Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2991 OF 2017

Kameng Dolo ... **Appellant**

Versus

Atum Welly ... **Respondent**

J U D G M E N T

Dipak Misra, J.

The instant appeal has been preferred under Section 116A of the Representation of the People Act, 1951 (for brevity, "the Act") assailing against judgment and order dated 08.02.2017 whereby the High Court of Gauhati had allowed the Election Petition 2 of 2014 filed by the respondent herein, and declared the election of the appellant herein, from No.12 Pakke-Kessang (ST) Legislative Assembly Constituency (hereinafter referred to as 'constituency'), as void under Section 100(1)(d)(iv) of the Act.

2. The facts necessary for adjudication of the present appeal are that the appellant and the respondent filed their respective nomination papers from the earlier mentioned constituency. No other candidate had filed nomination papers in respect of the said constituency. Respondent's younger brother, Sri Utung Welly was the election agent of the respondent, who was also a registered voter of the constituency. Nomination papers of both the candidates were taken up for scrutiny on 24.03.2014 in the office of the Returning Officer at Seppa where wife and election agent of the respondent were present; and the nomination papers of both the candidates were found to be in order. It is stated that the respondent left Seppa for campaigning in the morning on 25.03.2014 at Rilloh village and on 26.03.2015 he came back to Itanagar and remained there from 26.03.2014 to 30.03.2014. In the evening of 26.03.2014, the respondent learnt about the withdrawal of his candidature telephonically through his supporters and relations and on the same day, the website of State Election Commission displayed withdrawal of candidature by the respondent from the constituency and consequential

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election of the appellant from the said constituency unopposed. Thereafter, the respondent lodged complaint with the Seppa Police Station which was registered as FIR No. 19/2014 under Sections 468 and 469 IPC.

3. As the factual score further depicts, the respondent filed Election Petition before the High Court challenging the legality and validity of the appellant's election, specifically pleading that the provisions of Section 37 of the Act had not been complied with inasmuch as Form V, the prescribed format for withdrawal of candidature, had neither been delivered by the respondent nor his proposer nor his election agent. It was further pleaded that acceptance of respondent's withdrawal had materially affected the election and prayed for declaration for setting aside the election.

4. The appellant filed his written statement contending, inter alia, that the respondent was himself instrumental in withdrawing the candidature; that Returning Officer had found respondent's signature in the withdrawal Form to be genuine; that the person who had submitted the withdrawal from was well known to the respondent and this fact had

been suppressed in the election petition; that to assuage his supporters after their violent reaction, respondent had filed the election petition; that plea of statutory violation alone would not be enough to set aside an election result; that the allegation by the respondent that his signature was forged is an afterthought; that the withdrawal of his nomination papers by the respondent from contesting the election from the said constituency was an act of his own accord and volition; and that the unopposed election of the appellant was as per due procedure of law; and that the election, being totally devoid of merit, deserved dismissal.

5. The High Court, after considering the pleadings, framed the following issues:-

> "1. Whether the petitioner gave any notice in writing in terms of Section 37(1) of the Act, read with Rule 9(1) of the Conduct of Election Rules, 1961 for withdrawal of his candidature from the constituency and delivered the same in a statutorily prescribed manner either personally or through his proposer or election agent so authorised in this behalf in writing by the petitioner?
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> 2. Whether the person who submitted the withdrawal of the nomination form of the petitioner to the Returning Officer of the Constituency was authorised to do so by the petitioner himself?

3. Whether the Returning Officer of the Constituency acted in compliance of the requirements of Section 37(3) of the Act and Rule 9 of the Conduct of Election Rules, 1961 while accepting the notice of withdrawal of petitioner's candidature from the constituency?

4. Whether the Returning Officer of the constituency acted legally in declaring the result of election to Arunachal Pradesh State Legislative Assembly from the constituency under Section 53(2) of the Conduct of Election Rules, 1961 and declaring respondent duly elected uncontested from the said constituency?

5. Whether election of the respondent to the Arunachal Pradesh State Legislative Assembly from the constituency is liable to be held void?

6. Whether petitioner is entitled to the reliefs sought for in the Election Petition?"

6. It was contended before the High Court by the respondent that as per Sections 37(1) and 37(3), the candidature can be withdrawn only by the candidate himself in person or by his proposer or by his election agent authorized in this behalf in writing by the candidate; that the Returning Officer must satisfy himself as to the genuineness of the notice of withdrawal as well as the identity of the person who delivered the notice of the withdrawal and in the instant case there was clear violation

of Section 37 of the Act which had materially affected the outcome of the election inasmuch as when there were only two candidates; and that evidence on record clearly suggested that neither the respondent nor his proposer nor his election agent had submitted the notice of withdrawal and as such the election of the appellant should be declared as void under Section 100(1)(d)(iv) of the Act.

7. Learned counsel for the appellant herein contended before the High Court that election law has to be construed strictly and interpretation must be adopted which upholds the election of the returned candidate and there is no place for equitable consideration in election law.

8. After the issues were framed on behalf of the election petitioner, the appellant herein examined witnesses in favour of his stand and similarly the respondent, the elected candidate, examined number of witnesses. The designated election Judge took note of the rivalised submissions raised at the Bar and noted the decisions relied upon by the election petitioner in support of the stand, that is, ***Durai Muthuswami v. N. Nachiappan and others***[1]***, State (Delhi***

[1] (1973) 2 SCC 45

Administration) v. Pali Ram[2], ***Murari Lal v. State of Madhya Pradesh***[3], ***A. Neelalohithadasan Nadar v. George Mascrene and others***[4], ***Virender Nath Gautam v. Satpal Singh and others***[5], ***Ram Sukh v. Dinesh Aggarwal***[6], ***Jitu Patnaik v. Sanatan Mohakud and others***[7], ***Maria Margarida Sequeira Fernandes and others v. Erasmo Jack De Sequeira (Dead) through LRs.***[8], ***Her Highness Maharani Vijaya Raje Scindhia***[9], ***Jagan Nath v. Jaswant Singh & others***[10], ***Santokh Singh v. Mohan Singh***[11].

