मध्यप्रदेश राजपत्र

(असाधारण)

प्राधिकार से प्रकाशित

क्रमांक 117] भोपाल, शुक्रवार, दिनांक 29 मार्च 2024–चैत्र 9, शक 1946

विधि और विधायी (निर्वाचन) कार्य विभाग

भोपाल, दिनांक 29 मार्च 2024

फा.क्र. EP–02–2020–चार–वि.निर्वा.–84.–भारत निर्वाचन आयोग की अधिसूचना क्रमांक 82–रा.स.–म.प्र.–2–20–2024–बीई, दिनांक 26 मार्च 2024 सर्वसाधारण की जानकारी हेतु प्रकाशित की जाती है.

राजेश कुमार कौल, सचिव.

भारत निर्वाचन आयोग

निर्वाचन सदन, अशोक रोड, नई दिल्ली–110 001

नई दिल्ली, दिनांक 26 मार्च, 2024–चैत्र 06, 1946 (शक)

अधिसूचना

सं. 82–रा.स.–म.प्र.–2–20–2024–बीई.–लोक प्रतिनिधित्व अधिनियम, 1951 (1951 की 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग मध्यप्रदेश राज्य से राज्यसभा के सदस्य के रूप में श्री ज्योतिरादित्य एम. सिंधिया के निर्वाचन को प्रश्नांकित करने वाली '2020 की निर्वाचन याचिका सं. 2, डॉ. गोविन्द सिंह बनाम श्री ज्योतिरादित्य एम. सिंधिया एवं अन्य' में मध्यप्रदेश उच्च न्यायालय के दिनांक 15 फरवरी, 2024 के आदेश को एतद्द्वारा प्रकाशित करता है.

आदेश से,
हस्ता./–
(सुमन कुमार दास)
सचिव,
भारत निर्वाचन आयोग.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110 001

No. 82-CS-MP-2-20-2024-BE. New Delhi, Dated 26th March 2024-Chaitra 06, 1946 (Saka)

NOTIFICATION

No. 82-CS-MP-2-20-2024-BE.–In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the order dated 15th February, 2024 of the High Court of Madhya Pradesh in 'Election Petition No. 2 of 2020, Dr. Govind Singh *Vs* Shri Jyotiraditya M. Scindia & Others', calling in question the election of Shri Jyotiraditya M. Scindia as Member of the Council of States from the State of Madhya Pradesh.

By order,
Sd./-
(SUMAN KUMAR DAS)
Secretary,
Election Commission of India.

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE
ELECTION PETITION No. 2 of 2020

BETWEEN: -
DR. GOVIND SINGH S/O LATE MATHURA SINGH, AGED-69 YEARS, RESIDENT OF HOUSE NO.61 VILLAGE VAISHPURA POST VAISHPURA TEHSIL LAHAR DISTT. BHIND (MADHYA PRADESH)

.....PETITIONER

(BY SHRI ANOOP G. CHAUDHARY WITH SHRI KUMBER BODH (VC) AND SHRI MANAS DUBEY (PHYSICAL) - ADVOCATES)

AND

1. **MR. JYOTIRADITYA M. SCINDIA S/O SHRI LATE MADHAVRAO J. SCINDIA, AGED-49 YEARS, RESIDENT OF 1, JAI VILAS LASHKAR TESIL GWALIOR DISTT. GWALIOR (MADHYA PRADESH)**
2. **ELECTION COMMISSION OF INDIA (DELETED) THR. THE CHIEF ELECTION COMMISSIONER NIRVACHAN SADAN, ASHOKA ROAD (DELHI)**
3. **CHIEF ELECTORAL OFFICER (DELETED) THR. THE ELECTION COMMISSIONER NIRVACHAN SADAN, 17, ARERA HILLS BHOPAL (MADHYA PRADESH)**
4. **SHRI SUMER SINGH SOLANKI GI, NEW OFFICERS COLONY BARWANI, (MADHYA PRADESH)**
5. **SHRI DIGVIJAY SINGH, BI, SHYAMLA HILLS BHOPAL (MADHYA PRADESH)**
6. **SHRI PHOOL SINGH BARAIYA, 20, NEW JIVAJI NAGAR THATIPUR GWALIOR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI NAMANNAGRATH, SR. ADVOCATE WITH SHRI SOUMYA PAWAIYÄAND SHRI SANJAY SHUKLA-ÄDVOCATE FOR R-3 (VC), SHRI DEVRAJ DIXIT-ADVOCATE FOR R-3 (PRESENT)

Reserved on	14/12/2023
Delivered on	15/02/2024

This petition coming on for hearing this day, Hon'ble Shri ***Justice Milind Ramesh Phadke*** *passed the following:*

ORDER

1. Instant Election Petition under Section 80, 100 (1) (b) and (d) and 123 of the Representation of People Act, 1951 (herein referred to as "Act of 1951") had been filed by the election petitioner Dr. Govind Singh challenging the candidature of Respondent No. 1 Jyotiraditya M. Scindiya, as returned candidate of Bhartiya Janta Party from State of Madhya Pradesh, in the Biennial Elections to the Council of States (Rajya Sabha) in the parliamentary elections held on 19.06.2020. The said elections are put to challenge on the ground that while submitting nomination paper along with the affidavit, returned candidate i.e. Respondent no. 1 had not disclosed particulars or information regarding registration of an FIR lodged against him and others vide crime no. 176/2018, on 27.09.2018 at Police Station Shyamla Hills, Bhopal for commission of offences punishable under Sections 465, 468, 469, 471, 472, 474 & 120- B of IPC.

2. **Brief facts of the case:** Election Commission of India had issued a "Press Note" no. ECI/PN/26/2020 dated 25.02.2020 that the term of office of 55 Members of Rajya Sabha elected from 17 States is due to expire in the month of April, 2020 and in lieu of that the Commission notified the election program in respect of Biennial Elections to the Council of State of Madhya Pradesh along with other states. The 'Press Note' was uploaded by the Election Commission on its site having web address 'eci.gov.in.'. As per the said notification, the election was scheduled to be held as under:

S.NO.	EVENTS	DATES
1	Issue of notifications	06th March, 2020 (Friday)
2	Last date of making nominations	13th March, 2020 (Friday)

3	Scrutiny of nominations	16th March, 2020 (Monday)
4	Last date for withdrawal of candidatures	18th March, 2020 (Wednesday)
5	Date of Poll	26th March, 2020 (Thursday)
6	Hours of Poll	9:00 am to 04:00 pm
7	Counting of Votes	26th March, 2020 (Thursday) at 05:00 pm
8	Date before which election shall be completed.	30th March, 2020 (Monday)

3. Pursuant to the 'Press Note' dated 25.02.2020, the Parliamentary Bulletin of Rajya Sabha dated 06.03.2020 No.59830 was released which read as, " .... Members are informed that the Election Commission of India vide their notification no.318/CS-Multi/2020(1) dated 6th of March, 2020, have fixed the program for Biennial elections to the Rajya Sabha in the States of Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Jharkhand, **Madhya Pradesh**, Maharashtra, Manipur, Meghalaya, Odisha, Rajasthan, Tamil Nadu, Telangana and West Bengal.... ". The said Parliamentary Bulletin was also thereupon uploaded on the official website of the Election Commission.

4. Bhartiya Janta Party named present Respondent No. 1 as its Rajya Sabha candidate for the said Biennial Elections for the State of Madhya Pradesh for the year, 2020. On 13.03.2020 the nomination form was submitted by Respondent No.1 before the returning officer and the said nomination form along with affidavit was uploaded by the Chief Election Officer on the official website of the Election Commission.

5. Thereafter, Shri Digvijay Singh (proforma respondent no.5) filed objections to the nomination form filed by Respondent No.1 on 16.03.2020 before Returning Officer, claiming that the nomination form of Respondent No.

l should be rejected as he has deliberately furnished false information in his affidavit about his pending criminal case, as he had stated that there is no criminal case pending against him. Respondent No. 1 replied to the said objections on 17.03.2020, wherein it was averred that he had no knowledge about the registration of the said FIR, the objections raised by Shri Digvijay Singh are not maintainable in this scrutiny proceedings, the only remedy available to him is to agitate his grievance by way of election petition and as Representation of People Act mandates to disclose only those pending cases in which charges have been framed and herein no charge has been framed so far, therefore, non-disclosure of registration of F.I.R is of no consequence.

6. The returning officer accepted the nomination form of Respondent No. 1 on 17.03.2020, observing that " .... the duty of Returning Officer is only to see whether all the columns are filled or not by the candidates and there is no furnishing of false information and it is the duty of the competent court to look into the matter and it can be agitated under Section 125-A of the Act of 1951..." On 19.03.2020, the Election Commission passed an order that looking to the prevailing unforeseen situation of public health emergency, which indicates the need for avoidance of possibilities of gatherings of any nature, as it may expose all concerned to possible health hazard and in the light of the said order the period of the said election was extended invoking the provisions of Section 153 of the Act of 1951, with a further stipulation that the fresh date of pole shall be announced soon after reviewing the prevailing situation.

