further, the Election Petition being bereft of material facts and particulars and not constituting any triable issues needs to be dismissed at the threshold.

2. The Election Petition has been filed by the Election Petitioner questioning the election of the sole Respondent from 54-Sukinda Assembly Constituency to the Odisha State Legislative Assembly in the General Elections, 2024, seeking the prayers as enumerated under Paragraphs-(a) to (f) of the prayer portion of the petition. Pursuant to the notification issued by the Election Commission of India, polling was conducted and upon counting of votes the Respondent was declared elected after securing the highest number of votes, the margin of victory being 9,577 votes over the Election Petitioner. Pursuant to summons issued by this Court upon admission of the Election Petition, the sole Respondent entered appearance



and filed his written statement. In addition, he has filed the present I.A. to which a written objection has been filed by the Election Petitioner.

3. For convenience, the parties are referred to as per their original status in the Election Petition.

4. The grounds set forth by the Respondent in the present application are that the pleadings in the election petition are insufficient to constitute a cause of action. It is stated that allegations relating to non-disclosure of criminal cases amount in substance to allegations of corrupt practice, yet the petition does not contain the mandatory particulars required in law. It is further contended that the two proceedings relied upon by the Election Petitioner either arise from quasi-civil statutory proceedings or relate to offences carrying punishment below the statutory period for mandatory disclosure and, therefore, even if undisclosed, do not furnish a ground to void the election. With regard to educational qualification, the Respondent states that the allegation is vague, unsupported by source or documentary foundation, and



incapable of trial. On these premises, rejection of the election petition at the threshold is sought.

5. The Election Petitioner in his objection to the present application has stated that this application itself is belated and intended to delay the statutory trial of the election petition. Further, the election petitioner has specifically pleaded the existence of two pending criminal cases, the relevant court orders, the omission of disclosure in Form-26, the incorrect statement of educational qualification, and the manner in which such suppression materially affected the voters' informed choice and the election outcome. According to the Election Petitioner, these pleadings clearly disclose triable issues which can only be adjudicated in trial.

6. Heard Mr. P.K. Rath, learned Senior counsel with Mr. P.K Satpathy, learned counsel appearing for the sole Respondent-Petitioner in the I.A. and Mr. U.K. Samal learned Senior Counsel with Mr. M.R. Mohapatra, learned counsel for the Election Petitioner-Opp. Party in the I.A.

7. At the outset, Mr. U.K. Samal raised an objection regarding the maintainability of the present application. He



submits that the application under Order VII Rule 11 CPC has been filed at a belated stage of the proceeding and cannot be entertained when the trial is about to commence. According to him, the Respondent has invoked the said provision only with a view to delay the progress of the trial.

8. Per Contra, Mr. P.K. Rath submits that an application under Order VII Rule 11 CPC can be entertained at any stage of the proceeding prior to commencement of trial if, upon a meaningful reading of the election petition, it is found that the petition does not disclose any cause of action. He submits that the power under Order VII Rule 11 CPC is intended to prevent unnecessary trial and wastage of valuable judicial time where the pleadings themselves are insufficient. According to him, the present election petition, being devoid of material facts and not disclosing any triable issue, is liable to be rejected at the threshold.

9. Having considered the rival submissions on the question of maintainability, this Court deems it proper to refer to the settled position of law at first. The Supreme



Court in **R.K. Roja v. U.S. Rayudu**<sup>1</sup> following earlier decisions in **Sopan Sukhdeo Sable v. Charity Commissioner**<sup>2</sup> and **Saleem Bhai v. State of Maharashtra**<sup>3</sup> held that the power of rejection of plaint is an independent jurisdiction which can be exercised at any stage and, once such an application is filed, the Court is duty-bound to decide the same before proceeding with the trial. The following observations are noteworthy -

*“4. We are afraid that the stand taken by the High Court in the impugned order cannot be appreciated. An application under Order 7 Rule 11 CPC can be filed at any stage, as held by this Court in Sopan Sukhdeo Sable v. Charity Commr. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137] : (SCC p. 146, para 10)*

*“10. ... The trial court can exercise the power at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial.”*

*The only restriction is that the consideration of the application for rejection should not be on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the application for rejection of the plaint. The court has to consider only the plaint as a whole, and in case, the entire plaint comes under the situations covered by Order 7 Rules 11(a) to (f) CPC, the same has to be rejected.*