9. Learned counsel for the respondent, the elected candidate argued before the High Court that interpretation should be adopted which shall uphold the election of the return candidate and it should not allow any room for any kind of stretched interpretation. It was also urged by him that strict constriction is required and not an equitable one. The learned counsel for the elected candidate, referring to

[2] (1979) 2 SCC 158
[3] (1980) 1 SCC 704
[4] (1994) Supp (2) SCC 619
[5] (2007) 3 SCC 617
[6] (2009) 10 SCC 541
[7] (2012) 4 SCC 194
[8] (2012) 5 SCC 370
[9] AIR 1959 (MP) 109
[10] AIR 1954 SC 210
[11] AIR 1994 (P&H) 258

Section 100 of the Act, highlighted that in the absence of any pleading with regard to corrupt practices, the election of the elected candidate could not be unsettled. He had drawn support from the authority in ***Mangani Lal Mandal v. Bishnu Deo Bhandari***[12]. Additionally, it was urged by him that it is essential that election petitioner should not only breach or non-observe any constitutional or statutory provision, but must establish that such breach or non-observance had materially affected the result of the returned candidate. It was put forth that what had been averred is that, there had been violation of the Section 37 of the Act but nothing has been stated that the said violation in itself materially affected the election result. The High Court posed the question that the real test is whether contravention of the statutory provision alleged to have changed the result of the election and took note of this stance of the candidate whose nomination paper was not accepted and the stand set forth by the elected candidate that the evidence brought on record was not conclusive and the authorities cited by the election petitioner were

[12] (2012) 3 SCC 314

absolutely distinguishable. The elected candidate was extremely critical of the non-examination of star witnesses like Sri Sanjeev Tana and Dr. Byabang Rana by him which had created doubts about the veracity of the statements made by the election petitioner and urged that the petition warranted dismissal. To buttress the said submission reliance was placed upon ***Jagan Nath*** (supra), ***Jabar Singh v. Genda lal***[13], ***South Indian Corporation (P) Ltd v. Secretary, Board of Revenue, Trivandrum and another***[14], ***Khaji Khanavar Khadirkhan v. Siddavanballi Nijalingappa & another***[15], ***Samant N. Balkrishna v. George Fernandez and others***[16], ***Smt. Bhagwan Karu v. Shri Maharaj Krishan Sharma and others***[17], ***Magan Bihari Lal v. State of Punjab***[18], ***Narender Singh v. Mala Ram and another***[19], ***Jeet Mohinder Singh v. Harminder Singh Jassi***[20], ***K.T. Plantation Pvt Ltd v. State of Karnataka***[21], ***T.A.***

[13] (1964) 6 SCR 54
[14] AIR 1964 SC 207
[15] (1969) 1 SCC 636
[16] (1969) 3 SCC 238
[17] (1973) 4 SCC 46
[18] (1977) 2 SCC 210
[19] (1999) 8 SCC 198
[20] (1999) 9 SCC 386
[21] (2011) 9 SCC 1

Ahammed Kabeer v. A.A. Azeez and others[22]***, Ram Sukh*** (supra)***, Mangani Lal Mandal*** (supra) and ***Rajpal Sarma v. State of U.P***[23].

10. The learned judge scanned the anatomy of Section 37 and took note of various principles that emerged from the said provision, and after referring to Sections 83 and 100, which fundamentally deal with material facts, the language employed under Section 100, dwelt upon the evidence on record both oral and documentary analysed the legal provisions and came to hold as follows:-

> "29. The Returning Officer of the constituency at relevant point of time, Sri. Tarin Dakpe deposed as PW 4. He stated that on the last date for filing of nomination papers in the constituency, nomination papers of only two candidates were received, namely, petitioner and respondent. After scrutiny, nomination papers of both the candidates were found to be valid and accordingly accepted. There was no contest in the constituency because candidature of the petitioner was withdrawn, as a result of which only the respondent remained in the fray. 26.03.2014 was the last date for withdrawal of nomination. On that day, around 11.00 hours he received a notice for withdrawal of candidature in Form No. 5 from the petitioner through fax. He did not take cognizance of the same. thereafter, he received a telephone call from Dr. Byabang Rana requesting him to accept withdrawal of

[22] (2003) 5 SCC 650
[23] (2014) 105 ALR 140

candidature of the petitioner as it was signed by the petitioner in his presence. Dr. Rana also informed him that the said Form No.5 was being sent through one Sri Sanjeev Tana. Thereafter, Sri Sanjeev Tana personally came to the office of PW4 at 01.30 pm on 26.03.2014 and handed over the duly filled up Form No.4 in original bearing signature of the petitioner along with his authority letter. He admitted that Sri Sanjeev Tana was neither the proposer nor election agent of the petitioner. However, he got the withdrawal notice affixed in the notice board of his office after 3.00 p.m. thereafter, he declared respondent to be the elected candidate at around 06.00 p.m. of 26.03.2014.

29.1. In his cross-examination, he stated that during the phone call from Dr. Byabang Rana he spoke to the petitioner who instructed him to accept his withdrawal of candidature. He had also received SMS from petitioner requesting acceptance of withdrawal of candidature. Wife of the petitioner approached him personally on 27.03.2014 and wanted to know as to how the withdrawal had taken place. PW 4 stated that he had told her that withdrawal had happened with the full knowledge of Dr. Byabang Rana and petitioner.

30. PW 5, Sri Jamoh was the investigating officer at Seppa PS Case No.19/2014 in his evidence-in-chief, he has stated that investigation of the said case is not complete because he does not have access to the original documents, though in the meanwhile, he had examined seven persons. In the course of examination, he had arrested Sri Sanjeev Tana. In his cross-examination, he stated that though on 26.03.2014 complaint letter was sent to the Superintendent of Police, Seppa through fax, he refused to accept the same because signature of the complainant was not

there."