7. On 24.03.2020 and 03.04.2020 Election Commission again passed similar order's and while exercising powers under Section 153 of the Act of 1951 further extended the period of said election.

8. It was only on 01.06.2020 that the Election Commission announced the date of deferred Rajya Sabha elections to be held on 19.06.2020, while maintaining that the Commission has reviewed the matter in detail, considering all the factors, including guidelines dated 30.05.2020 issued by Union Home Secretary and Chairman, National Executive Committee under the National Disaster Management Act, 2005 and taking into account the inputs obtained from the Chief Electoral Officers concerned that the date of poll and counting of votes in respect of the Biennial Elections for 18 seats including Madhya Pradesh (3 seats), shall be as per the following schedule:

EVENTS	DATES
Date of Poll	19th June, 2020 (Friday)
Hours of Poll	9:00 am to 04:00 pm
Counting of Votes	19th June, 2020 (Friday) at 05:00 pm
Date before which election shall be completed.	22nd June, 2020 (Monday)

9. Thereafter, as per the Schedule for voting took place on 19.06.2020 by the members of assembly of Madhya Pradesh and after the voting was over on the same day i.e. 19.06.2020 under the Conduct of Elections Rule, the Returning Officer declared the results of the Biennial Elections of the Council of States stating that, ".... in pursuance of the provisions contained in Section 66 of the Representation of the People Act, 1951 r/w Clause (a) sub-Rule (1) of Rule 84 of the Conduct of Elections Rules, 1961, I declare that: Shri Jyotiraditya M. Scindia sponsored by **Bhartiya Janta Party**, Shri Digvijay Singh sponsored by **Indian National Congress**, Shri Sumer Singh Solanki sponsored by **Bhartiya Janta Party** have been duly elected to fill the seats in

the house of three members going to retire on 09.04.2020 on the expiration of their term of office ....."

10. Along with the aforesaid, the Returning Officer has also declared the number of votes received by all the candidates, the

Name of the candidates	Votes Polled by each candidate	Elected/Not elected
Shri Jyotiraditya M. Scindia	5600	Elected
Shri Digvijay Singh	5600	Elected
Shri Phool Singh Baraiya	3600	Not-Elected
Shri Sumer Singh Solanki	5600	Elected

details of which are as under:

11. The said result along with certificate of election were uploaded by the Election Commission on its official website. After declaration of the results the present petitioner downloaded the affidavit of Respondent No. 1 from the official website of the Chief Election Officer of Madhya Pradesh and procure the documents from present respondent no.5 and found:

(i) One Mr. Santosh Sharma on 23.09.2018 had filed a complaint under section 200 CrPC read with Section 156(3) CrPC before the Ld. Special Judge (MP & MLA), Bhopal, MP, against (1) Shri Digvijay Singh i.e. Performa Respondent no. 5 herein, (2) Prashant Pandey, (3) Shri Kamalnath, and (4) Mr. Jyotiraditya M. Scindia/Respondent No. 1 herein, requesting to register an F.I.R against them under sections 465, 468, 469, 471, 472, 474 & 120-B of IPC at Police Station Shyamla Hills, Bhopal.

(ii) The Ld. Special Judge (MP & MLA), Bhopal, MP after hearing the arguments on 24.09.2018 had directed the police officer to file the status report on 26.09.2018.

(iii) On the same date i.e. 26.09.2018, after hearing the application filed under section 156(3) CrPC, had applied his judicial mind and being satisfied that offences are made out, prima facie directed the police officer to register an F.I.R against (1) Shri Digvijay Singh i.e. Performa Respondent no. 5 herein, (2) Prashant Pandey, (3) Shri Kamalnath, and (4) Mr. Jyotiraditya M. Scindia/Respondent No. 1 herein, under sections 465, 468, 469, 471, 472, 474 & 120-B.

(iv) Under the directions given by the Ld. Special Judge (MP & MLA), Bhopal, Madhya Pradesh on 27.09.2018, police authorities registered an F.I.R being FIR No. 176/2018 against all the four persons.

(v) Various newspapers like Danik Bhasker, Patrika, Hindustan Times, Indian Express, etc., published the above said news & some of the newspaper also published the photographs on 27/28.09.2018 of Respondent No.1. Moreover, Respondent No.1 herein also responded to the said news while commenting,' ... false case has been registered against us.', therefore, the registration of F.I.R No. 176/2018 dated 27.09.2018 was in his special/personal knowledge of Respondent No.1.

12. Since there were clear directions issued by the Election Commission that all the contesting candidates will have to furnish all the requisite and correct details mentioned in the declaration form in support of his/her declaration made in the nomination form. Thus, all the information contained in that form was mandatorily required to be filled in that form, but Respondent No. 1 furnished false information in his affidavit:

(I) In Clause 5 (i) of Part-A of the Affidavit Respondent No.1 has ticked the clause which stated that "I declare that there is no pending criminal case against me", whereas, he was required to tick clause 5 (ii) of Part-A of the Affidavit which states that following criminal cases are pending against him.

(II) In Clause 5 (ii) of Part-A of the Affidavit Respondent no.1 has mentioned 'Not Applicable', whereas, he should have filled the details of F.I.R No. 176/2018 dated 27.09.2018 which was in his Special/personal knowledge.

(III) In Point 5(ii) (a) of Part-A of the Affidavit, which pertains to: "FIR No. with name and address of Police Station concerned" it had been mentioned by Respondent no. 1 as 'N.A.', whereas, he was supposed to furnish the details of the F.I.R No. 176/2018 dated 27.09.2018 registered at Police Station Shyamla Hills, Bhopal.

(IV) In point 5(ii) (c) of Part-A of the Affidavit, wherein "Section(s) of concerned Acts/Codes involved (give no. of the Section. e.g. Section ... of IPC, etc.) it was mentioned by the respondent no. 1 as 'N.A.', whereas, the details of the sections involved were required to be furnished.

(V) In point 5(ii) (d) of Part-A of the Affidavit, wherein, "Brief description of offence", but Respondent no. 1 again mentioned as 'N.A.', whereas the brief descriptions of the offences registered against him i.e. creating forged and fabricated digital records & used the same as genuine with an intent to cause injury & falsely implicate the highly placed public servants for gaining public mercy" was required to be mentioned.

(VI) In Clause 11 (5) of Part-B of the Affidavit, wherein "Total Number of pending criminal cases", were required to be mentioned but Respondent no. 1 had mentioned as 'NIL', whereas, he had to furnish the total number of pending criminal cases against him and if the above F.I.R was a solitary incident, he was required to furnish the details.

(VII) Respondent No. 1 had made a false verification in the affidavit while he sworned that "... there is no pending case against me...:".

(VIII) Verification date has been left blank.

(IX) In the affidavit signatures of the Respondent No. 1 has not been identified by anyone.

13. Thus, the petitioner upon scrutiny of the documents procured by him found that the Respondent No. 1 had furnished false information on oath while he was having full knowledge of the F.I.R No.176/2018 and, therefore, it was crystal clear that though Respondent No. 1 had full/special/personal knowledge about the aforesaid F.I.R, he had suppressed the said fact by not disclosing the same in his affidavit, which tantamount to fraud and corrupt practice and since as per the provisions contained in the Section 33-A of the Act of 1951 the candidates were required to fill the details in the prescribed form and the nomination form/affidavit in Form-26 contains the details of the criminal antecedents to be disclosed, giving false affidavit in that regard amounts to undue influence as defined under sub-Section 2 of the Section 123 of the Act of 1951 and it can, therefore, be said that Respondent No. 1 had committed corrupt practice, thus, on this account the Election is required to be held to be void under Section 100 (1) (b) and (d) of the Act of 1951.

14. Further as per Section 123 (2) of the Act of 1951 since undue influence amounts to corrupt practice which is one of the grounds for declaring the elections to be void, concealment of criminal antecedents in the affidavit amounts to using undue influence on the voters, as the electors voting for such a candidate may vote for him under mistaken belief formed on the basis of the disclosure made by him of his criminal antecedents, hence the same amounts to corrupt practice. Further, as the affidavit sworn by the candidate has to be put in, in the public domain so that the electorate can know the factual truth about the candidate and if they know only the half-truth, it is dangerous for the electorate, as they are denied of the information which is in the special knowledge of the candidates, which may lead to a candidate getting elected having a criminal background and this may

also be said to be an attempt to misguide the electorate and keep them in dark and such type of attempt undeniably and un-disputedly is undue influence and, therefore, amounts to corrupt practice.

15. The Election Commission of India vide its letter dated 10.10.2018 had informed the Chief Electoral Officers of all the States and Union Territories that in pursuance of the directions of the Hon'ble Supreme Court in W.P.(Civil) No. 784/2015 titled as **Lok Prahari vs. Union of India and Ors. and in W.P. (Civil) No.536/2011 titled as Public Interest Foundation and Ors. vs. Union of India and another,** the candidates at all elections are required to file affidavit in Fonn-26 along with nomination paper, declaring information about criminal cases, assets, liabilities and educational qualifications.