*5. Once an application is filed under Order 7 Rule 11 CPC, the court has to dispose of the same before proceeding with the trial. There is no point or sense in proceeding with the trial of the case, in case the plaint (election petition in the present case) is only to be rejected at the threshold. Therefore, the defendant is*

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<sup>1</sup> (2016) 14 SCC 275

<sup>2</sup> (2004) 3 SCC 137

<sup>3</sup> (2003) 1 SCC 557



*entitled to file the application for rejection before filing his written statement. In case the application is rejected, the defendant is entitled to file his written statement thereafter (see Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557]). But once an application for rejection is filed, the court has to dispose of the same before proceeding with the trial court. To quote the relevant portion from para 20 of Sopan Sukhdeo Sable case [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137] : (SCC pp. 148-49)*

*“20. ... Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word “shall” is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant.”*

*6. In Saleem Bhai case [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557] , this Court has also held that: (SCC p. 560, para 9)*

*“9. ... a direction to file the written statement without deciding the application under Order 7 Rule 11 cannot but be a procedural irregularity touching the exercise of jurisdiction by the trial court.”*

*However, we may hasten to add that the liberty to file an application for rejection under Order 7 Rule 11 CPC cannot be made as a ruse for retrieving the lost opportunity to file the written statement.”*

10. In the instant case, admittedly the application under order 7 Rule 11 was filed after completion of pleadings. However, in view of the aforesaid settled position of law, the objection of Mr. Samal that the present application is liable to be rejected solely on the ground of



delay or belated filing cannot be accepted. The preliminary issue relating to maintainability is accordingly answered.

11. This Court shall now examine whether the election petition, on a meaningful reading of its pleadings, discloses material facts constituting a cause of action and raises triable issues or not.

12. Mr. Rath submits that the allegations relating to non-disclosure of criminal cases, as pleaded in the election petition, do not satisfy the statutory requirement of disclosure contemplated under the Representation of the People Act, 1951 and the Conduct of Election Rules, 1961. According to him, if the Election Petitioner has alleged non-disclosure of criminal antecedents by the Respondent, then, as per law, this falls within the allegation of corrupt practice under Section 100(1)(b) of the RP Act. Therefore, the Election Petitioner ought to have filed Form-25 affidavit as per the proviso to Section 83(1)(c). Non-filing of the same and in the absence of material facts and particulars, entails dismissal of the election petition in limine. He also submits that the proceedings relied upon by the Election Petitioner are either quasi-civil in nature or relate to offences not



carrying the statutory period of punishment so as to mandate disclosure in Form-26. He further submits that, even assuming such non-disclosure, the same would not constitute a ground to declare the election void in the absence of pleadings demonstrating its material effect on the election result.

Mr. Rath also argues that the challenge relating to the declaration of educational qualification is vague and unsupported by any foundational material. The election petition, according to him, does not disclose the source of information, the nature of alleged falsity, or any contemporaneous document to substantiate the plea. Such bald and unverified allegations, according to him, cannot be treated as material facts within the meaning of Section 83 of the Representation of the People Act, 1951 and are therefore, liable to be struck down at the threshold. Mr. Rath, in support of his argument, has cited the following judgments:

- i. Saleem Bhai (Supra)**
- ii. K. Madanmohan Rao v. B.B. Patil<sup>4</sup>**
- iii. Hukum Singh Karada v. Arun Bhimavad<sup>5</sup>**
- iv. Rajan Baburao Vichare v. Naresh Ganpat Mhaske<sup>6</sup>**

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<sup>4</sup> ELPET NO.-34 of 2019 of Telengana HC