And again:

> "33. Before moving on to some of the exhibits, it would be appropriate to see what exactly is the testimony of Dr. Byabang Rana, DW 9. Dr. Byabang Rana deposed as DW 9. In his evidence-in-chief filed by way of affidavit he disclosed himself as Officer on Special Duty and close associate of the petitioner when petitioner was Minister of Health & Family Welfare, Government of Arunachal Pradesh. He stated that on 26.03.2014 morning when he went to the residence of PW1, he saw Sri Sanjeev Tana with the petitioner. Petitioner requested him to fill up Form No.5 and accordingly, he filled up Form No.5 by his own hand writing in presence of the petitioner. Petitioner signed form No.5 in his presence. As per instruction of the petitioner, he handed over Form No.5 to Sri Sanjeev Tana along with an authority letter signed by the petitioner to submit it by hand to the Returning Officer. Form No.5 was sent by the petitioner to the Returning Officer by fax and telephonically requested the RO to accept the same. Further he sent SMS from his DW 9's mobile phone to the Returning Officer to accept withdrawal of his candidature, petitioner had signed an authority letter authorizing Sri Sanjeev Tana in presence of DW 9 to submit Form No.5 to the Returning Officer. Cross-examination of this witness was declined by the petitioner.
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> 34. Ext.9 is the authority letter dated 26.03.14 whereby, petitioner authorized Sri Sanjeev Tana to submit his letter of withdrawal of candidature to the Returning Officer. Ext. 9(2) is the signature of the petitioner. Ext.10 is the notice of withdrawal of candidature n Form No.5 and signature of petitioner is Ext. 10(1A). Ext.11 is

the receipt of notice of withdrawal issued by the Returning Officer. Ext.15 is the list of documents which were found on opening of the sealed packet by the Returning Officer on 06.05.2014 in the presence of petitioner and representative of respondent. At SI No.3 thereof corresponding to page 73, it is a photocopy of notice of withdrawal. At SI No.4 corresponding to page 74, it is photo copy of receipt of notice of withdrawal. At SI. No.5 corresponding to page 75, it is photo copy of authority letter of the petitioner authorizing Sri Sanjeev Tana for withdrawal of candidature. At SI No.6 corresponding to page 75 is the notice of withdrawal of candidature in original. Ext.19 is the forensic examination report of Central Forensic Science Laboratory, Guwahati dated 15.05.2014. As per this report prepared by PW 7, the person who wrote the enclosed signatures stamped and marked S1 to S4 and A1 to A16 did not write the red enclosed signature similarly stamped and marked Q2. Regarding ownership of signature marked Q1, no opinion was expressed because it was a copy and also a non-hand written one which he explained in his evidence to mean fax/xerox or photo copy or any other form of reproduction. It was also mentioned that the questioned signatures fundamentally differs from the standard signatures in hand writing characteristics. The differences are fundamental in nature and beyond the range of natural variation. Considering the differences in hand writing characteristics between the questioned and standard set of signatures coupled with signs of imitation observed in the questioned signatures, PW 7 arrived at the opinion of different ownership."

11. Thereafter, the High Court, analysing the framework of Section 100 in the context of Section 37, held thus:

"38. Reverting back to Section 37, as already discussed above in the earlier part of this judgment, sub-section(1) thereof relates to the candidate and sub-section (3) relates to the Returning Officer. As per sub-section (1), a candidate may withdraw his candidature by a notice in writing in Form-5 which must be delivered to the Returning Officer before the appointed time and date. Such delivery should either be by the candidate himself in person or by his proposer or by his election agent who has been authorized in this behalf in writing by the candidate. Therefore, requirement of sub-section (1) is giving of notice of withdrawal in prescribed format by the candidate before the appointed time and date and the same must be delivered to the Returning Officer by any of the three specified persons, namely, candidate himself in person or by his proposer or by his election agent. If it is the election agent, then he must be authorized in this behalf in writing by the candidate.

39. Proceeding to sub-section(3), which deals with the Returning Officer, it says that the Returning Officer shall cause notice to be affixed in some conspicuous place in his office after being satisfied as to the genuineness of the notice of withdrawal and the identity of the person delivering then notice under sub-section(1). Therefore, it is the requirement of law that the Returning Officer must first satisfy himself as to the genuineness of the notice of withdrawal as well as identity of the person delivering the notice under sub-section(1), i.e., whether he is the candidate himself in person or his proposer or his election agent; if he is the election agent, then whether he has been authorized in writing by the candidate himself. Only after being satisfied as to the genuineness of the above two, notice is to be affixed as above.

> 40. In the election petition, petitioner has pleaded in paragraph-8 that he did not write any notice of withdrawal of his candidature. Since he was not present at Seppa on 26.03.2014 and did not write any notice of withdrawal question of him personally delivering such notice to the Returning Officer at Seppa did not arise. He has also stated that he didn't authorize Sri Ravindra Tana or his election agent Sri Utung Welly to write such notice or to deliver the same to the Returning Officer. As a fact, on 26.03.2014, both of them were not at Seppa. The averments from paragraphs 10 to 13 and from paragraphs 16 to 26 of the election petition reflect the steps taken by the petitioner following acceptance of withdrawal of his candidature by the Returning Officer. While in paragraph 27, petitioner has averred that withdrawal of his candidature and acceptance of the same by the Returning Officer were in violation of sub-sections (1) and (3) of Section 37, this is reiterated in paragraphs 28 and 29. In paragraphs 30 and 31, Election petitioner has pleaded they illegal acceptance of his purported withdrawal it candidature had materially affected the result of the Election and therefore unopposed Election of the respondent has been rendered void under section 100(1)(d)(iv) of the Act."

12. The High Court, as is perceptible, took note of the evidence of PW-1, who in his evidence, has categorically stated that he had neither given any notice of withdrawal of candidature nor did he authorise anyone including his proposer or agent to submit such application. PW-4 in his evidence, stated that he received a call from PW-9

requesting him to accept the notice of withdrawal of candidature of the petitioner and DW-9 informed him that notice was being sent through Sri Sanjeev Tana and the said person handed over the notice of withdrawal in Form 5 to PW-4 along with the authority letter. The High Court took note of the fact that the authority letter in original was not available and only a photocopy of the said is available which had been proved as Ext. 9. According to the evidence of DW-9, he stated that he had filled up Form No. 5, i.e., notice of withdrawal in his own hand writing in the presence of the petitioner and who signed the same in his presence whereafter it was handed over to Sri Sanjeev Tana who was present at the time of filing up of Form No. 5 and thereafter Sri Sanjeev Tana went to the Returning Officer with Form No. 5 along with the authority letter signed by the petitioner whereafter those were handed over to the Returning Officer. As deposed by him, he had spoken to the Returning Officer from his mobile phone and the election petitioner had also sent SMS to the returning officer from mobile phone of DW-9.

