IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA,

ACTING CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 4th OF AUGUST, 2026

WRIT PETITION No. 36367 of 2025

RAJKUMAR SINGH

Versus

ELECTION COMMISSION OF INDIA AND OTHERS

Appearance:

Aseem Trivedi - Advocate for the petitioner [P-1].

Shri Aseem Trived with Shri Sourabh Kumar Shri Rajveer Singh - Advocate for petitioner.

Shri Sanjay Agrawal, Senior Advocate with Shri Arpit Agrawal - Advocate for intervenor.

Shri Anshuman Singh - Advocate for intervenor.

Shri Vivek Ranjan Pandey - Advocate for respondent No.5.

Shri Siddharth Sharma with Shri Mayank Upadhyaya - Advocate for respondent No. 2, 3, 4, 6, 7, 8

Shri Abhijeet Awasthi - Deputy Advocate General for respondent/State.

ORDER

Per: *Pradeep Mittal J.*

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By invoking the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner, a resident voter and a candidate from the 51 Surkhi Legislative Assembly Constituency in the General Elections to the Madhya Pradesh Legislative Assembly, 2023, has approached this Court seeking a writ of mandamus commanding the official respondents to inquire into, investigate, and take consequential penal/administrative action against Respondent No. 5, the returned candidate from the said constituency, and further seeking quashment of the communications dated 09.05.2025 and 11.07.2025, whereby his grievance was held to be beyond the summary jurisdiction of the election machinery, the election process having already culminated in a declaration of result.

2. The core allegation raised by the petitioner is that Respondent No. 5 suppressed disclosure of certain immovable properties belonging to himself, his spouse, and a registered society /Gyanveer Sewa Samiti, of which his spouse is the Chairperson, in the affidavit filed in Form 26 under Section 33-A of the Representation of the People Act, 1951 (for short, "the Act of 1951").

3. The admitted chronology of dates is material and may be set down at the very outset. Respondent No. 5 filed his nomination paper along with the affidavit in Form 26 on 30.10.2023. The General Election to the 51 Surkhi Legislative Assembly Constituency was held on 17.11.2023, on which date Respondent No. 5 was declared elected as the

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returned candidate. The petitioner, though himself a candidate from the same constituency whose nomination came to be rejected for want of a party mandate, raised no objection whatsoever to the nomination of Respondent No. 5 at the stage of scrutiny under Section 36 of the Act of 1951, nor did he institute an election petition under Section 81 of the Act of 1951 within the period prescribed therefore. It was only on 21.03.2025 an interregnum of nearly seventeen months from the date of the affidavit and over sixteen months from the date of declaration of the result that the petitioner lodged a written complaint before the election authorities alleging non disclosure of assets. The petitioner seeks to explain this delay on the ground that he remained in judicial custody in connection with unrelated criminal proceedings between November, 2023 and January, 2025, and that he approached the authorities promptly upon his release.

4. Respondent No. 1/Election Commission of India and the State authorities, in their preliminary returns and counter affidavits, have stated that upon receipt of the complaint dated 21.03.2025, the matter was forwarded down the administrative hierarchy for factual verification in terms of the guidelines issued by the Election Commission of India, but it was thereafter rightly communicated to the petitioner, vide communications dated 09.05.2025 and 11.07.2025, that once an election process concludes and the result is declared under Section 66 of the Act of 1951, the returning officer and the district election machinery cease to

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possess any statutory jurisdiction to reopen, adjudicate, or otherwise conduct a roving inquiry into asset disclosures made in Form 26, such jurisdiction being exclusively reserved, by virtue of Article 329(b) of the Constitution read with Sections 80 and 81 of the Act of 1951, to this Court in the trial of a duly instituted election petition.

5. Respondent No. 5 has vehemently contested the petition by filing a detailed parawise reply supported by documentary evidence. It is his case that the petition is an abuse of the process of the Court, filed with oblique motives, and that the properties alleged to have been concealed are either non existent as personal assets, held independently by third party relatives under registered sale deeds executed as far back as 1987 (the stray Khasra entries reflecting only clerical discrepancy and not title), correctly disclosed with accurate aggregate acreages and dates, or constitute institutional property of Gyanveer Sewa Samiti, a society registered under the Societies Registration Act, 1860, in which individual office bearers, including his spouse in her capacity as Chairperson, hold no personal proprietary right.

6. We have heard learned counsel for the rival parties at considerable length, perused the pleadings and the documents placed on record, and examined the statutory framework governing the resolution of election disputes under the Act of 1951.

Two questions fall for determination: first, whether the grievance raised by the petitioner namely, suppression of assets in a Form 26

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affidavit by the returned candidate is at all cognizable in a writ petition under Article 226 of the Constitution once the election has concluded and the result declared, and second, whether the impugned communications dated 09.05.2025 and 11.07.2025, declining to entertain the petitioner's complaint on the ground of want of jurisdiction, disclose any illegality warranting interference.