<sup>5</sup> AIR 2025 MP 67



- v. ***Ajmera Shyam v. Smt. Kova Laxmi & Ors***<sup>7</sup>
- vi. ***Senthilbalaji v. A.P Geetha & Ors***<sup>8</sup>
- vii. ***Anil Vasudev Salgonkar v. Naresh Kushali Shigaonkar***<sup>9</sup>
- viii. ***Karikho Kri v. Nuney Tayang & Anr.***<sup>10</sup>
- ix. ***Karim Uddin Barbhuiya v. Aminul Haque Laskar & ors.***<sup>11</sup>
- x. ***Kanimozhi Karunanidhi v. A. Santhana Kumar & Ors.***<sup>12</sup>
- xi. ***Mohammad Aslam Raeeni v. Ram Feran Pandey***<sup>13</sup>
- xii. ***Jitu Patnaik v. Sanatan Mohakud & Ors***<sup>14</sup>
- xiii. ***Virendra Kumar Saklecha v. Jagjiwan & Ors***<sup>15</sup>
- xiv. ***F.A. Sapa v. Singora & Ors***<sup>16</sup>
- xv. ***V. Narayanswamy v. C.P. Thirunavukkarasu***<sup>17</sup>
- xvi. ***Mangani Lal Mandal v. Bishnu Deo Bhandari***<sup>18</sup>
- xvii. ***R.P Moidutty v. P.T. Kunju Mohammad & Anr***<sup>19</sup>
- xviii. ***Hari Shankar Jain v. Sonia Gandhi***<sup>20</sup>

13. In reply, Mr. Samal submits that the submissions advanced on behalf of the Mr. Rath amount to a premature evaluation of the merits of the pleadings, which is impermissible while considering an application under Order VII Rule 11 CPC. He contends that, at this stage, the Court is required to confine itself strictly to the averments contained in the election petition and to assume the same to be true for the limited purpose of examining

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<sup>6</sup> 2025 SCC OnLine Bom 3137

<sup>7</sup> 2025 0 INSC 992

<sup>8</sup> 2023 SCC Online SC 679

<sup>9</sup> 2009 SCC (9) 310

<sup>10</sup> AIR 2024 (SC) 212

<sup>11</sup> 2024 4 SCR 523

<sup>12</sup> AIR 2023(SC) 2366

<sup>13</sup> 2024 Supreme (All) 1

<sup>14</sup> AIR 2012 SC 913

<sup>15</sup> AIR 1974 (SC) 1957

<sup>16</sup> AIR 1991 (SC) 1557

<sup>17</sup> AIR 2000 (SC) 694

<sup>18</sup> AIR 2012 (SC) 1094

<sup>19</sup> AIR 200(SC) 388

<sup>20</sup> 2001 (8) SCC 233



whether a cause of action is disclosed. According to him, the election petition contains specific pleadings regarding: (i) pendency of two criminal cases in which cognizance has been taken by a competent criminal court; (ii) omission of disclosure of such cases in Form-26 affidavit; (iii) incorrect declaration of educational qualification; and (iv) the manner in which such suppression and misstatement materially affected the voters' right to make an informed choice. These, according to him, clearly constitute material facts giving rise to triable issues. He further submits that non-filing of an affidavit in Form 25 along with the election petition cannot, by itself, entail dismissal of the petition at the threshold, since such defect is curable and substantial compliance with the requirement of Form-25 is sufficient, as held in the decisions of the Supreme Court in **G.M. Siddeshwar v. Prasanna Kumar**<sup>21</sup>, **Thangjam Arunkumar v. Yumkham Erabot Singh**<sup>22</sup> and **A. Manju v. Prajwal Revanna**<sup>23</sup>. He submits that the affidavit appended to the election petition substantially complies

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<sup>21</sup> (2013) 4 SCC 776

<sup>22</sup> (2023) 17 SCC 500

<sup>23</sup> (2022) 3 SCC 269



with the requirement of Form-25. Mr. Samal, in support of his arguments, has cited the following judgments:

- i. ***Resurgence India v. Election Commission of India*** <sup>24</sup>
- ii. ***People's Union for Civil Liberties v. Union of India*** <sup>25</sup>
- iii. ***Krishnamoorthy v. SivaKumar & Ors***<sup>26</sup>
- iv. ***Public Interest Foundation v. Union of India & Anr***<sup>27</sup>
- v. ***D.R Venkatachalam v. Transport Commissioner***<sup>28</sup>
- vi. ***Sate v. Sanjeev Nada***<sup>29</sup>
- vii. ***Nazir Ahmad v. King Emperor***<sup>30</sup>
- viii. ***Resurgence India v. ECI***<sup>31</sup>
- ix. ***Shaligram Srivastava v. Narish Singh Patel***<sup>32</sup>
- x. ***Babu Verghese & Ors. V. Bar Council of Kerala & Ors***<sup>33</sup>
- xi. ***Rao Shiv Bahadur v. Sate of U.P***<sup>34</sup>
- xii. ***Deep Chand v. State of Rajasthan***<sup>35</sup>
- xiii. ***State of U.P v. Singhara Singh***<sup>36</sup>
- xiv. ***D. Rama Chandran v. R.V Janakiraman & Ors***<sup>37</sup>
- xv. ***Bhim Rao Baswanath Rao Patil v. Madan Mohan Rao & Ors***<sup>38</sup>
- xvi. ***Virendranath Gautam v, Satpal Singh***<sup>39</sup>
- xvii. ***A. Manju (Supra)***
- xviii. ***Thangjam Arunkumar (Supra)***
- xix. ***Dilip Kumar Ray v. Sarada Prasad Nayak***<sup>40</sup>
- xx. ***H.D Revanna v. G. Puttaswamy Gowda & Ors.***<sup>41</sup>
- xxi. ***V.S Achuthanandan v. P.J Francis & Ors***<sup>42</sup>
- xxii. ***G.M Siddeshwar (Supra)***