13. The High Court, as is evident, opined Sri Sanjeev Tana

was neither the candidate himself nor the proposer nor the election agent of the candidate and, therefore, he was not authorized to seek withdrawal of the candidature. As is seen, the High Court placed reliance on ***Her Highness Maharani Vijaya Raje Scindhia*** (supra) wherein it has been held that the violation of the statute must materially affect the result of the election. Thereafter, the High Court referred to the principles stated in ***Jagan Nath*** (supra) that statutory requirement of election letter must be strictly observed and that an election contest is not an action at law or a suit in equity but is purely a statutory proceeding unknown to the common law. It opined that where a statute provides that a thing should be done in a particular manner, it would be done in the manner prescribed and not in any other way. Origin of this basic proposition of law is traceable to the English decision in ***Taylor v. Taylor*** followed by the Privy Council in ***Nazir Ahmed v. The King Emperor***[24]. This rule has since been applied to Indian Courts across jurisprudences. After so stating, the High Court observed:-

[24] AIR 1936 PC 253

> "46. However, it is to be noted that PW7, the expert witness, who had prepared the forensic examination report, opined that the two signatures attributed to the petitioner were not his. Though evidence of PW7 is in the form of an opinion, yet in the context of the evidence adduced, it may be a pointer to possible foul play. However, that is in the realm of criminal investigation and need not detain the Court in this proceeding in view of the finding reached that there was violation of Section 37 of the Act. The expression 'material facts' as appearing in section 83(1)(a) of the Act has neither been defined in the Act nor in the Code of Civil Procedure. Referring to the dictionary meaning, the Supreme Court in Birendra Nath Gautam (supra) held that 'material' means fundamental, vital, basic, cardinal, central, crucial, decisive, essential, pivotal, indispensable, elementary or primary. Thus it was held that the expression 'material facts' would mean those facts upon which the party relies for his claim or defence. What particulars are 'material facts' would depend upon the facts of each case and no rule of universal application can be laid down. However, it is essential that all basic and 'material facts' which must be proved at the trial by the party to establish existence of a cause of action or defence are 'material facts' and must be stated in the pleading by the party. This position has been reiterated by the Supreme Court in Jitu Patnaik (supra)."

14. And adverting to the materially affecting the election of the constituency, the High Court held:-

> "49. Since this has been the main argument of learned counsel for the respondent, a further elaboration of the order extracted above is necessary. The proposition advanced by the

learned counsel for the respondent backed by a series of judicial pronouncements would certainly be acceptable in a case where there are more than two candidates in the fray; say candidates A, B and C or candidates A, B, C and D. in either of the two situations, if candidate C withdraws his candidature, still an electoral contest would be inevitable between candidates A and B in the first situation and between candidates A, B and D in the second situation. Say after the electoral contest, candidate B emerges victorious. In such a scenario, candidate C, whose candidature was withdrawn and if he challenges acceptance of such withdrawal, he has not only to plead and prove violation of section 37 of the Act but has also to plead and prove that such violation had materially affected the election of candidature B. This is precisely what was held in Vijaya Raje Scindhia (supra). But as has been held by this Court in the order dated 27.10.2014 as extracted above, in a case where there are only two candidates in the electoral fray, namely candidates A and B, and if candidate A withdraws his candidates A and B, and if candidate A withdraws his candidature and such withdrawal is contended to be illegal being in violation of section 37 of the Act relating to withdrawal of candidature of candidate A would materially affect the election inasmuch as candidate B would automatically stand elected unopposed.

50. It is true that it is a well settled proposition that election of a candidate who has won at an election should not be lightly interfered with. But at the same time, it has also to be borne in mind that one of the essentials of election law is to safeguard the purity of the election process and to see that people do not get elected by flagrant breaches of that law or by corrupt practices. In the instant case, as discussed above, there was

> no contest at all and there can be no manner of doubt that there was flagrant breach of section 37 of the Act leading to unopposed election of the respondent."

15. In view of the aforesaid analysis, it opined that the election had been materially affected and accordingly declared the election result dated 15.03.2014 as void under Section 100(1)(d)(iv) of the Act. Being of this view, it allowed the election petition.

16. At the commencement of the hearing, we have heard Mr. Soli Sorabjee, learned senior counsel and on the adjourned date, Mr. Preetesh Kapur, learned counsel for the appellants addressed the Court. We have heard Mr. C.A. Sundaram and Mr. Subramonium Prasad, learned senior counsel for the respondent.

17. Before we delve into the legal position, the statutory provisions are to be kept in view. Part V of the Act deals with the conduct of elections. Section 30 provides for appointment of date for nomination. Section 31 stipulates that Returning Officer shall give notice of the intended election in such form and manner as may be prescribed inviting nominations of candidates for such election and

specifying the place at which the nomination papers are to be delivered. Section 32 deals with the nomination of candidates for election and Section 33 provides for presentation of nomination paper and requirements for a valid nomination. Section 33A postulates what information the candidates shall furnish apart from any information which he is required to furnish under the Act or the Rules framed hereunder. Be it noted, Section 33A came into force with effect from 24.8.2002. It is also worthy to note here that Section 33B was inserted stating that candidate to furnish information only made under the Act and the Rules vide Amendment Act 72 of 2002 with effect from 2.5.2002, but that has been struck down as unconstitutional by this Court in ***People's Union for Civil Liberties v. Union of India***[25]. Section 34 deals with deposits and Section 35 provides for notice of nominations and the time and place of their scrutiny and Section 36 deals with scrutiny of nominations. As has been held earlier, it is an admitted position that the nominations papers of the appellant and the respondent were scrutinised and they were found to be

[25] (2003) 4 SCC 399

valid.

18. Section 37 of the Act is the provision that calls for interpretation in this case. The said Section reads as follows:-

> "37. Withdrawal of candidature.—
>
> (1) Any candidate may withdraw his candidature by a notice in writing which shall contain such particulars as may be prescribed and shall be subscribed by him and delivered before three O'clock in the afternoon on the day fixed under clause (c) of section 30 to the returning officer either by such candidate in person or by his proposer, or election agent who has been authorised in this behalf in writing by such candidate.
>
> (2) No person who has given a notice of withdrawal of his candidature under sub-section (1) shall be allowed to cancel the notice.
>
> (3) The returning officer shall, on being satisfied as to the genuineness of a notice of withdrawal and the identity of the person delivering it under sub-section (1), cause the notice to be affixed in some conspicuous place in his office."

