



HIGH COURT OF CHHATTISGARH, BILASPUR

CR No. 57 of 2022

1. Sapandeeep Mahto @ Sapan S/o Sajjanlal Aged About 40 Years R/o Ward No. 3, Manendragarh, District Koriya Chhattisgarh. Respondent No. 1 In Election Petition

---- **Petitioner**

Versus

1. Rajkishan Mahto S/o Ratanlal Mahto Aged About 34 Years R/o Ward No. 3, Manendragarh, District Koriya Chhattisgarh Petitioner In Election Petition
2. Suraj Chandel S/o Mannalal, Aged About 27 Years R/o Ward No. 3, Manendragarh, District Koriya Chhattisgarh Respondent No. 2 In Election Petition
3. Returning Officer Manendragarh Nagar Palika Nirvachan Shetra, District Koriya Chhattisgarh Respondent No. 3 In Election Petition

---- **Respondent**

For Petitioner : Shri Rohit Sharma, Advocate.
For Respondent No.3 : Shri Vinod Tekam, PL.

Hon'ble Shri Deepak Kumar Tiwari, J

Order On Board

29/07/2022

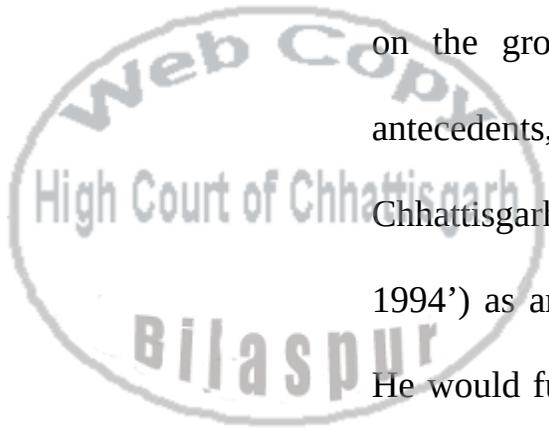
1. This Revision has been preferred challenging the order passed by the District Judge, Baikunthpur, District Koria in Misc. Civil Case No.5/2020 (Rajkishan Vs. Sapandeeep Mahto @ Sapan & Others) whereby petition of respondent No.1 challenging the election of the petitioner as returned candidate as Ward Councillor of Manendragarh



Municipality on the ground of non-disclosure of offences in his nomination paper, so he played the corrupt practice has been allowed and the result declaring the petitioner herein as Councillor is held to be void.

2. Learned counsel for the petitioner would submit that the petitioner has succeeded in the election after defeating the respondent No.1 for Ward No.3, Municipal Council, Manendragarh, which was conducted on 21.12.2019 and result was declared on 24.12.2019. Thereafter the respondent No.1 challenged the election of the present petitioner solely on the ground that the petitioner has failed to disclose criminal antecedents, as required under Form-3A, according to Rule 25-A of the Chhattisgarh Nagar Palika Election Rules, 1994, (henceforth 'the Rules, 1994') as amended on 8.11.2019, vide Notification No.F-1-5/2014/18. He would further submit that without any evidence being produced by the respondent No.1, the Court below has wrongly passed the impugned order.

3. Learned counsel for the petitioner further submits that the learned Court below has wrongly held that the applicant is not eligible to participate in the election itself. There is no such mandatory provisions requiring disclosure of acquittal cases. He would further submit that Rule 28 of the Rules, 1994 does not refer to consequences of Rule 25-A, so non-disclosure of offences as required under Rule 25-A is not substantial in view of disqualification prescribed under Section 35 of the Chhattisgarh Municipality Act, 1961 and only for offences enumerated under Section



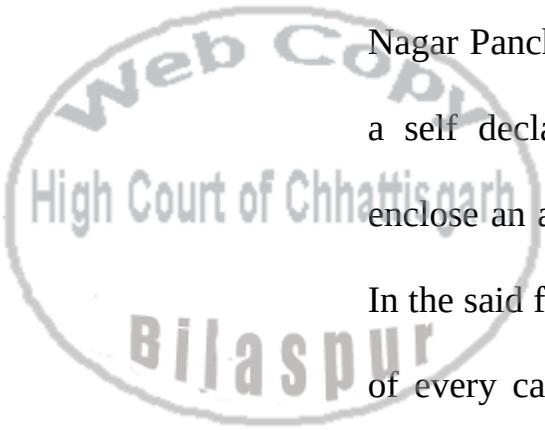


35-(h), (hh) and (hhh), no other offence has been mentioned and the respondent No.1 has no such case that the petitioner has been found in such category, therefore, the impugned order is not sustainable.

4. Heard learned counsel for the petitioner at length and perused the documents annexed with the petition with utmost circumspection.
5. Chhattisgarh Nagar Palika Nirvachan Niyam, 1994 was amended and Rule 25-A was inserted, according to which, it is mandated that under the provision of sub-rule (1) of Rule 25, every candidate who is submitting his nomination for election of Councillor or Chairperson of Nagar Panchayat before the Returning Officer shall necessarily enclose a self declaration form provided in Form-3A and shall necessarily enclose an affidavit sworn in before the Magistrate 1st Class or Notary.