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<sup>24</sup> (2018) 4 SCC 699

<sup>25</sup> (2003) 4 SCC 399

<sup>26</sup> (2015) 3 SCC 467

<sup>27</sup> (2019) 3 SCC 224

<sup>28</sup> (1977) 2 SCC 273

<sup>29</sup> (2012) 8 SCC 450

<sup>30</sup> 1936 SCC Online PC 41

<sup>31</sup> (2014) 14 SCC 189

<sup>32</sup> (2003) 2 SCC 176

<sup>33</sup> (1999) 3 SCC 422

<sup>34</sup> AIR 1954 SC 322

<sup>35</sup> AIR 1961 SC 1527

<sup>36</sup> AIR 1964 SC 358

<sup>37</sup> (1999) 3 SCC 267

<sup>38</sup> (2023) 18 SCC 231

<sup>39</sup> (2007) 3 SCC 617

<sup>40</sup> ELPET No.-2/2024

<sup>41</sup> (1999) 2 SCC 217

<sup>42</sup> (1999) 3 SCC 737



14. Before advertng to the rival submissions, this Court finds that it is not in dispute that the object and purpose of requiring candidates to file a complete and truthful affidavit in Form-26 is to secure the fundamental 'right to know' of the electorate, which has been judicially recognized as part of Article 19(1)(a) of the Constitution. The Supreme Court in ***Resurgence India*** (*supra*) emphatically held that any suppression or omission in such affidavit frustrates the voter's right to information and amounts to a direct infringement of constitutional guarantees. The Court clarified that the filing of an affidavit with blanks or incomplete particulars is impermissible, and that the Returning Officer is duty-bound to ensure that all disclosures relating to assets, liabilities, educational qualifications, and criminal antecedents are properly furnished. The relevant observation reads as follows:

*"21. With this background, Section 33-A of the RP Act was enacted by Act 72 of 2002 with effect from 24-8-2002. Thus, the purpose of Act 72 of 2002 was to effectuate the right contemplated in Assn. for Democratic Reforms [Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294]. However, the legislators did not incorporate all the suggestions as directed by this Court in the above case but for mandating all the candidates to disclose the criminal antecedents under Section 33-A by filing an affidavit as prescribed along with the nomination paper filed*



*under Section 33(1) of the RP Act so that the citizens must be aware of the criminal antecedents of the candidate before they can exercise their freedom of choice by casting of votes as guaranteed under the Constitution of India. As a result, at present, every candidate is obligated to file an affidavit with relevant information with regard to their criminal antecedents, assets and liabilities and educational qualifications.*

*[Emphasis Added]*

15. In the present case, so far as the first allegation is concerned, it is observed that the Election Petitioner has specifically pleaded that the Respondent failed to disclose two pending cases, namely 2(c) CC No. 69 of 2010 and 2(c) CC No. 71 of 2010, before the learned JMFC, Jajpur Road. Such pleading is supported by reference to the orders dated 16.09.2010, 21.02.2011 and 13.03.2024 passed in the said proceedings. From a prima facie reading of the pleadings and the documents relied upon, it appears that cognizance had been taken and the proceedings were pending on the date of filing of nomination. Both the cases arise out of contravention of the provisions of Payment of Wages Act, 1936.