19. On plain reading of the said provision, it is clear as crystal that a candidate is entitled to withdraw the candidature by notice in writing and the said notice shall contain such particulars as may be prescribed and the said notice shall be signed by him and delivered before three

O'clock in the afternoon on the date fixed under Clause (c) of Section 30 to the Returning Officer. Clause (c) of Section 30 reads as follows:-

> "(c) the last date for the withdrawal of candidatures, which shall be the second day after the date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday"

20. Thus, the candidate has to comply with the Clause (c) of Section 30 and the notice has to be in writing, it shall contain such particulars as may be prescribed and it shall be subscribed to him and delivered as stipulated under Clause (c) of Section 30 to the Returning Officer. The said notice, as sub-section (1) of Section 37 lays down, is to be delivered to the Returning Officer either by the candidate in person or by his proposer or election agent who has been authorised in this behalf in writing by such candidate. Be it noted, sub-section (2) of Section 37 prescribes that no person who has given a notice of withdrawal of his candidature under sub-section (1) shall be allowed to cancel the notice. That reflects the sanctity of withdrawal by a candidate. Sub-section (3) of Section 37, as is manifest, makes its obligatory on the part of the Returning Officer to

be satisfied as to the genuineness of the notice of withdrawal and the identity of the person delivering it. Thereafter, he shall cause the notice to be affixed in some conspicuous place in his office.

21. In the case at hand, from the evidence of the Returning Officer, it is explicit that withdrawal of the candidature was not made by the candidate or by his proposer or his election agent. The evidence of the Returning Officer reads as follows.

> "26.03.2014 was the last date for withdrawal for nomination. On that date around 1100 hrs., I received a duly filled Form No. 5 i.e., a notice for withdrawal through fax from Sri Atum Welly, BJP candidate for 12 Pakke Kesang Legislative Assembly Constituency, but I did not take cognizance of the same. Thereafter, I received a telephonic call from Dr. Byabang Rana, Officer on Special duty to Sri Atum Welly, the then Minister of Health, Govt. of Arunachal Pradesh, requesting me to accept the withdrawal of nomination of Sri Atum Welly, as according to Dr. Byabang Rana the said Form No. 5 was signed by Sri Atum Welly in the presence of Dr. Byabang Rana."
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> x x x x x x x x x
>
> "Since I know Sri Sanjeev Tana personally, I also know that during the relevant point of time i.e. 2014 Arunachal Pradesh Legislative Assembly election, Sri Tana Sanjeev was neither a proposer nor the election agent of Sri Atum Welly for 12 Pakke Kesang (ST) Legislative Assembly

> Constituency. Under the law, it is only either the candidate personally, the proposer or election agent duly authorised by candidate are competent and eligible to file Form No. 5 for withdrawal of nomination of a candidate."

22. From the aforesaid evidence, it is quite luminous that neither the candidate delivered the notice of withdrawal nor his proposer nor his election agent and there was no authorisation for the same to the proposer or election agent. To elucidate, if the candidate gives the notice himself ascribing to it, there can be no confusion. The only thing that the Returning Officer has to see is to verify the identity of the candidate and genuineness of the signature. The other two categories who can issue the notice has to satisfy certain conditions precedent. The notice has to be in writing, the proposer or the election agent must be in that capacity and they must have been authorised in this behalf in writing by such candidate. In the present case, there has been total non-compliance of Section 37 of the Act.

23. The seminal question that emanates for consideration is what is the effect of acceptance of such withdrawal of the candidature that is in total non-compliance with the law. Mr. Sorabjee argued that though withdrawal of the

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candidature is treated to be non-compliant with the statutory provisions, yet it is obligatory on the part of the elected candidate to satisfy the court or the election tribunal that it has materially affected the election. The said argument was carried forward by Mr. Kapur on the next date. Emphasis has been laid on Section 100 of the Act. Section 100 of the Act deals with the grounds for declaring election to be void. For apposite appreciation, the provision is reproduced in entirety:

> "100. Grounds for declaring election to be void.—
>
> (1) Subject to the provisions of sub-section (2) if the High Court is of opinion—
>
> (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963)]; or
>
> (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
>
> (c) that any nomination has been improperly rejected; or
>
> (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent other than his election agent, of any corrupt practice but the High Court is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the High Court may decide that the election of the returned candidate is not void."

24. It is submitted by the learned counsel for the appellant that Section 100(1)(d) is inextricably connected with the concept and election being materially affected and unless that is proven or established, an election cannot be set aside. In this regard, learned counsel for the appellant has commended us to certain authorities and we shall refer to the same.

25. In ***Mangani Lal Mandal*** (supra), this Court was dealing with an appeal arising from the judgment passed by the High Court of Patna where the election of the appellant was set aside. To set aside the election, the High Court heavily placed reliance upon two decisions of this Court, namely, ***Union of India v. Association for Democratic Reforms***[26] and ***People's Union for Civil Liberties*** (supra) and held that suppression of facts by the returned candidate with regard to the assets and liability of his first wife and dependent children born in that wedlock was breach of Article 19(1)(a) and for such breach and non-compliance the candidate who had not complied with and

[26] (2002) 5 SCC 294

breached right to information of electors and on the election to suffer consequence of such non-compliance and breach and accordingly set aside the election. This Court, after reference to Section 100(d)(iv) came to hold as follows:-

> "10. A reading of the above provision with Section 83 of the 1951 Act leaves no manner of doubt that where a returned candidate is alleged to be guilty of non-compliance with the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder and his election is sought to be declared void on such ground, it is essential for the election petitioner to aver by pleading material facts that the result of the election insofar as it concerned the returned candidate has been materially affected by such breach or non-observance. If the election petition goes to trial then the election petitioner has also to prove the charge of breach or non-compliance as well as establish that the result of the election has been materially affected. It is only on the basis of such pleading and proof that the Court may be in a position to form opinion and record a finding that breach or non-compliance with the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder has materially affected the result of the election before the election of the returned candidate could be declared void.
>
> 11. A mere non-compliance or breach of the Constitution or the statutory provisions noticed above, by itself, does not result in invalidating the election of a returned candidate under Section 100(1)(*d*)(*iv*). The sine qua non for declaring the election of a returned candidate to be void on the ground under clause (*iv*) of Section 100(1)(*d*) is further proof of the fact that such breach or non-

> observance has resulted in materially affecting the result of the returned candidate. In other words, the violation or breach or non-observation or non-compliance with the provisions of the Constitution or the 1951 Act or the rules or the orders made thereunder, by itself, does not render the election of a returned candidate void Section 100(1)(*d*)(*iv*). For the election petitioner to succeed on such ground viz. Section 100(1)(*d*)(*iv*), he has not only to plead and prove the ground but also that the result of the election insofar as it concerned the returned candidate has been materially affected. The view that we have taken finds support from the three decisions of this Court in: (*1*) *Jabar Singh* v. *Genda Lal*[27]; (*2*) *L.R. Shivaramagowda* v. *T.M. Chandrashekar*[28]; and (*3*) *Uma Ballav Rath* v. *Maheshwar Mohanty*[29]."

