

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION NO. 3274 of 2016**

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JITENDRA MOHANDAS CHANDWANI....Petitioner(s)

Versus

STATE ELECTION COMMISSION & 3....Respondent(s)

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Appearance:

MR BB NAIK SENIOR ADVOCATE with MR KR KOSHTI, ADVOCATE for the  
Petitioner(s) No. 1

MR NIRAL R MEHTA, ADVOCATE for the Respondent(s) No. 1

MR PK JANI, ADDITIONAL ADVOCATE GENERAL with MR DHAWAN  
JAYSWAL, ASSISTANT GOVERNMENT PLEADER for the RESPONDENT(s)  
No. 2-3

MR C B UPADHYAYA, ADVOCATE for the Respondent(s) No. 4

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CORAM: **HONOURABLE MS.JUSTICE HARSHA DEVANI**  
and  
**HONOURABLE MR.JUSTICE A.S. SUPEHIA**

Date : 06/12/2016

**ORAL ORDER**

**(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)**

1. By this petition under Article 226 of the Constitution of India, the petitioner has challenged the order dated 15.2.2016 passed by the respondent No.3, whereby the application made by the petitioner in connection with the affidavit submitted by the candidate of ward No.12 Bharatkumar Dhirubhai Danger has been rejected. The petitioner has further sought a declaration that the respondent No.4 committed material irregularity in the election process by concealing material and

important information in the affidavit which came to be filed along with his nomination paper for the General Election of Vadodara Municipal Corporation.

2. The facts stated briefly are that the petitioner is registered as a voter in ward No.15 of the Vadodara Municipal Corporation. The fourth respondent herein Bharatkumar Dhirubhai Danger, was declared uncontested as a Councillor in the General Election of Vadodara Municipal Corporation, 2015 from ward No.12 and has subsequently been elected as the Mayor of the Vadodara city. It is the case of the petitioner that under the Bombay Provincial Municipal Corporations (Conduct of Election) Rules, 1994, every candidate is required to file an affidavit along with the nomination paper, wherein he is required to disclose all the details in respect of family, dependents, antecedents and criminal record, if any, and also details of his movable and immovable assets as well as the liabilities. The fourth respondent Bharatkumar Dhirubhai Danger filed his nomination form along with the requisite affidavit. It is the case of the petitioner that the fourth respondent has concealed the following important information in his affidavit which was submitted along with his nomination form, namely:

- (i) weapons on the basis of a licence for keeping the weapons issued to respondent No.4,
- (ii) has not disclosed 2000 shares of International and Domestic Arbitration, India where respondent No.4 is appointed as a director of the company, and
- (iii) concealed the information about his status as a director of Bank of Baroda where the respondent No.4 is receiving

money.

It is further the case of the petitioner that the respondent No.4 had signed the affidavit as well as verified the details that he has not concealed any important material. The petitioner obtained a copy of the affidavit and nomination form of the fourth respondent under the Right to Information Act which, according to the petitioner, reveals that the fourth respondent has not disclosed material facts and thereby had committed the offence of concealing the information in his affidavit. The petitioner, therefore, made a representation dated 12.2.2016 to the respondents No.1, 2 and 3 and requested them to take appropriate action against the respondent No.4 to disqualify him as a councillor as well as to institute criminal proceedings for committing fraud/material irregularity in the election process. By a communication dated 12.2.2016, the third respondent informed the petitioner that nothing was required to be done in the matter as no representation had been made to the Election Officer at the relevant time. Being aggrieved, the petitioner has filed the present petition seeking the reliefs noted hereinabove.