16. On 26.04.2014, the Election Commission of India had further made it clear that the false declaration or concealing of information in the affidavit in Form-26 will attract the provision of Section 125-A of the Act of 1951 and under the said Section 125-A of the Act of 1951 furnishing any false information or concealing of information in the affidavit in Form-26 is an electoral offence. In the said letter it was further stated that it would be open to any aggrieved person to move petition before the appropriate Court of competent jurisdiction for action under Section 125-A of the Act of 1951 in the case of any false declaration or concealing of information in the affidavit in Form-26. Further Article 173 of the Constitution of India mandates that any person, who wants to be a Member of Legislature of a State, must bear true faith and allegiance to the Constitution of India as by law established and undertake to uphold the sovereignty and integrity of India, and to ensure this, he must make an oath or affirmation and once such an oath or affirmation is made before a competent authority, he becomes bound by that oath/affirmation.

17. The Election Commission of India had also issued a handbook for Returning Officers for the Elections of the

Councils of the State and State Legislative Councils which has been updated in the month of February, 2019 and Clause 5.16 to 5.20 of the said handbook deals with the provisions of affidavit and the manner of making oath. Clause 5.17.8 of the handbook lays down that " .... the oath of affirmation has first to be made and then signed by the candidate before the authorized person .... ", which impliedly bourn's in mind that mere signing on the paper on which the form of oath is written is not sufficient, the candidate must make the oath before the authorized person. The latter should ask the candidate to read aloud the oath and then to sign and give the date on the paper on which it is written, if the candidate is illiterate or unable to read the form the authorized person should read out the oath and ask the candidate to repeat the same and, thereafter, take his signatures or thumb impression, as the case may be, on the form. In all cases, the authorized person should endorse on the form that the oath of affirmation has been made and subscribed by the candidate on that day and hour .... "The said clause makes it clear that the affidavit has to state correct and true particulars of each and every fact including the criminal antecedents of the candidates and since Respondent No. 1 has willfully concealed the information, he has violated the law of the land.

18. As the Respondent No. 1 has been declared elected on 19.06.2020, therefore, the present petition on the basis of the aforementioned facts came to be filed on 25.07.2020 alleging the cause of action for filing the present petition arisen on 13.03.2020 when the Respondent No. 1 had filed his nomination form along with affidavit before Returning Officer, with a further cause of action stating to have arose when the Returning Officer accepted the nomination form of Respondent No. 1 on 17.03.2020. The cause of action further arose when the Respondent No. 1 was declared elected on the same day i.e. on 19.06.2020 by the Returning Officer, as Respondent No. 1 had filed the false affidavit before the Returning

Officer while intentionally/knowingly concealing his criminal antecedents and got elected on the basis of false affidavit, therefore as the cause of action still continued, on the aforesaid premise the present election petition came to be filed.

19. A written statement has been filed on behalf of Respondent No. 1 wherein apart from para wise reply to the election petition, preliminary objections have been taken, alleging the filing of the said election petition to be an abuse of process of law, thus, prayed for its dismissal with exemplary costs.

20. It was admitted by Respondent No. 1 that in pursuance to the directions issued by learned Special Judge (MP and MLA) Bhopal vide order dated 26.09.2018 one F.I.R was registered against the respondents at Police Station, Shyamla Hills, Bhopal vide Crime No.176/2018 under Sections 465, 468, 469, 471,472, 474 and 120-B of IPC, but was averred that firstly mere issuance of directions to register F.I.R under the provisions of Section 156(3) of Cr.P.C does not amount to taking cognizance as while dealing with an application under Section 156(3) of Cr.P.C the Magistrate may either straightway direct registration of F.I.R or may take cognizance and proceed to record pre- summoning evidence under Section 200 of Cr.P.C and if the Magistrate takes cognizance at that stage, then he is required to proceed to record pre-summoning evidence of the complainant and his witnesses and it is only, thereafter, it would/could either issue summons under Section 204 or reject the complaint under Section 203, as the case may be and since the Magistrate in the present case had simply directed the police for registration of F.I.R under Section 156 (3) and to investigate the matter in terms of chapter XII of Cr.P.C, then such an order does not amount to taking cognizance under Section 190 and/or Section 200 of Cr.P.C.,and would not amount to pendency of a criminal case.

21. In the reply it was further averred that since the order dated 26.09.2018 does not amount to taking cognizance, the present FIR

does not fall under the category of 'Pending Criminal Case' and the disclosure of a mere F.I.R under the prescribed Form-26 is neither necessitated, nor mandated by law. Further it was averred that registration of F.I.R under Section 154 of the Cr.P.C. is the mere inception point of an investigation under Chapter XII of the Cr.P.C. It may or may not culminate into a Final Report as prescribed under Section 173 of the Code, thus mere registration of F.I.R by itself does not constitute a 'Pending Criminal Case' as neither has any criminal court taken cognizance at that stage, nor has any process or summons been issued to the accused person under Section 204 and it may be possible that the investigation may culminate into a Closure Report and no cognizance is taken by the court at all. Further, it was averred that assuming (without conceding) that an order directing registration of F.I.R amounts to taking cognizance, registration of such F.I.R by way of such order still does not amount to a 'Pending Criminal Case', in as much as no process or summons have been issued by the Court under Section 204 at this stage and the term 'Pending criminal case" for the purposes of disclosure under Form 26 has to be understood in terms of Section 33-A the Representation of People Act 1951. Secondly, without prejudice, in any event the Respondent No. 1 had no knowledge of either the order dated 26.09.2018 passed by learned Special Judge (MP and MLA), Bhopal while hearing an application u/s 156(3) of Cr.P.C. or of F.I.R No. 176/2018 registered at P.S. Shyamla hills, Bhopal, in pursuance to the said order, as no notice/summons were issued to him by the Court directing registration of F.I.R. and even no notice under Section 41A of the Cr.P.C was ever issued to him at the relevant point of time by the Police and Respondent No. 1 had no knowledge of the F.I.R No.176/2018 registered at P.S. Shyamla hills, Bhopal, thus, there was no occasion for him to disclose the same.

22. It was further averred therein that all the allegations of the petitioners are based upon the contentions and arguments solely. on the

basis of his concocted and mis-construed interpretation of phrase "Pending Criminal Case" which significantly is the heading of point 5 (i) &(ii) of Form-26, wherein a potential candidate is required to disclose his criminal antecedents to the electorate and one entry in Form-26 has been singled out and is being relied, out of context, only to create a legal illusion that details of every FIR, known or unknown, registered against any potential candidate in any comer of the country in which cognizance has not been taken, is also required to be mandatorily disclosed under the applicable laws, whereas, the true and only context in which the said details are required are criminal cases which are "pending" in a court of law and if the said contention of the petitioner is accepted then a political candidate may be harassed by anyone merely by lodging an F.I.R at some far-off distant place of the country of which such political candidate may not even have knowledge.

23. It was further averred that Form-26 was required to be read in consonance with Section 33A of the Act of 1951, as Section 33A makes it clear that disclosure is required of pending cases in which a charge has been framed by the Court of competent jurisdiction, but in the present case, admittedly, the charge-sheet has not been filed pursuant to an investigation and when charges have not been framed by a competent Court it does not amount to pending of criminal case. On the basis of the aforesaid averments, para wise reply had been submitted to the election petition and the aforesaid averments had been reiterated in detail and it was thus, prayed that the present election petition be dismissed with exemplary cost.

24. Vide I.A. No.1400/2023 various issues were proposed by the Election petitioner. This Court while disposing of the said I.A. on the basis of the pleadings of the parties and looking to the crux of the controversy, vide order dated 17 .03.2023 had framed a legal preliminary issue which goes to the root of the matter and reads as under:

"Whether registration of FIR vide Crime No.176 of 2018 against the respondent No. 1 at Police Station Shyamla Hills, Bhopal for commission of offences punishable under Sections 465, 468, 469, 471, 472, 474 and 120- B of IPC comes within the purview of "pendency of criminal case" or not, as per Form 26 under Rule 4-A of the Act, 1951?"

Arguments:

25. Learned senior counsel Shri Anoop G. Chaudhary along with Shri Kuber Bodh, Senior Advocate (through VC) and Shri Manas Dubey, who is present in the Court, had vehemently canvassed before this Court that the Election Commission of India in pursuance to the judgment of the Hon'ble Supreme Court in the case of Public Interest Foundation and Ors vs. Union of India and another reported in 2019 (3) SCC 224 had issued various directions with respect to furnishing of all the details required to be mentioned in the Form-26. While referring to para 116.1 of the Judgment, it was contended that each contesting candidate was mandatorily required to fill up the form as provided by the Election Commission and the form was to contain all the particulars as required therein.