In the said form, not only the conviction, but also the result of acquittal of every case is necessarily to be disclosed. The petitioner has also filed deposition sheet of himself, which reveals that in cross-examination, the petitioner has categorically admitted that he has not furnished information in the said form. He also admitted that from 1998 to 2016, 7 criminal cases have been registered at the Police Stations.

6. Non-disclosure of offence while submitting nomination papers has serious consequences. The Hon'ble Supreme Court in the matter of **Krishnamoorthy Vs. Sivakumar and Others** {(2015) 3 SCC 467} has observed that such non-disclosure amounts to undue influence. The relevant paragraphs are 82, 83 & 84 which read thus:-





“82. Having stated about the need for vibrant and healthy democracy, we think it appropriate to refer to the distinction between disqualification to contest an election and the concept or conception of corrupt practice inhered in the words "undue influence". [Section 8](#) of the 1951 Act stipulates that conviction under certain offences would disqualify a person for being a Member either of House of Parliament or the Legislative Assembly or Legislative Council of a State. We repeat at the cost of repetition unless a person is disqualified under law to contest the election, he cannot be disqualified to contest. But the question is when an election petition is filed before an Election Tribunal or the High Court, as the case may be, questioning the election on the ground of practising corrupt practice by the elected candidate on the foundation that he has not fully disclosed the criminal cases pending against him, as required under the Act and the Rules and the affidavit that has been filed before the Returning Officer is false and reflects total suppression, whether such a ground would be sustainable on the foundation of undue influence. We may give an example at this stage. A candidate filing his nomination paper while giving information swears an affidavit and produces before the Returning Officer stating that he has been involved in a case under [Section 354](#) IPC and does not say anything else though cognizance has been taken or charges have been framed for the offences under [Prevention of Corruption Act](#), 1988 or offences pertaining to rape, murder, dacoity, smuggling, land grabbing, local enactments like MCOCA, U.P. Goonda Act, embezzlement, attempt to murder or any other offence which may come within the compartment of serious or heinous offences or corruption or moral turpitude. It is apt to note here that when an FIR is filed a person filling a nomination paper may not be aware of lodgement of the FIR but when cognizance is taken or charge is framed, he is definitely aware of the said situation. It is within his special knowledge. If the offences are not disclosed in entirety, the electorate remain in total darkness about such information. It can be stated with certitude that this can definitely be called antecedents for the limited purpose, that is, disclosure of information to be chosen as a representative to an elected body.





83. The sanctity of the electoral process imperatively commands that each candidate owes and is under an obligation that a fair election is held. Undue influence should not be employed to enervate and shatter free exercise of choice and selection. No candidate is entitled to destroy the sacredness of election by indulging in undue influence. The basic concept of "undue influence" relating to an election is voluntary interference or attempt to interfere with the free exercise of electoral right. The voluntary act also encompasses attempts to interfere with the free exercise of the electoral right. This Court, as noticed earlier, has opined that legitimate canvassing would not amount to undue influence; and that there is a distinction between "undue influence" and "proper influence". The former is totally unacceptable as it impinges upon the voter's right to choose and affects the free exercise of the right to vote. At this juncture, we are obliged to say that this Court in certain decisions, as has been noticed earlier, laid down what would constitute "undue influence". The said pronouncements were before the recent decisions in PUCL (supra), PUCL (NOTA) (supra) and Association of Democratic Reforms (supra) and other authorities pertaining to corruption were delivered. That apart, the statutory provision contained in [Sections 33, 33A](#) and Rules have been incorporated.

84. In this backdrop, we have to appreciate the spectrum of "undue influence". In PUCL (supra) Venkattarama Reddi, J. has stated thus: "Freedom of voting as distinct from right to vote is thus a [pic]species of freedom of expression and therefore carries with it the auxiliary and complementary rights such as right to secure information about the candidate which are conducive to the freedom"."

7. In the said matter, it has also been concluded that when the candidate has special knowledge of the pending case cognizance of which has been taken or charges have been framed and there is non-disclosure on his part, it would amount to undue influence and, therefore, election is to be declared null and void.





8. So considering the admission of the petitioner himself learned District Judge has passed the order in proper manner, which does not call for any interference.
9. In view of the above, I am of the opinion that this Revision sans merit, the same is liable to be and is hereby dismissed *in limine*.

Sd/-
(Deepak Kumar Tiwari)
Judge

Barve



**HEADLINES**

Non-disclosure of criminal antecedents, conviction or acquittal, as required by the Election Rules, amounts to undue influence on voters and election is declared null and void.

आपराधिक पृष्ठभूमि का प्रकटीकरण, जैसा कि चुनाव नियमों द्वारा अपेक्षित है, भले ही उसमें दोषसिद्धि या दोषमुक्ति हुई हो, नहीं किया जाना, मतदाताओं पर अनुचित प्रभाव के समान है। अतएव चुनाव को अमान्य एवं निष्प्रभावी घोषित किया जाता है।