3. Mr. B. B. Naik, Senior Advocate, learned counsel with Mr. K. R. Koshti, learned advocate for the petitioner submitted that the fourth respondent has committed material irregularity in the election process by suppressing relevant material in the affidavit filed by him. It was submitted that the petitioner having pointed out the relevant facts to the Returning Officer, it was the legal duty of the third respondent, as a public officer, to act in accordance with law and to institute criminal

proceedings against the fourth respondent. It was pointed out that the fourth respondent possessed arms licence and that the arms being valuable assets, the fourth respondent was duty bound to disclose the same in his affidavit under the head of movable assets. It was further submitted that despite the fact that the fourth respondent possessed 2000 shares in International and Domestic Arbitration Centre, India, he has not disclosed the same in his affidavit and thereby concealed relevant material. It was further submitted that despite the fact that the respondent No.4 was a director of Bank of Baroda during the relevant period, he has not disclosed this fact. According to the learned counsel, the fourth respondent as a director of Bank of Baroda was getting certain remuneration which is evident from the documents annexed along with the petition and hence, was required to disclose the same in his affidavit. That non-disclosure of the relevant material amounts to suppression of material facts, which is an offence under the provisions of section 177 of the Indian Penal Code, which provides that where a person is legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, is an offence under the said provision. It was submitted that not disclosing relevant material would also amount to stating false information, inasmuch as, the fourth respondent has verified the affidavit and that all relevant material has been furnished in the affidavit. It was submitted that when the petitioner has made out a prima facie case with regard to commission of the offence in question, the respondents were not justified in not acting pursuant to the representation made by him. It was, accordingly, urged that the petition deserves to be allowed by

directing the respondents to institute criminal proceedings against the fourth respondent for concealment of the material and important information in his affidavit.

4. Opposing the petition, Mr. P. K. Jani, learned Additional Advocate General, invited the attention of the court to the election program to submit that the same was declared on 23.10.2015, nomination forms were to be filed on 6.11.2015 and the date of voting was fixed on 22.11.2015. The date of counting was 26.11.2015. The petitioner was a voter from ward No.15. On 12.2.2016, the petitioner made a representation to the respondent authorities. Pursuant to the representation made by the petitioner, the Police Inspector, Raopura Police Station, had called the petitioner to record his statement in relation to the allegations made by him, however, the petitioner had not turned up before the concerned police authority and thereby had not cooperated with the inquiry. The attention of the court was invited to the provisions of section 243ZA of the Constitution of India which provide for "Elections to the Municipalities", as well as to section 14 of the Gujarat Provincial Municipal Corporations Act, 1949 (hereinafter referred to as "the GPMC Act"), which provides for "Election by State Election Commission". Reference was made to sub-section (18A) of section 2 of the GPMC Act which defines "election" to mean and include entire election process commencing from the delimitation of constituencies to be known as wards and all stages culminating into election of a councillor and it is always deemed to have meant and included entire election process. Reference was made to the Bombay Provincial Municipal Corporations (Conduct of Election) Rules, 1994 (hereinafter referred to as "the rules"), to point out that

rule 3 thereof provides for “Appointment of City Election Officer” and rule 4 provides for “Appointment of Returning Officers and Assistant Returning Officers”. Under rule 7, nomination forms are required to be filed in Form 3 and sub-rule (9) thereof obliges the candidates or his proposer, as the case may be, at the time of delivering to the Returning Officer, the nomination paper also furnish to him an affidavit sworn by the candidate before a Magistrate of the First Class or Notary in Form 23. It was submitted that under rule 8, scrutiny of nomination papers is to be carried out and at that time, the Returning Officer is required to examine the nomination papers and decide all objections which may be made to the nomination. It was submitted that at the relevant time when the nomination papers were scrutinised, no objection was raised by the petitioner, whereafter the Returning Officer had no power to consider any representation in relation to the nomination papers.

4.1 Reference was made to section 125A of the Representation of the People Act, 1951 which makes a provision for “Penalty for filing false affidavit, etc.” to submit that under the said Act there is a specific provision for penalty for filing of false affidavit, which is not the case under the GPMC Act.