26. It was further contended that Form-26 was amended vide Ministry of Law and Justice notification no. S.O. 5196 (E) dated 10.10.2018 and a missive (an official letter) was sent by the Election Commission to the Chief Electoral Officers of all the States and Union Territories instructing that " ...the candidates at all elections are required to file affidavit in Form-26, along with nomination paper, declaring information about their criminal cases, assets, liabilities and educational qualifications. The said Form-26 has now been amended vide Ministry of law & Justice Notification No. H.11019(4)/2018-Leg.II, dated 10th October, 2018. The amendments

made in Form-26 are in pursuance of the directions in the judgments of the Hon'ble Supreme Court in Writ Petition (C) No. 78412015 (Lok Prahari vs. Union of India & Others) and Writ Petition (C) No. 53612011 (Public Interest Foundation & Ors. vs. Union of India & Anr.) and the candidates are now required to file the affidavit in the amended Form-26 as per the directions given in the judgment Public Interest Foundation (supra).

27. It was further submitted that in pursuance to the aforementioned judgments, the Commission after due consideration had given directions to be followed by the candidates at elections to the Houses of Parliament and Houses of State Legislatures who have criminal cases against them, either pending cases or cases of conviction in the past, with further directions to circulate the said letter to all the DEOs, ROs in the State/Union Territory for necessary action on their part and shall also be circulated to all the political parties based in the State, i.e. the State Units of the recognized parties and recognized State parties of other States and all registered un-recognized political parties with headquarters based in the respective State/Union Territory, with instructions to take note of the above directions and the amendments in Form- 26 ... ".

28. It was further submitted that on 05.11.2018 another missive was issued by Election Commission of India to the Chief Electoral Officers of Madhya Pradesh and to all recognized National and State political parties in that regard and again on 28.02.2019 another missive was issued. It was further submitted that on 19.03.2019 in a missive issued by the Election Commission to Chief Electoral Officers of all the State and Union Territories, attention was invited to the earlier directions issued vide letter dated 10.10.2018 that in pursuance to the judgment of the Hon'ble Supreme Court in W.P. (c) No.536 of 2011 and also FAQs, clarifications, in view of the various queries raised in this regard were forwarded in which the FAQ No.8 which supplied "Whether FIR cases have to

be published by the concerned candidate and political parties?" was answered as **"Yes"** under the heading **"Case No. and Status of Case"** and therefore, details regarding F.I.Rs mentioned in Item no.5 of Form-6, was required to be mentioned.

29. It was further submitted that time and again the Hon'ble Supreme Court has observed that the information to be furnished under Section 33A of the Act of 1951 includes not only information mentioned in Clause (i)& (ii) of Section 33A(I), but also information, that the candidate is required to furnish, under the Act or Rules made there under and such information should be furnished in Form-26 and the said intention of the legislature as expressed in Section 33A of the Act, 1951 is in tune with the judgment of the Hon'ble Supreme Court in the case of Public Interest Foundation (supra).

30. Further learned senior counsel had placed reference in the matter of **Brajesh Singh vs Sunil Arora** case reported in **2021 (IO) SCC 241**, wherein it has been held that the purpose of disclosure of criminal antecedents makes the election a fair one and the exercise of the right of voting by the electorate also gets sanctified and it has to be remembered that such a right is paramount for a democracy. A voter is entitled to have an informed choice and if his right to get proper information is scuttled, in the ultimate eventuate, it may lead to destruction of democracy because he will not be an informed voter having been kept in the dark about the candidates who are accused of heinous offences. Further reliance was placed in the matter of **Satish Ukey vs. Devendra Gangadhar Rao Fadnavis, (2019) 9 SCC 1**, wherein it has been held that, "...A cumulative reading of Section 33A of the 1951 Act and Rule 4-A of the 1961 Rules and Form 26 along with the letters dated 24.08.2012, 26.09.2012 and 26.04.2012, in our considered view, makes it ample clear that the information to be furnished under Section 33A of the 1951 Act includes not only information mentioned in clause (i) and (ii) of Section 33A(I), but also information, that the candidate is

required to furnish, under the Act or the Rules made there under and such information should be furnished in Form-26, which includes information concerning cases in which a competent court has taken cognizance. This is apart from and in addition to cases in which charges have been framed for an offence punishable with imprisonment for two years or more or cases in which conviction has been recorded and sentence of imprisonment for a period of one year or more has been imposed...".

31. In the aforesaid regard reliance was further placed in the matter of **People's Union for Civil Liberties vs. Union of India reported in 2013 (10) SCC 1** and the in the matter of **Resurgence India vs. Election Commission of India and another** reported in **2014 (14) SCC 189.**

32. Learned Senior counsel also referred to one of the judgments of the Delhi High Court in the matter of **Yogender Chandolia vs. Vishesh Ravi and Ors passed in Election Petition No. 10/2020** decided on 24.12.2021, wherein while dealing with the similar issue of non-disclosure by the concerning about the pendency of the F.I.R registered at Police Station, Paharganj, Delhi in Form-26, it was observed that disclosure of FIR is in addition to the disclosure of information qua pending criminal case, therefore, the assertions made in the election petition have to be viewed in the broad framework of law, as enunciated by the Supreme Court and thus, it was incumbent upon Respondent No. 1 to have disclosed the registration of F.I.R.

33. While taking this Court through the unamended Form-26 and amended Form-26, learned Senior Counsel asserted this Court to appreciate that after insertion of Section 33A of the Act 1951, the Election Commission from time to time has changed the Form- 26 after considering the needs for disclosure of criminal antecedents of the candidates which also includes disclosure of F.I.R if the candidate is having full/special knowledge of its registration. The reference made by the learned Senior Counsel of the Forms makes it

necessary for this Court to quote the unamended Form- 26 and amended Form-26 which are quoted herein below:

34- **Unamended Form-26:-**

5. I am/am not accused of any offence(s) punishable with imprisonment for two years or more in a pending case(s) in which a charge(s) has/have been framed by the Court(s) of competent jurisdiction.

If the deponent is accused of any such offence(s), he shall furnish the following information-

(i) The following case(s) is/are pending against me in which charges have been framed by the Court for an offence punishable with imprisonment for two years or more-

(a)	Case/First Information Report No./Nos together with complete details of police station/district/state concerned.	
(b)	Section(s) of the Act(s) concerned and short description of the offence(s) for which charged.	
(C)	Name of the Court, Case No. date of order taking cognizance.	
(d)	Court(s) which framed the charge(s).	
(e)	Date(s) on which the charge(s) was/were framed.	
(f)	Whether all or any of the proceeding(s) have been stayed by any court(s) of competent jurisdiction.	

(ii) The following case(s) is/are pending against me in which cognizance has been taken by the Court (other than the cases mentioned in Item (i) above.

(a)	Name of the Court No, and date of order taking cognizance.	
(b)	The details of cases where the Court has taken cognizance, section(s) of the Act(s) and description of the offence(s) for which cognizance taken.	
(c)	Details of appeal(s)/application(s) for revision (if any) filed against the above order(s).	

35. Amended Form 26: -

(5) Pending Criminal Cases: -

(i) I declare that there is no pending criminal case against me. (Tick this alternative if there is no criminal case pending against the Candidate and write NOT APPLICABLE against alternative (ii) below)

(ii) The following criminal cases are pending against me. (If there are pending criminal cases against the candidate, then tick this alternative cad score off alternative (i) above, and give details of all pending cases in the Table below)

(a)	FIR No. with name and address of police station concerned.			
(b)	Case No. with name of the Court			
(c)	Section(s) of Concerned Acts/Codes involved (give no. of the Section, e.s. Section of IPC, etc.)			
(d)	Brief description of Offence.			
(e) 3	Whether charges have been framed (mention YES of NO)			
(f)	If answer against (e) above is Yes, then give the date on which charges were framed			
(g) R	Whether any Appeal/Application for revision has been filed against the proceedings (Mention YES or NO)			

e

ferring to the amended Form 26, learned Senior Counsel argued that the legislature intended for all the contesting candidates to disclose all the information/special knowledge which the candidates have in his/her personal capacity with regard to criminal antecedents and for that a separate column of F.I.R, with name and address of police station had been inserted in the table, which is required to be filled by the contesting candidates, thus, when the Constitution Bench of the Hon'ble Apex Court has mandated the requirement of filing of affidavit in Form-26 along with nomination paper declaring

information about criminal cases, qualifications etc. and in view of the amended Form 26 it was required for the Respondent No. 1 to have mentioned the F.I.R number, name and address of the police station concerned etc. and in absence thereof it would tantamount to undue influence and as fall out to corrupt practice.

37. With regard to the preliminary issue framed by this Court on 17.03.2023 learned Senior Counsel while criticizing the same had argued that it is per-incuriam as it has been framed in ignorance of law laid down by the Constitution Bench of Hon'ble Supreme Court in the case Public Interest Foundation (supra) and against the mandatory directions issued by the Election Commission of India vide notification no. S.O. 5196 (E) dated 10.10.2018. The reasons for the applicability of per- incuriam doctrine to the present case was assailed on the ground that the Constitution Bench had in clear terms laid down the requirements to be filled up in the form as provided by the Election Commission and it is amust to contain all the particulars as required therein and as the said order dated 17.03.2023 is against the aforesaid law as laid down by the Hon'ble Apex Court it is per-incuriam and therefore, issues as proposed by the Election Petitioner are required to be framed and the matter is required to be put to trial on those issues.