26. After so holding, the Court opined that in the entire election petition there was no pleading at all that suppression of the information by the returned candidate in the affidavit filed along with nomination papers with regard to first wife and dependent children from her and non-disclosure of that assets and liabilities materially affected the result of the election.

27. The analysis of the aforesaid dictum makes it graphically clear that to sustain the ground as stipulated under Section 100(1)(d)(iv), the election petitioner is

[27] AIR 1964 SC 1200
[28] (1999) 1 SCC 666
[29] (1999) 3 SCC 357

required not only to plead and prove the ground but also to establish the result of the election of the returned candidate concerned has been materially affected. In this context, it is fruitful to refer to the law enunciated in ***Santosh Yadav v. Narender Singh***[30]. In the said case, there were 17 candidates including the appellant and the respondent who remained in the fray of contest in the constituency in question. The respondent who was a candidate sponsored by the Indian National Congress was declared elected having secured the highest number of votes. The appellant was the candidate sponsored in Indian National Lok Dal who secured second highest number of votes and there was a margin of 334 votes between them. In the election petition filed by the appellant before the High Court, one of the grounds taken in the election petition was that nomination of Narender Singh was improperly accepted as he had been convicted under Section 30B and Section 498A IPC and was sentenced to undergo rigorous imprisonment for seven years and one year respectively apart from fine. Be it noted, the High Court, in appeal, had suspended execution of the

[30] (2002) 1 SCC 160

sentence of imprisonment. The learned designated Election Judge of the High Court refused to set aside the election of the respondent as, in his opinion, the election petitioner had failed in discharging the onus of proof that the result of the election insofar as it concerns the respondent, the returned candidate, had been materially affected. This Court posed the question whether the High Court was right in forming the opinion that on established facts and circumstances of the case, the appellant had failed in proving that the election of the respondent was materially affected by improper acceptance of the nomination papers of Naresh Yadav. Dealing with the same, the Court held:

> "9. A few decisions were cited at the Bar and it will be useful to make a review thereof. In *Vashist Narain Sharma* v. *Dev Chandra*[31] the candidate whose nomination was improperly accepted had secured 1983 votes while the margin of votes between the winning candidate and the next-below candidate was 1972. This Court held that having been called upon to record a finding that "the result of the election has been materially affected", the result should not be judged by the mere increase or decrease in the total number of votes secured by the returned candidate but by proof of the fact that wasted votes would have been so distributed between the contesting candidates as would have brought about the

[31] AIR 1954 SC 513

defeat of the returned candidate. The Court emphasized the need of proof by affirmative evidence and discarded the test of a mere possibility to say that the result could have been different in all probability. The question is one of fact and has to be proved by positive evidence. The Court observed that the improper acceptance of a nomination paper may have, in the result, operated harshly upon the petitioner on account of his failure to adduce the requisite positive evidence but the Court is not concerned with the inconvenience resulting from the operation of the law. The Court termed it "impossible" to accept the ipse dixit of witnesses coming from one side or the other to say that all or some of the votes would have gone to one or the other on some supposed or imaginary ground. In *Samant N. Balkrishna* v. *George Fernandez* this Court recognized that proof of material effect on the result of the election insofar as a returned candidate is concerned on account of a miscarriage occasioned by improper acceptance of nomination paper at an election may be a simple impossibility. The Judge has to enquire how the election would have gone if the miscarriage would not have happened and that enquiry would result virtually placing the election not in the hands of the constituency but in the hands of the Election Judge. The Court held that neither could the matter be considered on possibility nor was there any room for a reasonable judicial guess. The law requires proof; how far that proof should go or what it should contain is not provided by the legislature; but the insistence on proof cannot be dispensed with. In *Shiv Charan Singh* v. *Chandra Bhan Singh*[32] this Court pointed out that proof of material effect on the result of the election in a case of improper acceptance of nomination paper involved the harsh and difficult burden of proof being

[32] (1988) 2 SCC 12

> discharged by the election petitioner adducing evidence to show the manner in which the wasted ballots would have been distributed amongst the remaining validly nominated candidates and in the absence of positive proof in that regard the election must be allowed to stand and the court should not interfere with the election on speculation and conjectures."

28. Thereafter, the Court referred to ***Tek Chand* v. *Dile Ram***[33] wherein it has been held that:

> "..the mere fact that the number of votes secured by a candidate whose nomination paper was improperly accepted, was greater (more than three times in that case) than the margin of the difference between the votes secured by the returned candidate and the candidate securing the next higher number of votes, was not by itself conclusive proof of material effect on the election of the returned candidate."

29. Thereafter, the Court summed up the law as regards the result of election having been materially affected in case of improper acceptance of nomination papers. They are as follows:-

> "2. Merely because the wasted votes are more than the difference of votes secured by the returned candidate and the candidate securing the next highest number of votes, an inference as to the result of the election having been materially affected cannot necessarily be drawn. The issue is one of fact and the onus of proving it lies upon the petitioner.

[33] (2001) 3 SCC 290

> 3. The burden of proving such material effect has to be discharged by the election petitioner by adducing positive, satisfactory and cogent evidence. If the petitioner is unable to adduce such evidence the burden is not discharged and the election must stand. This rule may operate harshly upon the petitioner seeking to set aside the election on the ground of improper acceptance of a nomination paper, but the court is not concerned with the inconvenience resulting from the operation of the law. Difficulty of proof cannot obviate the need of strict proof or relax the rigour of required proof.
>
> 4. The burden of proof placed on the election petitioner is very strict and so difficult to discharge as nearing almost an impossibility. There is no room for any guesswork, speculation, surmises or conjectures i.e. acting on a mere possibility. It will not suffice merely to say that all or the majority of wasted votes might have gone to the next highest candidate. The law requires proof. How far that proof should go or what it should contain is not provided by the legislature.
>
> 5. The casting of votes at an election depends upon a variety of factors and it is not possible for anyone to predicate how many or which proportion of the votes will go to one or the other of the candidates. It is not permissible to accept the "ipse dixit" of witnesses coming from one side or the other to say that all or some of the votes would have gone to one or the other on some supposed or imaginary ground."