4.2 Reference was made to the decision of a Division Bench of this court in the case of **Farsubhai Muljibhai Gokalani v.State of Gujarat**, 2016 JX (Guj) 397, wherein the court held thus:

*“8.7 Thus, nowhere in section 125A of Act, 1951, it prevents the petitioner from taking action in accordance*

*with law. Without taking recourse to Election Commission or if the Election Commission expresses its inability or declined to take any action in this regard, for which guidelines are issued by way of communication dated 26.04.2014 to all concerned about filing of false affidavit in Form-26, the petitioner has filed the present Public Interest Litigation. It is thus open for the petitioner to file complaint himself before the concerned court having jurisdiction in this regard.”*

The court placed reliance upon the decision of a Division Bench of the Andhra Pradesh High Court in **Dubbaka Narsimha Reddy v. Election Commission of India** rendered in Writ Petition No.12066 of 2014, wherein it was held that under section 125A it does not appear that Election Officer is to take any step for initiating any criminal proceedings and the aforesaid section nowhere says that it is the duty coupled with power or power coupled with duty or power to take any action. It merely provides penal measures for filing affidavit giving false information or concealing information and further there is no stipulation that complaints under this section have to be made by the public servant viz. Returning Officer and, therefore, it would be open to any aggrieved person to move petition before the appropriate court of competent jurisdiction with petitions for action under section 125A of the Act in case of any false declaration or concealing of information in the affidavit in Form-26. It was submitted that the present case is squarely covered by the above referred decision. It was submitted that the election process is over and that after the result is declared, the petitioner has filed the present representation. It was submitted that in the light of the above decision, it is always open for the petitioner to file appropriate proceedings before the appropriate court.

5. Mr. C. B. Upadhyaya, learned advocate for the fourth respondent, invited the attention of the court to the provisions of section 16 of the GPMC Act to submit that the same provides that if the qualification of any person declared to be elected as a councillor is disputed, or if the validity of any election is questioned, whether by reason of the improper rejection by the Commissioner of a nomination or of the improper rejection or refusal of a vote, or by reason of a material irregularity in the election proceedings corrupt practice, or any other thing materially affecting the result of the election, any person enrolled in the municipal election roll may at any time within ten days after the result of the election has been declared, submit an application to the Judge for the determination of the dispute in question. It was submitted that, therefore, if the petitioner wanted to file an election petition seeking disqualification of the fourth respondent on the grounds alleged in the present petition, the same was required to be filed within ten days after the result of the election had been declared. It was submitted that in the present case, the respondent No.4 has been elected uncontested and that the petitioner is not even registered in the same ward. It was submitted that, therefore, no fundamental right of the petitioner has been violated so as to enable the petitioner to approach this court by invoking the writ jurisdiction of this court under Article 226 of the Constitution of India. It was submitted that the petitioner has an alternative remedy available to him by approaching the appropriate forum in connection with the grievance voiced in the present petition.

5.1 Reference was made to the decision of the Supreme Court in the case of ***Election Commission of India v. Ashok***

**Kumar**, (2000) 8 SCC 216, for the proposition that the term election has been widely interpreted to mean and include all the steps and entire proceedings commencing from the date of notification of election under section 14 of the Representation of the People Act, 1951 till the date of the declaration of results under section 66 of that Act. Reference was made to the order dated 28.6.2011 of the State Election Commission (Annexure-R1 to the affidavit in reply of the second and third respondents), to point out that various directions have been issued by the Election Commission to the Returning Officer in charge of the elections of the Municipal Corporation as set out thereunder. The attention of the court was invited to the impugned order to submit that the Returning Officer has informed the petitioner that no action can be taken upon his representation as at the relevant time, no such objection had been raised before the Election Officer. It was submitted that once the results were declared on 2.12.2015, the Returning Officer no longer had any jurisdiction to take any action in connection with the complaint made by the petitioner. It was submitted that verification of the affidavit is at the stage of scrutiny, at which point of time, no objection was raised in this regard and that in any case the petitioner is not prevented from instituting any criminal proceedings on his own, if he so deems fit. It was submitted that rule 8 is the only provision which calls for an inquiry by the Returning Officer at the stage of scrutiny of the nomination papers and that there is no obligation cast upon the Election Officer or the Returning Officer to institute any criminal proceedings, as prayed for by the petitioner. The attention of the court was invited to the provisions of sub-rules (9) to (11) of rule 7 of the rules to point out that the information furnished by a candidate in the

affidavit in Form 23 is disseminated by the Returning Officer by displaying a copy of the affidavit on the notice board of his office and also by making the copies thereof available freely and liberally to all other candidates and the representatives of the print and electronic media. It was submitted that, therefore, at the relevant time itself it was open for the petitioner to raise any objection to the contents of the affidavit.