38. It was further contended that the preliminary issue has been framed in total ignorance of the fact that pursuance to the law laid down by the Constitution Bench of Supreme Court in the case of Public Interest Foundation (supra), the nomination Form-26 was amended on 10.10.2018 and as a consequence of the said amendment, the Election Commission had issued a Notification to all Returning Officers, directing them that it would be mandatory for all the candidates to give all information as sought in Form-26 and from the bare perusal of the said preliminary issue, it appears that it has been framed on the basis of the requirements of Form- 26 that existed prior to its amendment and as the preliminary issue is interpretative in nature and without mentioning the consequences of its interpretation

i.e. if it is in favour of Respondent No. 1 the consequence and if it is against him, whether would he be held guilty of corrupt practice/or is it that whatever the interpretation it will be followed by the trial of the Election Petition.

39. It was further submitted that there is clear distinction of the un-amended Form-26 and the amended Form-26 which came into force w.e.f. 10.10.2018 and cumulative reading of the judgment of Hon'ble Supreme Court in Public Interest Foundation case (supra), the amended Form-26 and the directions sent by the Election Commission of India vide missive dated 05.11.2018 and 19.03.2019 makes it crystal clear that the Preliminary issue framed in the present form is per incuriam and thus non-est and further the information required to be given in the present form i.e. in relation to any F.I.R and its details registered against the candidate filing this nomination form.

40. It was further submitted that respondent no. 1 had not furnished the details of the F.I.R because as per his pleadings **'he was not aware'** of the lodging of the said F.I.R or else he would have furnished it, leading to a question of interpretation of the preliminary issue **"whether registration of FIR comes under the purview of pendency of criminal case or not'**, which does not arise at all, as it's only about his knowledge and the same can be discovered only through trial. It was further submitted that the preliminary issue which is interpretative in nature cannot be framed, moreover, when from the clarification given by the Election Commission vide its letters dated 05.11.2018 and 19.03.2019, it was made very much clear that it is mandatory to mention the details of F.I.R cases in the nomination Form-26. Thus, on the pretext it was argued that since the preliminary issue framed by this Hon'ble Court on 17.03 .2023 was inadvertently framed overlooking the law laid down by the Hon'ble Apex Court in the Public Interest Foundation (supra) and directions of the Election Commission which were and are binding precedent makes the preliminary issue per-incuriam.

therefore, this Court is required to frame the issues which has been proposed by the Election petitioner and the said election petition is required to be put to trial on said issues. In support of the aforesaid contention reliance was placed by the Learned Senior Counsel in the matter **State of Madhya Pradesh vs. Narmada Bachao Andolan reported in 2011 (7) SCC 639** and in the matter of **Subhash Chandra and another vs. Delhi Subordinate Services Selection Board and Ors reported in 2009 (15) SCC 458.**

41. In furtherance of his arguments Learned Senior Counsel submitted that the elementary principal of interpreting and construing a statute is to gather the mens or sententia legis of the legislature and the interpretation postulates the search for the true meaning of the words used in the statute as a medium of expression to communicate a particular thought, which this Court had not done while framing the issue. To support his contentions he placed reliance in the matter of **Commissioner of Income Tax, Kerala vs. Tara Agencies reported in 2007 (6) SCC 429**, wherein the Hon'ble Apex Court has held that "....the Court rightly observed that in seeking legislative intention judges not only listen to the voice of the legislature but also listen attentively to what the legislature does not say.... The legal position seems to be clear and consistent that it is the bounden duty and obligation of the Court to interpret the statute as it is. It is contrary to all rules of construction to read words into a statute which the legislature in its wisdom has deliberately not incorporated...."

42. Further reliance was placed in the matter of **J.P. Bansal vs. State of Rajasthan, (2003) 5 SCC 134**, wherein Apex Court has held that, "...where, therefore, the "language" is clear, the intention of the legislature is to be gathered from the language used. What is to be borne in mind is as to what has been said in the statute as also what has not been said...".

43. Ld. Senior Counsel further relied on **State of Kerala vs. Mathai Verghese and Ors, (1986) 4 SCC 746**, wherein it is observed by the

Court that, "...the court can merely interpret the section, it cannot re-write, recast or redesign the section. In interpreting the provision, the exercise undertaken by the Court is to make explicit the intention of the legislature which enacted the legislation. It is not for the court to reframe the legislation for the very good reason that the powers to 'legislate' have not been conferred on the Court. A Court can make a purposeful interpretation so as to 'effectuate' the intention of the legislature and not a purposeless one in order to 'defeat' the intention of the legislators wholly or in part ... ".

44. It was further contended that in the case of **A.R. Antulay vs. Ramdas Sriniwas Nayak, 1984 (2) SCC 500**, the Constitution Bench has observed that, "...it is well-established canon of construction that the court should read the section as it is and cannot rewrite it to suit its convenience, nor does any canon of construction permit the court to read the section in such manner as to render it to some extent otiose...".

45. Further in the matter of **Grasim Industries vs. Collector of Customs, 2002 (4) SCC 297 and in the matter of Apex Laboratories Pvt. Ltd. vs. Deputy Commissioner of Income Tax, 2022 (7) sec 98**, it has been held that "...No words or expression used in any statute can be said to be redundant or superfluous. In matters of interpretation, one should not concentrate too much on one word and pay too little attention to other words. Every provision and every word must be looked at generally and in the context in which it is used. Merely because the provision could have been differently worded, does not in any way affect the meaning of the expression used as it is clear and unambiguous ... ". Further "...interpretation of law has two essential purposes: one is to clarify to the people governed by it, the meaning of the letter of the law; the other is to shed light and give shape to the intent of the lawmaker. And, in this process the courts' responsibility lies in discerning the social purpose which the specific provision sub-serves. Thus, the cold letter of the law is not an abstract exercise in semantics which practitioners are want to indulge in. So,

viewed the law has birthed various ideas which as implied conditions, un-spelt but entirely logical and reasonable obligations, implied limitations, etc. The process of continuing evolution, refinement and assimilation of these concepts into binding norms (within the body of law as is understood and enforced) injects vitality and dynamism to statutory provision. Without this dynamism and contextualization, laws become irrelevant and state".

46. On the basis of the aforesaid arguments and the citations, Learned Senior Counsel had tried to emphasize that the very conduct of Respondent No. 1 in not disclosing the factum of the pending criminal cases in the nomination Form-26 expressly and impliedly amounts to corrupt practice and also since the preliminary issue framed by this Court is per-incuriam as the same has been framed in ignorance of the statutory and legal position as envisaged by the Hon'ble Apex Court in the matter of Public Interest Foundation (supra) and the guidelines issued by the Election Commission, therefore, apart from the preliminary issue, other issues which has been proposed by the petitioner be framed and the trial be proceeded with.

47. Per contra, Shri Naman Nagrath, Learned Senior Counsel along with Shri Jubin Prasad and Shri Soumya Pawaiya, on behalf of the Respondent No. 1 has vehemently opposed the contentions of the petitioner with regard to framing of the preliminary issue by this Court on 17.03.2023 being per-incuriam as the same has been framed in ignorance of the statutory and legal position as envisaged by the Hon'ble Apex Court in the matter of Public Interest Foundation (supra) and the guidelines issued by the Election Commission, and had contended that firstly since the said order dated 17.03.2023 has been put to test before the Hon'ble Apex Court in SLP No.13267/2023 which got dismissed on 07.07.2023, after having considered the basis for the aforesaid impugned order and finding no scope to interfere with the same, the very framing of the

legal preliminary issue, now cannot be said to be per-incuriam.

48. It was further submitted that, though the framing of the preliminary issue was upheld by the Supreme Court, even thereafter, the petitioner tried to whisk the said aspect once again while moving I.A. No. 3718/2023, which was an application under Order XIV Rule 2 r/w Section 151 of CPC for pronouncement of Judgment on all the issues and along with it another I.A. No.3719/2023 was filed, which was an application under Section 114 r/w Order XLVII Rule 1 and r/w Section 151 of CPC for review of the order dated 17.03.2023 and the said order dated 17.03.2023 was sought to be reviewed on the ground that while passing of the said order, this Court has not considered the relevant provisions of Cr.P.C and has passed the order, which is an error apparent on the face of the record, but this Court vide order dated 13.07.2023 had rejected both the I.As against which the petitioner has once again preferred an SLP No.15745/2023 which was withdrawn as not pressed, thereafter, again another I.A. No.4200/2023 for reviewing of the order dated 13.07.2023 was filed which was also dismissed by the order of this Court dated 26.10.2023 and now again under the garb of repeated, old and over ruled arguments, in a way is seeking review which is not permissible. It was further argued that a decision is given per-incuriam when the Court's previous decision of its own or of a Court of its coordinate jurisdiction, which covered the case before it, in which case it must decide which case to follow or in other words the rule of per-incuriam can be applied where the Court omits to consider the binding proceeding of the same Court or superior Court rendered on the same issue where a Court omits to consider any statute while deciding said issue, but herein neither is the case. The Constitution Bench in the case of Public Interest Foundation (supra) had laid down that each contesting candidate shall fill up the form as provided by Election Commission and the form must contain the

particulars as required therein and so also the amended Form-26 (amended as on 10.10.2018 by the Election Commission), whereby it was made mandatory for all the candidates to give all the information as sought in Form-26 is not in dispute. The dispute as narrowed down by this Court is as to whether registration of FIR vide Crime No. 176/2018 against Respondent No. 1 comes within the purview of "**pendency of criminal case**" or not, which would make it obligatory to be mentioned in the Form-26.