7. Article 329(b) of the Constitution of India, which opens with a non obstante clause, provides as under:-

329. Bar to interference by courts in electoral matters

Notwithstanding anything in this Constitution

(a)the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court;

(b)no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

8. The bar engrafted in Article 329(b) has received authoritative and enduring exposition at the hands of the Constitution Bench of the Supreme Court in ***N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, AIR 1952 SC 64,*** which, dealing with the very question of

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resort to Article 226 in electoral matters, held thus:-

" The question now arises whether the law of elections in this country contemplates that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under article 226 of the Constitution (the ordinary jurisdiction of the courts having been expressly excluded), and another after they have been completed by means of an election petition. In my opinion, to affirm such a position would be contrary to the scheme of Part XV of the Constitution and the Representation of the People Act, which, as I shall point out latter, seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any court. It seems to me that under the election law, the only significance which the rejection of a nomination paper has consists in the fact that it can be used as a ground to call the election in question. Article 329(b) was apparently enacted to prescribe the manner in which and the stage at which this ground, and other grounds which may be raised under the law to call the election in question could be urged. I think it follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other court. If the grounds on which an election can be called in question could be raised at

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an earlier stage and errors, it any, are rectified, there will be no meaning in enacting a provision like article 329(b) and in setting up a special tribunal. Any other meaning ascribed to the words used in the article would lead to anomalies, which the Constitution could not have contemplated, one of them being that conflicting view may be expressed by the High Court at the pre-polling stage and by the election tribunal, which is to be an independent body, at the stage when the matter is brought up before it.."

9. This exposition, consistently followed by the Supreme Court since 1952, makes it clear that once an election has been held and a result declared, any grievance touching the validity of that election which necessarily includes an allegation of suppression or nondisclosure of assets by the returned candidate in his statutory affidavit can be agitated only before this Court by way of a duly instituted election petition, and not otherwise, whether before the election machinery in the exercise of a supervisory or administrative jurisdiction, or before this Court under Article 226 of the Constitution.

10. Giving statutory content to this constitutional bar, Section 80 of the Act of 1951 declares that no election shall be called in question except by an election petition presented in accordance with the provisions of Part VI thereof. Section 81(1) of the Act of 1951, which prescribes the manner and the period within which such a petition must be presented, reads as under:-

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"81. Presentation of petitions. (1) An election petition calling in question any election may be presented on one or more of the grounds specified in 8 [sub-section (1)] of section 100 and section 101 to the 6 [High Court] by any candidate at such election or any elector 9 [within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates]

Explanation.—In this sub-section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

*1 * * * * **

*2 [(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition 3*** and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.]"*

11. Section 100(1)(d)(i) of the Act of 1951, which is directly attracted to the grievance raised by the petitioner, provides that where the High Court is of the opinion that the result of the election, in so far as it concerns a returned candidate, has been materially affected by the improper acceptance of any nomination, the High Court shall declare the election of the returned candidate to be void. It is thus this very provision improper acceptance of nomination on account of a defective

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or false Form 26 affidavit that furnishes the ground on which the petitioner's grievance, if true, would have had to be tried, and that too only in an election petition presented within the time prescribed under Section 81(1).

12. On the question whether the period of forty five days prescribed under Section 81(1) admits of any relaxation, extension, or condonation, the law is settled beyond controversy by the decision of the Supreme Court in Hukumdev Narain Yadav v. Lalit Narain Mishra, (1974) 2 SCC 133, where it was authoritatively held as follows:-

"Section 81 prescribes the period of 45 days from the date of the election of a returned candidate within which an election petition calling in question any election on one or more grounds specified in sub-section (1) of section 100 and section 101 has to be presented to the High Court. If the provisions of section 81 are not complied with, section 86 requires that the High Court shall dismiss the petition."

13. The Supreme Court in the very same decision went on to hold that the provisions of the Limitation Act, 1963, including Section 5 thereof, stand excluded from application to election petitions by reason of the special scheme and the mandatory language of Sections 81 and 86 of the Act of 1951, so that no court, including this Court, possesses the power to condone delay, howsoever meritorious the explanation, in the presentation of an election petition beyond the period of forty five days. This position of law has never been departed from and binds this Court

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under Article 141 of the Constitution.