5.2 Insofar as the allegation with regard to non-disclosure in the affidavit made by the fourth respondent is concerned, Mr. Upadhyay invited the attention of the court to the contents of the affidavit-in-reply filed by the fourth respondent, wherein each of the allegations has been dealt with in detail. It was submitted that insofar as the weapons on the basis of the licence for keeping the weapons issued to the fourth respondent is concerned, the form in which the affidavit is required to be filed, does not seek any information as to any arms or ammunition or weapons or licence which has been issued in favour of a particular candidate in connection with any arms or ammunition and hence, there was no question of providing such information and the question of concealing the same does not arise.

5.3 Insofar as the status of the petitioner as a Director of the Bank of Baroda and receiving money is concerned, it was submitted that if the whole form is seen and scrutinised, it is amply clear that there is no provision which requires a candidate to mention that he has been appointed as a Director of any such institution. It was submitted that when there is no requirement for disclosing such information, the question of suppressing the same would not arise.

5.4 As regards non-disclosure of 2000 shares of International and Domestic Arbitration Centre, India is concerned, it was submitted that the 2000 shares relate to a non-profit making company registered under the provisions of section 8 of the Companies Act, 1956. It was submitted that since the fourth respondent was desirous of being appointed as a Director of such company, it was mandatory for him to own such shares. It was submitted that the fourth respondent has acquired the shares so as to qualify for being appointed as a Director and was under a bona fide impression that any details with regard to appointment as a Director of a particular company or organisation is not sought for and, therefore, he is not required to mention the acquisition of 2000 shares. It was urged that for the reason that the 2000 shares were of a non-profit making organisation, the fourth respondent had not mentioned the same. It was submitted that the fourth respondent has mentioned the details of all the equity shares and other movable and immovable properties owned by him in his personal capacity as well as by his family members, the valuation of which is substantially higher, as compared to the valuation of the 2000 shares and, therefore, by no stretch of imagination can it be construed that there was any deliberate intentional concealment on the part of the fourth respondent as can be said to be material information which would affect the result of the election materially. It was submitted that there was no intention on the part of the fourth respondent not to disclose any of the aforesaid facts. According to the learned advocate, the fourth respondent has been declared elected uncontested and that there was no rival candidate, under the circumstances, there was no question of withholding any

information with a view to affect the result of the election.

5.5 To bolster his submissions, the learned counsel placed reliance upon the decision of the Supreme Court in the case of **Resurgence India v. Election Commission of India, (2014) 14 SCC 189**, for the proposition that non-furnishing of the affidavit or furnishing of any wrong or incomplete information or suppression of any material information would result in the rejection of the nomination paper, however, only such information shall be considered to be wrong or incomplete or suppression of material information which is found to be a defect of substantial character by the Returning Officer in the summary inquiry conducted by him at the time of scrutiny of nomination papers. It was submitted that in the facts of the present case at the time of scrutiny of the nomination papers, no defect was pointed out to the Returning Officer. Moreover, the defect pointed out by the petitioner, in any case, cannot be said to be of a substantial character as would result in rejection of his nomination paper. Reference was also made to the contents of paragraph 29 of the above referred judgment. It was, accordingly, urged that the petition being devoid of merits, deserves to be dismissed.

6. In rejoinder, Mr. B.B. Naik, learned counsel for the petitioner referred to the provisions of rule 2(h) of the rules which defines "electoral roll" in relation to an election to a ward to mean the ward roll published by the Electoral Registration Officer with reference to that ward. Reference was made to clause (j) of rule 2 of the rules which defines "municipal electoral roll" to mean the electoral roll of the city prepared in the manner provided in the Bombay Provincial

Municipal Corporations (Reservation of Electors) Rules, 1994, to submit that the petitioner is duly registered in the municipal electoral roll and, therefore, has a locus to challenge the election of the fourth respondent even by way of filing an election petition.

6.1 Insofar as the contention that the election proceedings had already been concluded and that the result of the election has been declared, the learned counsel submitted that this petition does not concern the result of the election and that what the petitioner seeks is a direction to the third respondent to institute criminal proceedings against the fourth respondent for non-disclosure of relevant material in the affidavit filed by him along with his nomination form.