16. The question, however, as raised by Mr. Rath, is whether proceedings arising out of Payment of Wages Act would amount to criminal proceedings requiring mandatory disclosure in Form-26



17. At this stage, it would be profitable to refer to Section 33-A of the Representation of the People Act, 1951, which contains the statutory aspect of the voter's right to information and obligates a candidate to disclose specified criminal antecedents by way of affidavit along with the nomination paper. Section 33-A reads as follows:

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

*(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;*

*(ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more.*

*(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).*

*(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.”*

*[Emphasis added]*

18. From the above provision, it can be inferred that a candidate is mandatorily required to disclose a pending case in which he is accused of an offence punishable with



imprisonment for two years or more and in which a charge has been framed by a court of competent jurisdiction. As argued by Mr. Rath, the charges in the above pending cases attract a maximum term of imprisonment under the Payment of Wages Act that is below the threshold prescribed in Section 33-A for mandatory disclosure. This Court, therefore, finds it appropriate to refer to Section 20 of the Payment of Wages Act, which is as follows:

*“20. Penalty for offences under the Act.—(1) Whoever being responsible for the payment of wages to an employed person contravenes any of the provisions of any of the following section, namely, 6 [section 5 except sub-section (4) thereof, section 7, section 8 except sub-section (8) thereof, section 9, section 10 except sub-section (2) thereof, and sections 11 to 13], both inclusive, shall be punishable [with fine which shall not be less than one thousand five hundred rupees but which may extend to seven thousand five hundred rupees].*

*(2) Whoever contravenes the provisions of section 4, 8 [sub-section (4) of section 5, section 6, sub-section (8) of section 8, sub-section (2) of section 10] or section 25 shall be punishable [with fine which may extend to three thousand seven hundred fifty rupees].*

*[(2A) Whoever being required to nominate or designate a person under section 3 fails to do so, such person shall be punishable with fine which may extend to three thousand rupees.]*

*(3) Whoever being required under this Act to maintain any records or registers or to furnish any information or return— (a) fails to maintain such register or record; or (b) wilfully refuses or without lawful excuse neglects to furnish such information or return; or (c) wilfully furnishes or causes to be furnished any information or return which he knows to be false; or (d) refuses to answer or wilfully gives a false answer to any question necessary for obtaining any information required to be furnished under this Act,*



*shall for each such offence, be punishable [with fine which shall not be less than one thousand five hundred rupees but which may extend to seven thousand five hundred rupees].*

*(4) Whoever— (a) wilfully obstructs an Inspector in the discharge of his duties under this Act; or (b) refuses or wilfully neglects to afford an Inspector any reasonable facility for making any entry, inspection, examination, supervision, or inquiry authorised by or under this Act in relation to any railway, factory of 4 [industrial or other establishment]; or (c) wilfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of this Act; or (d) prevents or attempts to prevent or does anything which he has any reason to believe is likely to prevent any person from appearing before or being examined by an Inspector acting in pursuance of his duties under this Act, shall be punishable 5 [with fine which shall not be less than one thousand five hundred rupees but which may extend to seven thousand five hundred rupees].*

*(5) If any person who has been convicted of any offence punishable under this Act is again guilty of an offence involving contravention of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term [which shall not be less than one month but which may extend to six months and with fine which shall not be less than three thousand seven hundred fifty rupees but which may extend to twenty-two thousand five hundred]: Provided that for the purpose of sub-section, no cognizance shall be taken of any conviction made more than two years before the date on which the commission of the offence which is being punished came to the knowledge of the Inspector.*

*(6) If any person fails or wilfully neglects to pay the wages of any employed person by the date fixed by the authority, in this behalf, he shall, without prejudice to any other action that may be taken against him, be punishable with an additional fine which may extend to 7 [seven hundred fifty rupees] for each day for which such failure or neglect continues.”*

19. On perusal of Section 20 of the Payment of Wages Act, this Court finds that the maximum punishment



under the said Act is less than that prescribed under Section 33-A of RP Act 1951.

20. Thus, from a conjoint reading of Section 33-A of the Representation of the People Act, 1951 and Section 20 of the Payment of Wages Act, it is evident that the statutory obligation of disclosure arises only in respect of a pending criminal case in which the offence alleged is punishable with imprisonment for a term of two years or more and in which charge has been framed by a court of competent jurisdiction.

The offences under Section 20 of the Payment of Wages Act, as extracted hereinabove, are primarily punishable with fine, and even in cases of subsequent conviction, the provision does not prescribe punishment meeting the statutory threshold of imprisonment for two years or more as required under Section 33-A(1)(i) of the Representation of the People Act, 1951. This Court would also like to rely upon the ratio decided in ***Krishnamoorthy*** (supra) wherein it was held it

*“94. In view of the above, we would like to sum up our conclusions:*

*94.1. Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious*



offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative.