30. After such summation, the Court analysed the materials on record and concurred with the view of the High

Court that the appellant, election petitioner, had failed in discharging the heavy burden which lay on her of proving that the result of election, insofar as it concerns the returned candidate, had been materially affected by improper acceptance of the nomination of Shri Naresh Yadav.

31. To sustain the conclusion of the High Court, the Court analysed the evidence and recorded the following finding:-

> "It needs hardly any evidence to hold, as one can safely assume that the appellant must have openly and widely propagated herself as INLD candidate and made it known to the constituency that she was the official candidate sponsored by INLD and Shri Naresh Yadav was not an INLD-sponsored candidate and was a defector. Therefore, it is difficult to subscribe to the suggested probability that any voter committed to INLD ideology would have still voted for Shri Naresh Yadav merely because he had for a period of two years before defection remained associated with INLD."

32. Learned senior counsel for the appellant has drawn our attention to the authority in ***Rajendra Kumar Meshram v. Vanshmani Prasad Verma***[34]. In the said case, the two-Judge Bench while dealing with the violation under Section 100(1)(d) opined:-

[34] (2016) 10 SCC 715

> "10. Under Section 100(1)(*d*), an election is liable to be declared void on the ground of improper acceptance of a nomination if such improper acceptance of the nomination has materially affected the result of the election. This is in distinction to what is contained in Section 100(1)(*c*) i.e. improper rejection of a nomination which itself is a sufficient ground for invalidating the election without any further requirement of proof of material effect of such rejection on the result of the election. The above distinction must be kept in mind. Proceeding on the said basis, we find that the High Court did not endeavour to go into the further question that would be required to be determined even if it is assumed that the appellant returned candidate had not filed the electoral roll or a certified copy thereof and, therefore, had not complied with the mandatory provisions of Section 33(5) of the 1951 Act.
>
> 11. In other words, before setting aside the election on the above ground, the High Court ought to have carried out a further exercise, namely, to find out whether the improper acceptance of the nomination had materially affected the result of the election. This has not been done notwithstanding Issue 6 framed which is specifically to the above effect. The High Court having failed to determine the said issue i.e. Issue 6, naturally, it was not empowered to declare the election of the appellant returned candidate as void even if we are to assume that the acceptance of the nomination of the returned candidate was improper."

33. As we find from the aforesaid two paragraphs, the Court has drawn distinction between improper acceptance of a nomination for such improper acceptance of the

nomination has to materially affect the result of the election and the case of improper rejection of a nomination which itself is a sufficient ground for invalidating the election without any further requirement of proof or material effect of such rejection on the result of the election. The first one comes under Section 100(1)(d), the second one comes under Section 100(1)(c).

34. Relying on the said decision, it is contended by the learned counsel for the appellant that whether the proof of material effect on the result of the election is required when there is illegal acceptance of a nomination paper. In this context, placing reliance on the decision of ***Santosh Yadav*** (supra), he would contend that there is a necessity for proof by affirmative evidence that the result would have been different in all probability and the question being one of a fact, has to be proved by positive evidence.

35. At this stage, we are required to come back to Section 37 of the Act. It is imperative to note here that sub-Section (3) of Section 37 was substituted by Act 40 of 1981. The said provision requires the satisfaction of the returning officer as to the genuineness of the notice of withdrawal and

the identity of the person delivering it. The words have their own significance. The language employed in Section 37, as submitted by Mr. Sundaram, learned senior counsel for the respondent, cannot be diluted. Learned senior counsel would submit that if there is no election, the question of materially affecting the election does not arise. It is urged by him that in such a situation, especially in this case, when there are two candidates one from INC who is an elected candidate by default and other from another national party, i.e., BJP, the issue of withdrawal becomes extremely significant.

36. In ***Rattan Anmol Singh & Ram Prakash v. Ch. Atma Ram and others***[35], while dealing with the satisfaction of the returning officer, the Court held:

> "...when the law requires the satisfaction of a particular officer at a particular time his satisfaction can be dispensed with altogether. In our opinion, this provision is as necessary and as substantial as attestation in the cases of a will or a mortgage and is on the same footing as the "subscribing" required in the case of the candidate himself. If there is no signature and no mark the form would have to be rejected and their absence could not be dismissed as technical and unsubstantial. The "satisfaction" of the

[35] AIR 1954 SC 510

> Returning Officer which the rules require is not, in our opinion, any the less important and imperative."

37. In this regard, the decision of the Constitution Bench in ***Surendra Nath Khosla v. S. Dalip Singh***[36], is of immense significance. In the said case, the returning officer accepted all the nomination papers except that of one Buta Singh who did not take any further steps though his nomination was rejected. One Dalip Singh, the first respondent filed an election petition. The question was referred to the Constitution Bench to determine whether the burden of proof is on the person who seeks to challenge the election and that he must prove that the result of the election has been materially affected by the improper rejection of the nomination paper. Thereafter, the larger Bench, after referring to earlier decisions held that:

> "A Division Bench of this Court has laid down in the case of *Chatturbhuj Vithaldas Jasani* v. *Moreshwar Parashram*[37] at p. 842 that the improper rejection of a nomination paper "affects the whole election". A similar view was taken in the case of *Karnail Singh* v. *Election Tribunal, Hissar*[38], by a Bench of five Judges of this Court. But, as pointed out on behalf of the appellants, in