14. Applying the foregoing to the admitted facts, the result of the election of Respondent No. 5 was declared on 17.11.2023. Reckoned from that date, the period of forty five days prescribed under Section 81(1) expired on 01.01.2024. The petitioner, admittedly, neither presented nor caused to be presented any election petition within that period, or at all, before this Court. His explanation that he remained in judicial custody between November, 2023 and January, 2025 furnishes no legal justification, since, as held in Hukumdev Narain Yadav (supra), the bar of limitation under Section 81(1) is not amenable to any equitable extension, whatever the cause of the delay. Having allowed the statutorily prescribed remedy to lapse without recourse, it is not open to the petitioner to resurrect an identical grievance, going to the very root of the validity of the election, by clothing it as an administrative complaint before the election machinery and, upon its rejection, as a writ petition under Article 226 of the Constitution. To permit this course would be to do precisely what N.P. Ponnuswami (supra) forbids a second and collateral attack on the election after its completion, through a mode other than an election petition.

15. Independently of the above, the Act of 1951 also provides a distinct penal consequence for the making of a false or incomplete disclosure in a Form 26 affidavit. Section 125-A of the Act of 1951 reads as under:-

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"125-A. Penalty for filing false affidavit, etc. A candidate who himself or through his proposer, with intent to be elected in an election, (i) fails to furnish information relating to sub-section (1) of section 33-A; or (ii) gives false information which he knows or has reason to believe to be false; or (iii) conceals any information, in his nomination paper delivered under sub-section (1) of section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33-A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both."

16. Section 125-A does not, on its own terms, cast any duty upon the returning officer or the election machinery to undertake a post-election inquiry or to initiate prosecution suo motu, it is a penal provision to be set in motion, if at all, by a private complaint before a competent criminal court. Being an offence punishable with imprisonment extending to six months, cognizance thereof is governed by the limitation prescribed under Section 468(2)(b) of the Code of Criminal Procedure, 1973/Section 514(2)(b) of the Bharatiya Nagarik Suraksha Sanhita, 2023, namely, one year from the date of the commission of the offence. The affidavit in question having been sworn on 30.10.2023, and even reckoning the alleged offence as continuing up to the date of declaration of the election, i.e., 17.11.2023, the period of one year expired on 17.11.2024. The petitioner's complaint dated

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21.03.2025 was thus already barred by limitation under Section 468(2)(b) Cr.P.C./Section 514(2)(b) B.N.S.S. by over four months, quite apart from being addressed to an authority the election machinery which possesses no power to take cognizance of an offence in the first place. No material has been placed on record to make out a case for condonation of this delay under Section 473 Cr.P.C./Section 519 B.N.S.S., which in any event applies only to a court taking cognizance and not to an administrative or quasi judicial authority under the Act of 1951.

17. We may also notice that the petitioner, having himself contested from the same constituency and having had his nomination rejected for want of a party mandate, chose not to raise any objection to the nomination of Respondent No. 5 during the scrutiny stage under Section 36 of the Act of 1951 the only stage at which such an objection, going to the validity of the affidavit or the disclosures made therein, could have been raised before the returning officer in the course of the election process itself. Having permitted that stage to pass without demur, and having thereafter allowed both the period for an election petition under Section 81 and the limitation for a private criminal complaint under Section 468(2)(b) Cr.P.C./Section 514(2)(b) B.N.S.S. to lapse, the petitioner cannot be permitted to achieve, through the circuitous route of an administrative complaint followed by a writ petition, what the statutory scheme of the Act of 1951 does not

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otherwise permit.

18. Turning to the impugned communications dated 09.05.2025 and 11.07.2025, we find that they correctly and lawfully declined to entertain the petitioner's complaint. Once the result of an election is declared under Section 66 of the Act of 1951, the mandate of the returning officer and the district election machinery in relation to that election stands exhausted, and no provision of the Act of 1951 including Sections 33, 33-A and 36, which operate only up to the stage of scrutiny and declaration of validly nominated candidates confers upon that machinery any post-result power to reopen, verify, or adjudicate upon asset disclosures. The exclusive forum for such a challenge, as demonstrated above, is an election petition under Section 81 read with Section 100(1)(d)(i) of the Act of 1951, and the exclusive bar against any other mode of challenge is Article 329(b) of the Constitution. The communications impugned herein, therefore, disclose no error of jurisdiction or illegality on the contrary, they correctly apply the settled constitutional and statutory scheme, and could not have held otherwise without themselves acting without jurisdiction.

19. For the reasons aforesaid, we are of the considered opinion that the writ petition, seeking a mandamus for investigation into a grievance which could have been agitated, if at all, only by way of a timely election petition under Section 81 of the Act of 1951 or a timely private complaint under Section 125-A thereof, and seeking quashment

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of communications that correctly declined jurisdiction consistent with Article 329(b) of the Constitution, is devoid of merit.

20. Accordingly, the writ petition fails and is hereby dismissed. There shall be no order as to costs.

(VIVEK RUSIA)
ACTING CHIEF JUSTICE

(PRADEEP MITTAL)
JUDGE

Praveen

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