94.2. When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right.

94.3. Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.

94.4. As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(b) of the 1951 Act.”

*[Emphasis added]*

21. Therefore, even if the two cases referred to by the Election Petitioner were pending at the relevant time, same would not fall within the category of criminal antecedents mandatorily required to be disclosed in Form-26. Consequently, non-disclosure of such proceedings, by itself, cannot constitute a ground to challenge the election under Section 100 of the Representation of the People Act, 1951. A similar view has been taken by the Telangana High Court in the case of **K. Madan Mohan Rao (supra)**.

22. Even otherwise, the Election Petitioner has failed to place any foundational pleadings demonstrating as to



how the alleged non-disclosure of the aforesaid two cases materially affected the result of the election within the meaning of Section 100 of the Representation of the People Act, 1951. The pleadings in the election petition does not disclose any specific facts showing a nexus between the alleged omission and the ultimate electoral outcome, apart from a general assertion regarding deprivation of informed choice to the voters. Mere reproduction of statutory provision or vague averments regarding impact on the electorate, without supporting primary facts, cannot substitute the mandatory requirement of a concise statement of material facts under Section 83(1)(a) of the Act. In the absence of such foundational pleadings, this Court is of the view that no triable issue arises.

23. As regards the second ground relating to incorrect declaration of educational qualification, this Court has given its anxious consideration to the contentions advanced by learned counsel for both sides and has carefully examined the pleadings contained in the Election Petition in the light of the settled legal principles.



For better appreciation, paragraphs 10 (F) and 10(G) are quoted below:

*F. That, in the purported Form 26 affidavit Part -A serial No.8 the Respondent has mentioned as follows:*

*“(8) My educational qualification is as under:  
HSC pass under B.S.E., Odisha from Jagannath High School, Sukinda, Odisha in the year 1973.  
Degree of Doctor of Philosophy (Honoris Causa) from the Open International University, Colombo Sri Lanka for complimentary Medicines and Medicina Altemativa in the year 2008”*

*The election petitioner through his election agent had made a query regarding the educational qualification of the Respondent and it is ascertained that the Respondent has not passed the High School Certificate Examination under Board of Secondary Education, Odisha. But the Respondent as against the educational qualification has stated as H.S.C. pass under B.S.E. Odisha from Jagannath High School, Sukinda. The information provided by the Respondent in the affidavit purportedly filed in Form 26 would amount to misleading/false declaration. The false declaration relating to the educational qualification of Respondent is clear violation of applicable law and same is a defect of substantial character which cannot be brushed aside lightly and same is designed to confuse and mislead the voters. When the Respondent has not passed the HSC under Board of Secondary Education, Odisha, the Respondent has stated as pass. Since the information provided is a false and misleading information, the acceptance of nomination of the Respondent is improper and the votes polled is invalid votes and therefore the result of the election, in so far as it concerns, the Returned candidate (the Respondent) has been materially affected and the said election from 54 - Sukinda Assembly Constituency is liable to be set aside.*

*G. That the wrong / false information relating to the educational qualification by the Respondent in the purported affidavit under Form 26 creates impediment in free exercise of the electoral right by*



*the voters. Therefore, the election of the Respondent in so far as the Returned candidate is concerned has been materially affected and hence the election of the Respondent from 54- Sukinda Assembly Constituency is to be declared as null and void as the misinformed voters could not make an informed choice according to their free will and conscience and the same is violative of the right of the voters to know about the educational qualification of the candidate. In the instant case Respondent in total disregard of the applicable law had not correctly furnished about his qualification. The nomination of the Respondent has been improperly accepted and the result of the election in so far as it concern the returned candidate (Respondent) has been materially affected. Hence the election of the Respondent from 54- Sukinda Assembly Constituency be declared void.”*

On a close and careful scrutiny of the above paragraphs of the Election Petition, this Court finds that the allegations are vague and non-specific without disclosing the material facts as there are no foundational pleadings disclosing the source, basis, or material on which the Election Petitioner formed the assertion that the Respondent had not passed the Higher Secondary or High School Certificate Examination. The Election Petitioner merely states that such information was gathered through the election agent of the Election Petitioner upon making a query regarding the Respondent's educational qualification, and that it was thereafter ascertained that the Respondent had not passed the High School Certificate Examination



under the Board of Secondary Education, Odisha. Apart from this, the Election Petitioner neither refers to any official record, certificate, communication from the concerned educational authority, nor to any contemporaneous document demonstrating that the declaration made in Form 26 is false.