[36] AIR 1957 SC 242
[37] 1954 SCR 817
[38] 10 Elec. Law Reports 189

neither of those two cases the relevant provisions of the Act have been discussed. It appears that though the words of the section are in general terms with equal application to the case of improper acceptance, as also of improper rejection of a nomination paper, case law has made a distinction between the two classes of cases. So far as the latter class of cases is concerned, it may be pointed out that almost all the Election Tribunals in the country have consistently taken the view that there is a presumption in the case of improper rejection of a nomination paper that it has materially affected the result of the election. Apart from the practical difficulty, almost the impossibility, of demonstrating that the electors would have cast their votes in a particular way, that is to say, that a substantial number of them would have cast their votes in favour of the rejected candidate, the fact that one of several candidates for an election had been kept out of the arena is by itself a very material consideration. Cases can easily be imagined where the most desirable candidates from the point of view of electors and the most formidable candidate from the point of view of the other candidates may have been wrongly kept out from seeking election. By keeping out such a desirable candidate, the officer rejecting the nomination paper may have prevented the electors from voting for the best candidate available. On the other hand, in the case of an improper acceptance of a nomination paper, proof may easily be forthcoming to demonstrate that the coming into the arena of an additional candidate has not had any effect on the election of the best candidate in the field. The conjecture therefore is permissible that the legislature realising the difference between the two classes of cases has given legislative sanction to the view by amending Section 100 by the Representation of the People (Second Amendment) Act, 27 of 1956, and by going to the length of providing that an

> improper rejection of any nomination paper is conclusive proof of the election being void. For the reasons aforesaid, in our opinion, the majority decision on the fourth issue is also correct."
>
> [emphasis supplied]

38. In this regard, learned counsel for the respondent has drawn our attention to the Constitution Bench decision in ***Vishwanatha Reddy v. Konappa Rudrappa Nadgouda***[39]. In the said case, there were only two contesting candidates and one of them was under a statutory disqualification. The Court held that Section 53 of the Act renders the poll necessary if there are more candidates contesting the election than the number of seats contested. The Court distinguished the rule enunciated by the courts in the United Kingdom and stated that same cannot be extended to the trial of disputes under our election law, for it is not consistent with our Indian Statute Law and in any case the conditions prevailing in our country do not justify the application of the rule. Analysing further, where there are only two contesting candidates and one suffers a statutory disqualification, the Court held:

[39] AIR 1969 SC 604

".. When there are only two contesting candidates, and one of them is under a statutory disqualification, votes cast in favour of the disqualified candidate may be regarded as thrown away, irrespective of whether the voters who voted for him were aware of the disqualification. This is not to say that where there are more than two candidates in the field for a single seat, and one alone is disqualified, on proof of disqualification all the votes cast in his favour will be discarded and the candidate securing the next highest number of votes will be declared elected. In such a case, question of notice to the voters may assume significance, for the voters may not, if aware of the disqualification have voted for the disqualified candidate.

And again:

"13. The view that we are taking is consistent with the implication of Cl. (b) of Section 101. When in an election petition which complies with Section 84 of the Act it is found at the hearing that some votes were obtained by the returned candidate by corrupt practices, the Court is bound to declare the petitioner or another candidate elected if, but for the votes obtained by the returned candidate by corrupt practice, such candidate would have obtained a majority of votes. In case falling under Clause (b) of Section 101 the Act requires merely proof of corrupt practice, and obtaining votes by corrupt practice: it does not require proof that the voters whose votes are secured by corrupt practice had notice of the corrupt practice. If for the application of the rule contained in Clause (b) notice to the voters is not a condition precedent, we see no reason why it should be insisted upon in all cases under Clause (a). The votes obtained by corrupt practice by the returned candidate, proved to be guilty of corrupt practice, are

> expressly excluded in the computation of total votes for ascertaining whether a majority of votes had been obtained by the defeated candidate and no fresh poll is necessary. The same rule should, in our judgment, apply when at an election there are only two candidates and the returned candidate is found to be under a statutory disqualification existing at the date of filling of the nomination paper."
>
> [emphasis added]

39. The Constitution Bench in ***Surendra Nath Khosla*** (supra) has opined that there is a clear distinction between rejection of nomination papers and acceptance of nomination papers. It has stated about the path to follow. In ***Vishwanatha Reddy*** (supra), the Court has categorically laid down the distinct principle where there are two candidates in the fray.

40. It is unmistakably noticeable from the above enunciation of law that this Court has carved out a separate and distinct principle. Be it noted, it has been clearly held that when there is disqualification existing at the date of filing of nomination paper, and it has been found to be correct, no fresh poll is necessary.

41. The present case has its own distinct characteristics. There were only two candidates in the fray, one from the

Indian National Congress and the other from the Bhartiya Janata Party. The election petitioner while campaigning came to know that his nomination papers were withdrawn. As a prudent man he lodged an FIR. We are really not concerned with the initiation of criminal action. We are singularly concerned with the interpretation of Section 37 of the Act and the illegal acceptance of withdrawal of a candidature by the returning officer. As the provision would reflect, the legislature has provided number of safeguards before exercising the authority for acceptance of withdrawal of a candidate. The language employed in Section 37 of the Act is absolutely plain, unambiguous and unequivocal. It only admits of a singular interpretation. It is because the intention of the Parliament is that due care and caution has to be taken in letter and spirit so that no confusion is created. The issue of alert and careful exercise gains more significance when there are two candidates and that too from two National Parties. From this, it may not be understood, there will be any difference if there are two candidates, one from a National Party and the other from a regional party. The emphasis is on "two candidates" because

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if one's withdrawal is allowed in complete violation of the statutory provision, the other candidate gets automatically declared elected, for there is no election, no contest.

42. When there is no contest, and a desirable candidate for some reason is kept out of fray, the principle laid down in ***Vishwanatha Reddy*** (supra) has to be made applicable. We are disposed to think so, when in transgression of the statutory provision, a candidate's candidature is allowed to be withdrawn, it will tantamount to sacrilege of democracy. That is why, the mandate of Section 37 of the Act has been so carefully worded. The legislature has taken pains to provide safeguards since illegal acceptance of withdrawal has the potentiality to destroy the base of democracy and corrode its primary roots. The principle stated in ***Krishnamoorthy v. Sivakumar***[40], are to the effect that the sanctity of the electoral process imperatively commands that each candidate owes and is under an obligation that a fair election is held and freedom in the exercise of the judgment which engulfs a voter's right, a free choice, in selecting the candidate whom he believes to be best fitted to

[40] (2015) 3 SCC 467

represent the constituency, has to be given due weightage, are never to be eroded. The responsibility of a returning officer being statutorily significant, he has to keep himself alive to every facet and not act in a manner that will create a dent or hollowness in the election process.

43. In view of the aforesaid, there is no merit in this appeal and the same stands dismissed. There shall be no order as to costs.

.....J.
[Dipak Misra]

.....J.
[A.M. Khanwilkar]

New Delhi
May 09, 2017

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