UKHC010049992022

2026:UHC:10467

Judgment reserved on:-28.09.2026
Judgment delivered on:-18.11.2026

HIGH COURT OF UTTARAKHAND AT NAINITAL

Election Petition No.3 of 2022

Puran Singh Fartyal .....Petitioner

Vs.

Kushal Singh and others .....Respondents

Presence:-
Mr. S.P. Jain, learned Senior Advocate, through video conferencing, assisted by Mr. Sanjay Bhatt, learned counsel for the petitioner.
Mr. Piyush Garg, learned Senior Advocate assisted by Mr. Raghav Singhal, learned counsel for respondent no.1.

Hon'ble Pankaj Purohit, J.

The present election petition has been filed by the election petitioner, Puran Singh Fartyal, under Sections 80, 80-A and 84 read with Section 100 of the Representation of the People Act, 1951 (hereinafter referred to as "Act of 1951"), calling in question election of Khushal Singh Adhikari, returned candidate (respondent no.1) from 54-Lohaghat Assembly Constituency in the State of Uttarakhand, result of which was declared on 10.03.2022. Election of the returned candidate has been challenged, *inter alia*, on the grounds of alleged disqualification under Section 9-A of Act of 1951, non-compliance with statutory requirements governing filing of affidavit in Form 26, and concealment of material facts and furnishing of incorrect declarations therein. The election petitioner seeks to have election of returned candidate declared void on grounds set out in election petition.

Brief Facts of the Case

2. Facts of the case are that election to the Uttarakhand Legislative Assembly from 54-Lohaghat Assembly Constituency was held in the year 2022, and Khushal Singh Adhikari was declared elected on 10.03.2022. The election petitioner has challenged election of returned candidate, alleging that he was disqualified under Section 9-A of Act of 1951, on account of subsisting contracts relating to government works. It is further alleged that nomination of returned candidate was improperly accepted on account of non-compliance with Rule 4-A of the Conduct of Elections Rules, 1961 (hereinafter referred to "Rules of 1961"), and that material facts were concealed and incorrect declarations were made in the affidavit in Form 26 accompanying his nomination papers. The returned candidate had filed his nomination papers on 24.01.2022. The controversy regarding Form 26 arose from alleged deficiencies in the affidavit initially submitted along with nomination papers and subsequent filing of a supplementary affidavit on 28.01.2022, before scrutiny of nomination papers. The election petitioner has also questioned declaration made by the returned candidate in Form 26 regarding contracts with Government and other specified entries, including contracts undertaken through a partnership firm.

Pleadings on Behalf of the Election Petitioner

3. The election-petitioner in his election-petition has pleaded that the returned candidate was disqualified from being chosen as a member of the Uttarakhand Legislative Assembly in view of Section 9-A of Act of 1951. It is pleaded that the returned candidate was engaged in execution of government works as a registered contractor and that contracts relating to such works were subsisting at relevant time. According to the election petitioner, the

returned candidate was, therefore, not qualified to contest election from 54-Lohaghat Assembly Constituency, and his nomination paper ought not to have been accepted.

4. It is further pleaded that the returned candidate failed to furnish requisite particulars in the affidavit in Form 26 accompanying his nomination papers, as required under Rule 4-A of the Rules of 1961. The election petitioner has questioned acceptance of nomination paper on the ground that the affidavit initially furnished by the returned candidate contained deficiencies and did not comply with prescribed requirements.

5. The election petitioner has also alleged that the returned candidate concealed material information concerning his contractual engagements and business interests. In particular, it is pleaded that, notwithstanding his involvement in contractual works, the returned candidate declared relevant particulars concerning contracts, including those relating to partnership firms, as "not applicable" in Form 26. According to the election petitioner, these declarations were incorrect and amounted to suppression of material facts required to be disclosed by a candidate contesting an election.

6. On the aforesaid grounds, the election petitioner has sought a declaration that election of the returned candidate is void under provisions of Act of 1951.

Pleadings on Behalf of the Returned Candidate

7. The returned candidate, in his written statement, has denied allegations levelled by the election petitioner and has contested maintainability of the election petition. His case is that election petition does not disclose any ground warranting setting aside of his election under

provisions of the Act of 1951. With regard to allegation of disqualification under Section 9-A of the Act of 1951, the returned candidate has disputed that any subsisting contract of the nature contemplated under said provision rendered him disqualified from contesting election. His defence is that contractual arrangements relied upon by the election petitioner do not establish existence of a subsisting contract between the returned candidate and the appropriate Government within meaning of Section 9-A of Act of 1951. He has also relied upon his case that he had sought surrender of his registration certificate as a contractor and had retired from partnership firm before the election.

8. As regards allegations concerning the affidavit in Form 26, the returned candidate has denied having concealed any material information or furnished any false declaration in his nomination papers. His case is that the affidavit was furnished in accordance with prescribed requirements and that deficiencies, if any, in the affidavit initially submitted were subsequently rectified by filing a supplementary affidavit before scrutiny of nomination papers. He has, therefore, disputed the allegation that his nomination was improperly accepted for non-compliance with Rule 4-A of the Rules of 1961.