6.2 Insofar as reliance placed upon the decision of a Division Bench of this court in the case of **Farsubhai Muljibhai Gokalani v. State of Gujarat** (supra) is concerned, reference was made to paragraph 8.8 of the said decision to point out that in the facts of the said case, the public interest litigation jurisdiction of the court had been invoked, which is not so in the present case. The attention of the court was invited to the contents of paragraphs 8.5 to 8.12 of the said decision to point out that it is in the circumstances stated thereunder that the court has refused to exercise jurisdiction. It was submitted that in the facts of the said case essentially the petition had been dismissed on the ground that the court exercising jurisdiction and powers in writ petitions of the nature of PIL are required to be more cautious and careful to see that the case before the court involves paramount importance of public at large for which no other statutory provision for redressal of grievances

exist. Therefore, the above decision would have no applicability to the facts of the present case.

6.3 It was further submitted that it was incumbent upon the fourth respondent to state the emoluments that he has received as a Director of Bank of Baroda. It was contended that the 2000 shares in the International and Domestic Arbitration Centre, India are in the nature of movable assets which he was required to disclose. It was reiterated that ownership of a revolver which is a valuable immovable property was also required to be disclosed in the assets and that the fourth respondent having failed to do so, appropriate proceedings are required to be initiated against him for the offence punishable under section 177 of the Indian Penal Code.

6.4 It was submitted that the decision of the Supreme Court in the case of **Resurgence India v. Election Commission of India** (supra) would not be applicable in the facts of the present case, inasmuch as under rule 8 of the rules, the nomination paper can be rejected on the ground of affidavit having not been filed along with the nomination form. However, there is no provision empowering the Returning Officer to reject the nomination paper on the ground of false averment made or suppression in the affidavit along with the nomination form. It was, accordingly, urged that the petition deserves to be allowed by granting the reliefs as prayed for.

7. From the facts and contentions noted hereinabove, the principal allegation in the petition is that the fourth respondent has not furnished certain information in the affidavit filed along with the nomination form. In the above backdrop, the

questions that arises for consideration are: (i) whether there is a substantial compliance in disclosing the requisite information in the affidavit filed by the fourth respondent along with the nomination paper? and (ii) whether non-disclosure of the information on account of the aforesaid three facts referred to hereinabove could be said to be material information so as to amount to an offence under section 177 of the Indian Penal Code requiring appropriate action to be taken against the fourth respondent under the provisions of section 177 of the Indian Penal Code? and (iii) what is the nature of the relief that could be granted by the court ?

8. Insofar as non-disclosure of the information as alleged is concerned, the first question that needs to be examined is, whether there was any obligation on the part of the fourth respondent to furnish such information? If the answer is in the affirmative, then the next question which would need to be addressed is whether the information was of such significance as could be said to constitute non-disclosure of material facts amounting to an offence under section 177 of the Indian Penal Code.

9. Since the allegation is regarding non-disclosure of the requisite information in the affidavit filed along with the nomination form, it would be germane to refer to the necessary statutory provisions in this regard.

10. Rule 7 of the rules make provision for "Nomination papers" and provides that every nomination shall be made in Form 3. Sub-rule (9) thereof which is relevant for the present purpose provides that the candidate or his proposer, as the

case may be, shall, at the time of delivering to the Returning Officer the nomination paper, also furnish to him an affidavit sworn by the candidate before a Magistrate of the First Class or a Notary in Form 23. Sub-rule (10) postulates that non-furnishing of affidavit by the candidate or his proposer, as the case may be, shall be considered to be a violation of the rules and the nomination of such candidate shall be liable to rejection by the Returning Officer, at the time of scrutiny of nomination for non-furnishing of the affidavit. Sub-rule (11) of rule 7 provides for dissemination of the information furnished by a candidate in the affidavit in Form 23 by the Returning Officer by displaying a copy of the affidavit on the notice board of his office and also by making the copies thereof available freely and liberally to all other candidates and the representatives of the print and electronic media. Sub-rule (12) provides that if any rival candidate furnishes information to the contrary by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with the affidavit of the candidate concerned in the manner directed above.