49. It was further submitted that as per Form-26 outlined under Rule 4A of Rules of 1961, framed under Representation of People's Act, 1951, clause 5 provided two sets of declarations in either/or form. Clause 5 (i) provides declaration as to pendency of criminal case against the candidate, with a remark mentioned that 'Tick this alternative if there is no criminal case pending against the candidate and write NOT Applicable against alternative (ii) below. Further Clause 5 (ii) provides for mentioning about criminal cases which are pending against the candidate, with further mentioning that if there are pending criminal case against a candidate, he had to tick this alternative and had to score off alternative (i) above, and give details of all pending cases in the table below. Thus, the above amended Form-26 clearly revealed that a candidate has to declare about the pendency of criminal case, in case, if there are any and if there are no criminal cases pending, then he has to tick column 5 (i) and the rest of the columns as provided under Clause 5 (ii) he has to mention "N.A.". Thus, question whether there is any criminal case pending against the present Respondent No. 1 is the sole question, which crops up after due scrutiny of the pleadings and as mere registration of the F.I.R does not amounts to pendency of a criminal case, the preliminary issue had rightly been framed and Respondent No 1. had rightly ticked column 5 (i) of Form-26 and for column 5 (ii) has rightly mentioned "N.A"

50. Learned Senior counsel further contended that in light of the aforesaid there is no inconsistency between the controversy

involved and the preliminary issue framed by this Court as firstly it is required to be determined as to whether there was' *pendency of criminal cases'* against him and if answer is in "YES' then the question of it's mentioning in Fonn-26 would arise and secondly, for the aforesaid purpose, it is required to be ascertained whether mere registration of F.I.R would amount to "pendency of criminal case" and the answer to the said fact whether in negative or affirmative, would qualify the question of mentioning or non-mentioning of the pendency of the criminal case in Fonn-26, therefore, the contention of the counsel for the petitioner appears to be misconceived and has no applicability to the present matter.

51. Learned Senior Counsel further submitted that registration of the F.I.R vide crime no.176/2018 is pursuant to an order dated 26.09.2018 passed by Learned Special Judge (MP and MLA) on an application u/s 156(3) of Cr.P.C and it is a settled law that direction to register an F.I.R under Section 156 (3) does not amount to taking cognizance, and thus would not amount to pendency of a criminal case, as while dealing with the application under Section 156 (3) the Magistrate (in the present case Special Judge (MP & MLA) may either direct registration of F.I.R. under the provisions of Section 156 (3) or may take cognizance by recording pre-summoning evidence under Section 200 of Cr.P.C and if he were to take cognizance at the stage of deciding the application under Section 156 (3) then he has to record pre-summoning evidence, if any and, therefore, is required to issue summons under Section 204 or 203 as the case may be and mere issuance of directions by the Magistrate to the police to register F.I.R and to investigate the matter in terms of Chapter XII of the Cr.P.C. does not amount to taking cognizance under Section 190 and/or Section 200 of Cr.P.C and since the order dated 26.09.2018 passed by Special Judge (MP and MLA) Bhopal does not amount to taking cognizance, the present F.I.R does not fall under the category of

'Pending Criminal Case' and, therefore, its disclosure in the Form-26 in Column 5 (ii) was not necessitated, nor mandated by law.

52. To bolster his submissions he had placed reliance in the matter of **Satish Uekey vs. Devendra Gangadhar Rao Fadnavis and another** reported in **2019 (9) SCC 1**, wherein the Hon'ble Apex Court while analyzing the provisions of Section 33A of the Act of 1951, Rule 4-A of the Rules of 1961 and Form-26 had held that a cumulative reading of Section 33A of the 1951 Act and Rule 4-A of the 1961 Rules and Form-26 along with the letters dated 24.8.2012, 26.9.2012 and 26.4.2014, in our considered view, make it amply clear that the information to be furnished under Section 33A of the 1951 Act includes not only information mentioned in clauses (i) and (ii) of Section 33A (1), but also information, that the candidate is required to furnish, under the Act or the Rules made there under and such information should be furnished in Form-26, which includes information concerning cases in which a competent Court has taken cognizance (Entry 5(ii) of Form-26). This is apart from and in addition to cases in which charges have been framed for an offence punishable with imprisonment for two years or more or cases in which conviction has been recorded and sentence of imprisonment for a period of one year or more has been imposed (Entries 5(i) and 6 of Form 26 respectively).

53. He further placed reliance in the matter of **Supreme Bhiwandi Wada Manor Infrastructure Private Limited vs. State of Maharashtra and another** reported in **2021 (8) SCC 753** and contended that any judicial Magistrate before taking cognizance of the offence can order investigation under Section 156 (3) of the Code and if he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an F.I.R. There is nothing illegal in doing so. After all registration of an F.I.R involves only the process of entering the substance of the information relating to the

commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say it in so many words while directing investigation under Section 156 (3) of the Code that an F.I.R should be registered, it is the duty of the officer in charge of the police station to register the F.I.R regarding a cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.

54. Further placing reliance in the matter of **R.R. Chari vs. State of Uttar Pradesh** reported in **1951 SCC 250**, it was contended that the word "cognizance" is used in the Code to indicate the point when the Magistrate or Judge first take judicial notice of an offence and it is different thing from the initiation of proceedings. It is the condition precedent for initiation of proceedings by the Magistrate. Further the court noticed that the word 'cognizance' is a word of somewhat indefinite import and it is perhaps not always used in exactly the same sense. It seems clear however that before it can be said that any magistrate has taken cognizance of any offence under Section 190 (1) (a), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of the Chapter i.e. proceeding under section 200 and thereafter sending it for inquiry and report under section 202 and when the magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, i.e. ordering investigation under section 156 (3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence." Learned Senior Counsel has also relied in the matter of **Jayant and Ors Vs State of Madhya Pradesh** reported in **2021 (2) SCC 670** and had contended that the word "cognizance" has a wider connotation and is not merely confined to the stage of taking cognizance of the offence. When a Special Judge refers a complaint for

investigation under Section 156 (3) CrPC, obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage, when a Special Judge takes cognizance of the offence on a complaint presented under Section 200 CrPC and the next step to be taken is to follow up under Section 202 CrPC. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at pre-cognizance stage."

55. Lastly, reliance was placed in the matter of **Laddoo Ram Kori vs. Jajpal Singh Jajii passed in Election Petition No. 08/2019** by Coordinate Bench of this Court on 08.11.2023, wherein while relying on the matter of Krishna **Murthy vs. Shiv Kumar and Ors.** reported in **2015 (3) SCC 467** it had been held that no cognizance of offence/crime should be taken by the competent Court and mere registration of FIR is not sufficient to disqualify the candidate to contest the election and since there was no pleading or evidence that competent court has taken cognizance on the F.I.R registered against Respondent No. 1, therefore, it cannot be said that election of Respondent No. 1 is vitiated on account of violation of Section 33A of Representation of People Act.

56. On the basis of the aforesaid, it was contended that the defense of the Respondent No. 1 of not suppressing any material information while filling up the Form regarding mentioning of the F.I.R No.176/2018 at P.S. Shyamla Hill, Bhopal cannot be disbelieved as there is no evidence of the fact that he was ever summoned by the Police or the Court. Thus, it was submitted that preliminary issue framed by this Court is in consonance with the pleadings and in the light of the arguments advanced, it is to be answered in negative i.e. mere registration of an F.I.R. doesn't amounts to "pendency of a criminal case' and the Election petition be dismissed being filed in total abuse of process of Law.

<u>Discussion and Conclusion</u>

57. Learned Senior counsel for the petitioner while criticizing the preliminary issue framed by this court on 17.3.2023 had argued that it

is per-incuriam as it has been framed in ignorance of law laid down by the Constitution bench of the Supreme Court in the case of Public interest foundation (supra) and is also against the mandatory directives issued by the Election Commission of India, vide notification number S.O.5l 96(E) dated 10.10.2018.

58. To analyze the aforesaid aspect tis Court deems it fit to understand first the meaning of per-incuriam and its significance. Per-incuriam and its significance. Per-incuriam literally translated would mean **"though lack of Care"**, and refers to a judgement of the Court, which has been decided without reference to a statutory provision or earlier judgement which could have been relevant. The significance of the judgement having been decided per-incuriam is that it does not then have to be followed as a precedent by the Lower Court. Ordinarily in the common law, the rationes of a judgment must be followed thereafter by lower courts while hearing similar cases, though the court is free to depart from an earlier judgement of a superior court is free to depart from an earlier judgement of a superior court where that earlier judgement was decided as per-incuriam and the said doctrine is an exception to the Article 141 of the Constitution of India, which embodies the doctrine of precedent as a matter of law. In other words, a decision is not binding if it was rendered in ignorance of a statute or a rule having the force of a statute or delegated legislation.