24. It is apt to mention here that in election law, pleadings must contain precise and material facts and cannot rest upon hearsay, suspicion, or information of an undisclosed origin. Absence of such foundational facts renders the allegation speculative. It goes without saying that in the absence of specific pleadings as regards the identity of the election agent, the authority to whom the query was made, the authority who gave the information that the respondent had not passed HSC Examination under the BSE, Odisha, it will not be permissible to lead any evidence in this regard. In other words, the allegation as is stated, appears to be based on hearsay. Furthermore, the Election Petition is completely silent as to how the alleged incorrect declaration of educational qualification



had any nexus with, or materially affected, the result of the election.

25. It is the settled principle of election law that an Election Petition must comply strictly with the requirement of stating material facts as mandated under Section 83(1)(a) of the Representation of the People Act, 1951. The Supreme Court in ***Hari Shanker Jain*** (supra) has categorically held that:

*"Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See *Samant N. Balkrishna v. George Fernandez* 18, *Jitendra Bahadur Singh v. Krishna Behari*<sup>19</sup>.) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In *V.S. Achuthanandan v. P.J. Francis* this Court has held, on a conspectus of a series of decisions of this Court, that material facts*



*are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. 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. It is the duty of the Court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose the cause of action. To enable a court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings."*

*[Emphasis added]*

26. As already stated, reading of the relevant paragraphs 10(F) and 10(G) in the present case reveals that the averments fall short of setting out the material facts on which the Election Petitioner seeks to establish that the alleged act materially affected the result of the election. The allegations are sweeping and general in nature, lacking any clear indication as to how false declaration of educational qualification, if at all, influenced the election result.

27. It is trite that an election dispute is a serious matter; it cannot be treated lightly or used as a tool for vexatious purposes. In ***Ram Sukh v. Dinesh Aggarwal***<sup>43</sup> the Supreme Court, while interpreting Section 100(1)(d)(iv) of the Act, observed as follows-

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<sup>43</sup> (2009) 10 SCC 541



*“21. We may now advert to the facts at hand to examine whether the election petition suffered from the vice of non-disclosure of material facts as stipulated in Section 83(1)(a) of the Act. As already stated the case of the election petitioner is confined to the alleged violation of Section 100(1)(d)(iv). For the sake of ready reference, the said provision is extracted below:*

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

*\*\*\**

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

*\*\*\**

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

*It is plain that in order to get an election declared as void under the said provision, the election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under the Act, the result of the election, insofar as it concerned the returned candidate, was materially affected.”*

28. As the Election petitioner has failed to disclose the factual foundation necessary to bring the case of false declaration of educational qualification of Respondent, this Court finds the contention raised by the Election Petitioner on this ground untenable.

29. Based on the above observations the arguments of both counsel with regards to Form-25 becomes redundant for consideration.



30. In view of the foregoing discussion, this Court is of the considered opinion that the pleadings contained in the Election Petition do not disclose the material facts necessary to constitute a cause of action within the meaning of Section 83(1)(a) of the Representation of the People Act, 1951. The allegations relating to non-disclosure of criminal cases pertain to proceedings which do not attract the statutory threshold requiring disclosure under Section 33-A of the Act and, in any event, are unsupported by pleadings demonstrating any material effect on the result of the election. Similarly, the allegation regarding incorrect declaration of educational qualification is founded on vague and unsubstantiated assertions, bereft of primary material and wholly insufficient to establish a triable issue or to show that the election result was materially affected.

31. In the result, the IA is allowed. The Election Petition stands dismissed for want of any cause of action. There shall be no order as to costs.

32. Office is directed to communicate the substance of this order to the Election Commission and the Speaker of the State Legislative Assembly at the earliest, so also an



authenticated copy of this order to the Election Commission, in terms of Section 103 of the R.P. Act, read with Rule 16 under Chapter-XXXIII of the High Court of Orissa Rules, 1948.

.....  
**Sashikanta Mishra,**  
**Judge**

**Orissa High Court, Cuttack**  
**The 27<sup>th</sup> February, 2026/A.K. Rana/P.A.**