11. Since sub-rule (9) of rule 7 of the rules provides for furnishing an affidavit in Form 23, it would be germane to refer to Form 23 as prescribed under the said rule. A perusal of Form 23 shows that the same requires the candidate to furnish information regarding (ia) as to whether he has been convicted of any criminal offence in the past and details thereof; (ib) as to whether he has been discharged/acquitted in any criminal case and the details thereof; (ic) as to whether he has been accused of any offence punishable with imprisonment for two years or more and, in which a charge has been framed or

cognizance has been taken by a court. (ii) Details of assets (immovable, movable, bank balance, etc.) of the candidate, his/her spouse and dependents; (iii) details of his liabilities/overdues to public financial institutions and Government dues; (iv) educational qualifications.

12. Since the present petition pertains to non-disclosure of moveable assets, it may be pertinent to note that under Form 23, details of movable properties are required to be furnished under the following heads:

- (i) Cash
- (ii) Deposits in Banks, Financial Institutions and Non-Banking Financial Companies/Institutions
- (iii) Bonds, Debentures and Shares in companies, investment in mutual funds, etc.
- (iv) Other Financial instruments such as N.S.S. Postal Savings, LIC Policies, etc.
- (v) Motor Vehicles (details of make, etc.)
- (vi) Jewellery (give details of weight and value)
- (vii) Other assets, such as values of claims/interests.

13. Insofar as the contention with regard to non-disclosure of fire arms licence and the fire arms is concerned, in the opinion of this court, having regard to the description of the movable assets as set out in Form 23 prescribed under sub-rule (9) of rule 7 of the rules, it is not possible to read into it any requirement to state possession of an arms licence or possession of any fire arm, inasmuch as fire arms even if they are of considerable value would not fall under any of the

categories enumerated under serial No. (i) to (vii) set out in Form 23 under the head of details of movable assets. Under the circumstances, the contention of the petitioner with regard to non-disclosure of arms licence or the arms possessed by the fourth respondent, does not merit acceptance for the reason that there was no obligation cast upon the fourth respondent to furnish details thereof as per the rules.

14. Insofar as the contention regarding non-disclosure of the fact that the petitioner was a Director of the Bank of Baroda and was obtained remuneration in connection therewith is concerned, on reading Form 23 in its entirety, there is no column therein which requires such details to be furnished, nor is the candidate called upon to disclose any income that he may derive from holding any such post. Therefore, in the absence of any obligation to disclose such fact, it cannot be said that the fourth respondent is guilty of non-disclosure of a material fact.

15. Thus, out of the three deficiencies pointed out by the petitioner, two of the deficiencies, as discussed hereinabove, are not deficiencies inasmuch as there is no obligation cast upon a candidate to disclose the same. However, not disclosing shares worth Rs.20,000/- held in the non-profit making company can be said to be a non-disclosure inasmuch as under the head of details of movable assets at serial No.(iii) in Form 23, assets of the following description are required to be disclosed: (iii) Bonds, Debentures and Shares in companies, Investment in mutual funds, etc. Evidently, therefore, though the petitioner was required to disclose ownership of shares to

the extent of Rs.20,000/- he has not disclosed the same. Therefore, to that extent the first question would be required to be answered in the affirmative, namely that there was an obligation cast upon the fourth respondent to disclose ownership of such shares.

16. The next question that needs to be addressed is whether the non-disclosure is of such significance as would amount to non-disclosure of material facts so as constitute an offence under section 177 of the Indian Penal Code ? In this regard it may be pertinent to refer to the explanation given by the fourth respondent for not furnishing such information as set out in page 84 paragraph C of the petition.