59. Sir John Salmond in his book "Treaties on Jurisprudence" has aptly stated the circumstances under which the precedent can be treated as per-incuriam. It is stated that the precedent is not binding if it was rendered in ignorance of a statute or a rule having the force of statute or delegated Legislation.

60. C.C. K. Allen in the book 'Law in The Making' (page 246) analyzed the concept of 'Per Incuriam'. According to him, **'Incuria'** means literally **'carelessness'** which apparently is considered less uncomplimentary than ignorantia; but in practice 'Per Incuriam' applies to mean 'Per Ignorantiam'. It would almost seem that 'Ignorantia Juris Neminem Excusat' meaning except a Court of Law, ignorance of

what? Ignorance of a Statute, or of a Rule having statutory effect which would have affected the decision if the Court had been aware of it.

61. **The Court of Appeal** in Morelle Ltd v Wakeling [1955] 2 QB 379 stated that as a general rule the only cases in which decisions should be held to have been given per incuriam are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned: so that in such cases some part of the decision or some step in the reasoning on which it is based is found, on that account, to be demonstrably wrong.

62. By Lord Godard, C.J. In **Huddersfield Police Authority v. Watson (1947) 2 All ER 193** it was observed that: "Where a case or statute had not been brought to the court's attention and the court gave the decision in ignorance or forgetfulness of the existence of the case or statute, it would be a decision rendered in per incuriam.".

63. Apex court in **Siddharam Satlingappa Mhetre v. State of Maharashtra** reported in **Criminal Appeal No. 2271 of 2010 (Arising out of SLP (Crl.) No. 7615 of 2009)** refused to follow the decision of co-ordinate benches, which was opposed to the decision of an earlier Constitutional Bench. The Hon'ble Supreme Court explained the concept of "per incuriam" as follows. "Now we deem it imperative to examine the issue of per incuriam raised by the learned counsel for the parties. In **Young v. Bristol Aeroplane Company Limited (1994) All ER 293** the House of Lords observed that 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoration' of a statute or other binding authority. The same has been accepted, approved and adopted by this court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law.

64. Further Apex Court in Government of A.P. and Another v. B. Satyanarayana Rao (dead) by LRs. and Others (2000) 4 SCC 262 observed as under: "The rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue."

65. In a Constitution Bench judgment of this Court in Union of India v. Raghubir Singh (1989) 2 SCC 754, it was observed that "The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court."

66. The analyses of the English and the Indian law clearly leads to an irresistible conclusion that when a lower court ignores the decision of a higher court, the decision passed by such court can be discarded as being per incuriam of the decision of the higher court.

67. In context of the above inunciations, if the arguments of the learned Senior Counsel for the petitioner are analyzed, the Honorable Supreme Court in Public Interest Foundation (Supra) had observed that the contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the particulars as required there in and, it shall state in bold letters, with regard to the criminal cases pending against the candidate. The aforesaid observation has been made while relying another Constitutional bench judgement in the matter of People's Union or Civil Liberties vs Union of India (supra) wherein it has been observed that the information given by a candidate must express everything that is warranted by the Election Commission as per law, as the disclosure of antecedents makes the election a fair one.

68. The Honorable Supreme Court has further observed that the complete information about the criminal antecedents of the candidate

forms the bedrock of wise decision making and informed choice by the citizenry.

69. Earlier unamended form-26 provided for disclosure of the information of an offence punishable with imprisonment for two years or more in a pending case(s) or charge(s) which has/ have been framed by the Court(s) of competent jurisdiction and if the deponent was an accused of any such offence(s) he was required to furnish the information regarding the cases is/are pending against him in which charges have been framed by the court for an offence punishable with imprisonment for two years or more and also of the cases which are pending against him in which cognizance has been taken by the court (other than the cases mentioned above). Thus, earlier the candidate's were required to mention the decided or pending cases in which charges had been framed by the Court for an offence punishable with imprisonment for two years or more or in which the Courts have taken cognizance. But with the advent of Section 33A of the Act of 1951, the said Form-26 was amended and in column no.5, which related to pending criminal cases, two eventualities were inserted. In column 5(i) the candidate is required to declare that there is no pending criminal case against him and if the answer is in *'YES'* and there are no criminal cases pending, he/she has to Tick this alternate and he/she had to write not applicable to the alternate given in column 5(ii), but if the answer is 'NO' to the first alternate, then he/she has to tick the second alternate and had to disclose the pending cases against him and has to score of the first alternate and in the eventuality of the candidate scoring of Clause 5(i), then he has to provide the information as provided under Clause 5(ii).

70. The aforesaid analysis of the unamended Form-26 and amended Form-26 reveals that in the unamended Form-26 firstly the candidate was required to disclose whether he/she was an accused of an offence punishable with imprisonment for two years or more in pending cases in which the charges have been framed by the

court of competent jurisdiction or not and if the answer is not in affirmative and is *'YES'* then he has to furnish the information of the cases which are/were pending against him in which charges have been framed by the court for an offence punishable with imprisonment for two years or more and further he/she was also required to disclose the cases in which the courts have taken cognizance. Thus, there were only specific cases which were required to be disclosed in the unamended form-26, but in the amended Form-26, the said distinction was not limited to pendency of any specific type of cases rather the candidate is now required to disclose whether criminal case(s) is/are pending against him or not and only in case if any criminal case(s) is/are pending, then he/she has to furnish the details thereof. Thus, according to this Court there is apparently a clear distinction between the two Forms i.e. un-amended Form-26 and amended Form-26.

71. In the light of the aforesaid, the very crux of the matter would be *"pendency of a criminal case"* and answer to the preliminary issue framed by this Court as to whether mere registration of F.I.R under the provisions of IPC comes within the purview of "pendency of criminal case" or not as per Form- 26 framed under Rule 4A of the Rule of 1961, would decide the fate of the matter, whether further issues are required to be framed and whether the information of the registration of F.I.R was required to be furnished in Form-26 and its non-furnishing whether amounts to corrupt practice.

72. Thus, according to this Court furnishing all the details as provided by the Election Commission and mentioning of all the particulars as required in the Form would arise only when the said preliminary issue is decided either way. This court therefore finds that the contention of the petitioner that the preliminary issue framed is per-incuriam to the decision of the Honorable Apex Court in Public Interest Foundation (supra) is devoid of any substance and accordingly is here by rejected.

73. Now coming to the issue framed by this court, a bare perusal of Form-26 makes it apparently clear that entry 5(i) mandates disclosure

of pending criminal cases, if any, and entry 5(ii) specifically mentions that if there are pending criminal cases against the candidate, then he has to furnish the details mentioned in the table appended along with entry 5(ii). Thus, pendency of criminal case is *Sinequa non* for furnishing its details.

74. Now, whether mere registration of FIR would amount to pendency of criminal case or not, is required to be seen. For that it is necessary to discuss certain relevant legal provisions of chapter XII of the Code of Criminal Procedure, which includes Section 154 and Section 156(3). Section 154 deals with the information relating to the commission of cognizable offence and feats the procedure to be adopted when prima *facie* commission of cognizable offence is made out. Section 156, authorizes, a police officer in charge of the police station to investigate any cognizable offence without the order of Magistrate. Sub-section 3 of Section 156 provides for the Magistrate empowered under Section 190 to order an investigation as mentioned in Section 156 (1). Thus, the operandi for registration of information in a cognizable offence and eventually investigation is not limited to police, sub-section 3 of Section 156, subject to legal stipulations, gives the emulating power to a Magistrate empowered under Section 190 to order an investigation in a cognizable offence. The power of Magistrate to direct investigation falls under two limbs of the Court: One is "Pre-cognizance" stage under section 156(3) and another on cognizance under chapter XIV (Conditions requisite for Initiation of proceedings and deals with Sections 190 to 199) read with Chapter XV (Complaints to Magistrates, Sections 200 to 210). These two powers are different, and there also lies a procedure of discretion between the two.

75. A three-judge bench decision of the Hon'ble Apex Court in **Ramdev Food Products Private Limited vs State of Gujarat reported in 2015, (6) SCC 439** had examined the discretion between powers of the Magistrate to direct registration of an F.I.R under Section 156(3) and powers of the Magistrate to proceed under Section

202 of the Code. It was observed that the power under the former Section is to be exercised on receiving a complaint or a police report or information from any person other than the police officer or upon whose knowledge, before it takes cognizance under Section 190.