*“C. Not to disclose the 2000 shares of International and Domestic Arbitration India where respondent no. 4 is appointed as director of the company:*

*It is pertinent to note that the answering respondent herein has disclosed all the relevant information with regards to holding equity shares. It is pertinent to note that the aforesaid 2000 shares which are discussed herein are with regards to a non-profit making company registered under the provisions of section 8 of the Companies' act 1956. It is to be noted that since the answering respondent was to be appointed as one of the directors, it would be mandatory for him to own such shares so as to qualify to be appointed and function as a director. The total value of these 2000 shares in non-profit making organization is valued at an amount of Rs. 20,000. It is further submitted that in the present case the material which requires consideration by this Hon'ble Court is that the answering respondent was appointed as a director of a non-profit making organization and for the said appointment acquisition of such shares would be necessary. However as mentioned herein above, the form itself including the affidavit does not require any information which is to be placed on record as to appointment of a particular candidate with certain organization. Therefore, under a bona fide impression*

*that any details with regards to appointment as a director to a particular company or organization is not sought for and therefore does not require to be mentioned is the only reason that the said aspect of 2000 shares in a non-profit making organization has not been mentioned. However, for the purpose of elections and also for the purpose of the present petition it would be noteworthy that if the petitioner has mentioned the details of all the equity shares and all other movable and immovable property owned by him in his personal capacity as well as his family members have been disclosed and the valuation of the said property is substantially high compared to the amount of these 2000 shares. Therefore, by no stretch of imagination it can be construed that there is a deliberate or intentional concealment on the part of the answering respondent herein or the said information referred to by the petitioner does not fall within the criteria of reasonable and mandatory information, which would affect the results of election materially. Therefore, only on this count it cannot be assumed that any provision of law can be invoked against the answering respondent herein, which would entail any action against the answering respondent and therefore respondent no.3 has rightly rejected the representation made by the petitioner."*

17. Thus, on consideration of the explanation given by the petitioner, the information which was not disclosed cannot be said to be very significant having regard to the assets which have been disclosed by the fourth respondent which are of considerable value as against which shares worth Rs.20,000/- can hardly be said to be of much consequence. Considering the value of the assets declared by the fourth respondent as being held by him and his spouse and dependents which is approximately between Rs.3 to 4 crores, one can hardly attribute any motive to him for not disclosing such shares. Under the circumstances, in the opinion of this court, non-disclosure of the shares held in International and Domestic Arbitration Centre, India, in the given facts of the case, cannot

be said to be so serious a lapse as to amount to non-disclosure of material facts. While it would have been better if the fourth respondent had disclosed such shares, but having regard to the explanation submitted by him about not having disclosed the same under a bona fide belief that such details were not required to be disclosed as it was mandatory for him to own such shares so as to qualify to be appointed and function as a Director of the non-profit making organization, the lapse cannot be said to be so significant as could have materially affected the result of the election or such that would require criminal proceedings to be instituted against the fourth respondent.

18. The above view of this court is fortified by the decision of the Supreme Court in the case of **Kisan Shankar Kathore v. Arun Datatray Sawant**, (2014) 14 SCC 162, [on which reliance has been placed by the petitioner in paragraph 3(e) of the petition], wherein the court after considering the nature of the non-disclosure has held certain disclosures to be not in the nature of a serious lapse.

19. In the light of the above discussion, considering the fact that out of the three alleged deficiencies in the affidavit made by the fourth respondent as stated by the petitioner, two cannot be said to be deficiencies inasmuch as, there was no obligation cast upon the fourth respondent to state such facts in the affidavit as required in Form 23 prescribed under sub-rule (9) of rule 7; and in respect of the third deficiency, the same cannot be said to be so substantial a deficiency as can be said to be a serious lapse warranting institution of criminal

proceedings against the fourth respondent. Thus, on facts, the court having found that no case is made out for instituting criminal proceedings against the fourth respondent, the petitioner is not entitled to the reliefs prayed for in the petition whereby he seeks a direction to the respondents for instituting criminal proceedings against the fourth respondent.

20. Besides, as held by the Supreme Court in the case of **J. Jayalithaa v. C. Kuppusamy and others**, (2013) 11 SCC 337, the decision of initiating any prosecution proceedings must be taken by the authorities in the light of the applicable statutory provisions and no such direction can be issued by the High Court.

21. For the foregoing reasons, the petition fails and is, accordingly, dismissed. Notice is discharged with no order as to costs.

(HARSHA DEVANI, J.)

(A. S. SUPEHIA, J.)

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