76. Once, the Magistrate takes cognizance, the Magistrate has discretion to recourse to his powers under Section 202, which provides for postponement of the issue or process and enquire into the case himself or direct investigation to be made by a police officer, or by such other person as he thinks fits for the purpose of deciding whether or not there are sufficient grounds for proceedings. The proviso to Section 202 states that no direction for investigation shall be made where a complaint has not been made by a Court, unless the complainant and the witnesses present, if any, are examined on own under Section 200. When it appears to the Magistrate that the offence/complaint of is triable exclusively by Court of sessions, he shall call upon the complainant to produce all his witnesses and examine them on oath. However, in such cases the Magistrate cannot issue directions for investigation of an offence. Thus, the magistrate has powers, when a written complaint is made; to issue directions under Section 156(3), but this power is to be exercised before the magistrate takes cognizance of offence under Section 190. However, in both the cases whether under Section 156(3) or Section 202 of the Code, the person accused as a perpetrator, when the proceedings are pending before the Magistrate remains unrepresented. Under Section 203 the Magistrate after considering the statements of the complainant and the witnesses, if any, on oath and the result of an enquiry, if any, under Section 202 can dismiss the complaint, if he is of the opinion that there is no sufficient ground for proceedings and in every such case briefly records his reasons. If the Magistrate taking cognizance of the offence is of the opinion that there is sufficient ground for proceeding, he will issue the process to the accused for appearance as the procedure and mode specified under Section 204 of the Code. Process to the accused under section 204 falls under chapter XVI of

the Code and is issued post the cognizance, and enquiry/investigation/evidence recorded in a private complaint in terms of Section 202 of the Code.

77. The Honorable Apex Court in the matter of **Mohd. Yousuf vs Smt. Afaq Jahan & Anr** reported in **2006 (1) SCC 627** has opined that

> "The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156 (3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an F.I.R. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so in many words while directing investigation under Section 156(3) of the Code that an F.I.R should be registered, it is the duty of the officer in charge of the police station to register the F.I.R regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter. It is, therefore necessary to determine when the magistrate took cognizance of the offence."

78. A Magistrate when can take cognizance is provided u/s 190 of Cr.P.C. The relevant part of section 190 of the Code runs as follows:

> *190. (1) "Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-divisional Magistrate and any other Magistrate specially empowered in this behalf, may take cognizance of any offence-*
>
> *(a) upon receiving a complaint of facts which constitute such offence,*
>
> *(b) upon a report in writing of such facts made by any police officer;*
>
> *(c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed... "*

79. It is clear from the wording of the section that the initiation of the proceedings against a person commences on the cognizance of the offence by the Magistrate under one of the three contingencies mentioned in the section. The first contingency evidently is in respect of non-cognizable offences as defined in the Criminal Procedure Code on the complaint of an aggrieved person, the second is on a police report, which evidently is the case of a cognizable offence when the police have completed their investigation and comes to the Magistrate for the issue of a process and the third is when the Magistrate himself takes notice of an offence and issues the process.

80. The term "taking cognizance" has not been defined in the criminal procedure code, however, it seems to be clear that when any magistrate takes a judicial notice of an offence under Section 190 (1) (a) of Criminal Procedure Code that it could be said that cognizance of an offence had been taken, the Court must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of the Chapter i.e. proceeding under Section 200 and thereafter sending it for inquiry and report under Section 202. When the magistrate applies his mind not for the

purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation under Section 156 (3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence."

81. The word cognizance is used in the code to indicate the point when the Magistrate or judge first takes judicial notice of an offence and it is different from initiation of the proceedings. It is the condition precedent to the initiation of the proceedings by the magistrate. Thus, it can very well be said that mere registration of the F.I.R cannot be said to be initiation of the criminal proceedings and the same would be said to have commenced as and when the cognizance is taken by the Magistrate and only, thereafter, it could be said that a criminal case is pending against a person, else the registration of the F.I.R would only for the purpose of further investigation.

82. In the present matter, admittedly, the FIR was registered pursuant to an order dated 26.9.2018 passed by learned Special Judge (MP & MLA), Bhopal on an application under Section 156(3) of Cr.P.C and as per the legal position which has been culled out, direction to register F.I.R under Section 156(3) does not amount to take cognizance as the Special Judge (MP & MLA) at that stage had not applied his mind for the purpose of proceeding under subsequent Sections of chapter XIV, but had taken action of some other kind i.e. for investigation or issuing a search warrant for the purpose of the investigation. Therefore, it cannot be said that he had taken cognizance of the offence, and once the cognizance of the matter has not been taken by it, it cannot be said that there was any pending criminal case against Respondent No.1.

83. Further the contention forwarded on behalf of petitioner that since Respondent No.1 has pleaded that he was not aware of lodging of the said F.I.R or else he would have furnished the information leads to interpretation of the preliminary issue, which issue does not

arise at all as it was within his knowledge and the same could be discovered only through conducting of the trial is concerned, the said arguments appears to be misconceived, as the said ground by Respondent No.1 was taken as an alternate, that too without prejudice to his contention that registration of F.I.R does not amount to pendency of criminal case. It was raised for the fact that after registration of the F.I.R, in pursuance to the order passed by the Special Judge (MP & MLA), no process was either issued by the Court nor any notice under section 41A of the Cr.P.C was issued to him by the Police, which could have brought the factum of registration of F.I.R. to his knowledge and merely on the basis of some paper cuttings it could not be said that it was within his knowledge. Therefore, it could be said that the factum of registration of F.I.R and the pending investigation was not within his knowledge and, thus, there was no occasion for him to disclose the same, even if required. Thus, this court does not find any force in the arguments of learned counsel for the petitioner, accordingly it is negatived and the Judgments cited in this regard are held not applicable to the fact situation.

84. So far as the ground of contention of the petitioner that it is bounden duty and obligation of Court to interpret the statue as it is, and it is contrary to all the rules of construction to read words into a statute, which the legislature in its wisdom has deliberately not incorporated and where there the language is clear, the intention of the legislator is to be gathered from the language used, to this Court there appears to be no ambiguity or misreading of the statutory provisions or even there is no occasion for this court to interpret the statutes in a particular way, as the preliminary issue framed clearly stipulates whether registration of the F.I.R comes within the purview of pendency of a criminal case or not, as per Form-26 postulated under Rule 4A of the Rules of 1961 and in that regard there is no necessity of interpreting the legal position as laid down by the Honorable Apex Court in the matter of Public Interest Foundation (supra), thus, the

case laws which has been cited on behalf of the petitioners in this regard are of no help.

85. Thus, a cumulative reading of Section 33A of Act of 1951 and Rule 4A of Rules of 1961 and amended Form-26 makes it amply clear that the information to be furnished under Section33A of 1951 Act includes not only information mentioned in Clause (i) and (ii) of Section 33(A), but also the information that the candidates are required to furnished under the Act or the Rules made there under and such information should be furnished in Form-26, but so far as the present case is concerned, non-furnishing of registration of F.I.R. against Respondent No. 1 was not required to be furnished in the form- 26, as in the preceding paragraphs it has been held by this court, that mere registration of F.I.R does not come within the purview of ***"pendency of criminal case"***, thus, non-disclosure of the factum of registration of F.I.R in the nomination Form-26 expressly and impliedly cannot be said to amount corrupt practice as provided under Section 123 of the act of 1951.

86. In a very recent decision of the Coordinate Bench of this Court in the matter of **Laddoo Ram Kori vs. JajpalSingh Jajii** (supra) similar issue as to whether the election of Respondent No. 1 (i.e. the return candidate therein) was vitiated on account of violation of Sections 33 or 125 of Representation of Peoples Act, 1951 was answered in negative, while holding that since there was no evidence led by the election petitioner that any charge sheet has been filed or cognizance has been taken by a competent court, therefore, it cannot be said to be proved that the election of Respondent No. 1 (returned candidate therein) is vitiated on account of violation Sections 33 or 125A of The Representation of People Act. The Coordinate Bench while relying on the decision of the Hon'ble Apex Court in the matter of **Krishnamoorthy vs Sivakumar & Ors** reported in **2015 (3) SCC 467**' wherein it has been observed that it is only when cognizance of offence/crime had been taken by the competent court and not mere registration of F.I.R is sufficient to

disqualify the candidate to contest the election and on the aforesaid basis it was held that section 33A of the Act of 1951 would not be attracted and, therefore, question of punishment under Section 125A would be frustrated.

87. In view of the forgoing discussions and reasons, this court answers the preliminary issue in *"Negative"* and helds that mere registration of F.I.R vide crime number 176/2018 against Respondent No. 1 at police station, Shyamla Hills, Bhopal for commission of offence punishable under sections 465, 468, 469, 471, 472, 474 and 120-8 of IPC *doesn't come within the purview of pendency of criminal case* and, therefore, the information regarding the registration of the F.I.R was not required to be furnished in Form-26 postulated under Rule 4A of Rules of 1961.

88. The Election Petition accordingly hereby fails and is accordingly **dismissed.**

Sd./-

(Milind Ramesh Phadke)

Judge.

नियंत्रक, शासकीय मुद्रण तथा लेखन सामग्री, मध्यप्रदेश द्वारा शासकीय केन्द्रीय मुद्रणालय, भोपाल से मुद्रित तथा प्रकाशित–2024.