9. The returned candidate has further denied that declarations made in Form 26 concerning contracts and business interests were false or misleading. He has disputed the election petitioner's assertion that particulars in question were required to be disclosed in the manner alleged and has maintained that no material fact was suppressed so as to render his nomination invalid or his election liable to be set aside. On the aforesaid grounds, the

returned candidate has sought dismissal of the election petition.

Issues Framed by the Court

10. On the basis of pleadings of parties, following issues were framed by this Court via order dated 03.08.2022:

(1) Whether on 24.01.2022, when respondent no.1 filed nomination papers for contesting Legislative Assembly election of Uttarakhand from 54, Lohaghat Assembly Constituency, there subsisted contract(s) entered into by respondent no.1 in course of his trade or business with State Government, as alleged in paragraphs 10, 11, 12, 15, 16, 17, 18 & 19 of the Election Petition? If so, its effect?

(2) What is the effect of non-submission of an affidavit sworn by respondent no.1 before a Magistrate of First Class or Notary in Form 26, while delivering to the Returning Officer nomination papers, as required under Rule 4A of the Rules of 1961?

(3) Whether the returned candidate concealed material facts and filed a false affidavit in Form 26, as alleged in paragraphs 8, 9 and 10 of the Election Petition?

(4) Whether the affidavit, which is filed by the petitioner with regard to alleged corrupt practice, is not as per Section 83 of the Act of 1951 read with Rule 94-A of the Rules of 1961, as alleged in paragraph nos. 1(e) & (f) under the caption of Preliminary Objections in the written statement filed by the respondent no.1? If so, its effect?

(5) Whether annexures filed with the Election Petition are not in accordance with sub-section (2) of Section 83 of Act

of 1951, as alleged in paragraph no.1(g) under the caption of Preliminary Objections in the written statement filed by respondent no.1? If so, its effect?

(6) Whether petitioner did not verify documents as required under Section 81(3) of Act of 1951, as alleged in paragraph no.1(m) under the caption of Preliminary Objections in the written statement filed by the respondent no. 1? If so, its effect?

(7) Whether the Election Petition is bad for non-compliance of provision of Section 83(1)(c) of the paragraph, as alleged in para 1(i) under the caption of Preliminary Objections in the written statement filed by respondent no.1? If so, its effect?

Procedural History and Preliminary Objection

11. Upon institution of election petition, the returned candidate filed his written statement and also raised preliminary objections and sought dismissal of the petition under Section 86 of the Act of 1951 and Order VII Rule 11 of the Code of Civil Procedure, 1908. The said applications were rejected by this Court vide order dated 14.07.2022, holding that objections raised required consideration at trial. Thereafter, seven issues were framed on 03.08.2022. By order dated 02.11.2022, this Court decided Issues Nos.4 to 7, holding, *inter alia*, that copy of election petition supplied to the returned candidate complied with Section 81(3) of the Act of 1951 and that certain defects relating to the affidavit, verification of annexures and signature on prayer clause were curable. The returned candidate thereafter challenged order dated 14.07.2022 before Hon'ble Supreme Court in Special Leave Petition (Civil) No.37070 of 2022. The proceedings before this Court were stayed during pendency of special leave

petition, which came to be dismissed on 15.09.2023. Subsequently, by order dated 24.06.2024, Issue No.3 concerning alleged concealment of material facts and false declarations in Form 26 was amended. The parties have led evidence and addressed their submissions, and Issues Nos. 1, 2 and 3 now remain for determination.

Evidence Adduced by the Parties

I. Oral Evidence

The election petitioner examined himself as EPW-1, Puran Singh Fartyal, and EPW-2, Ravi Pratap Singh, Chief Engineer, Uttarakhand Rural Roads Development Agency (URRDA). The returned candidate examined himself as RW-1, Khushal Singh Adhikari, along with RW-2, Shyam Singh Karki, and RW-3, Rinku Bisht, the Returning Officer.

EPW-1, Puran Singh Fartyal, supported the averments made in the election petition concerning the returned candidate's contractual engagements and particulars disclosed in original and corrected affidavits in Form 26.

EPW-2, Ravi Pratap Singh, deposed regarding constitution and functioning of Uttarakhand Rural Roads Development Agency (URRDA), execution of Pradhan Mantri Gram Sadak Yojana (PMGSY) contracts, and nature of contractual relationship relevant to alleged disqualification.

RW-1, Khushal Singh Adhikari, denied the allegations of disqualification and concealment. He relied upon documents concerning reconstitution of partnership firm, his request for cancellation of contractor registration, and the affidavits filed with his nomination papers. He also referred to payment of ₹99,87,675/- relating to PMGSY works.

RW-2, Shyam Singh Karki, deposed regarding execution and notarisation of retirement-cum-first amended deed of partnership dated 10.01.2022.

RW-3, Rinku Bisht, deposed regarding the filing and scrutiny of nomination papers and submission of corrected Form 26 affidavit on 28.01.2022. She stated that prescribed procedure had been followed and that no objection had been filed by any other candidate.

II. Documentary Evidence Adduced by the Election Petitioner

The election petitioner relied upon documents concerning election notification, Form 26 particulars of the candidates, the returned candidate's contractor registration, election results, conversion of proprietorship into a partnership, and partnership deed dated 01.01.2022. These documents were admitted and marked as Exhibits 1 to 8, subject to evidentiary status recorded in the proceedings.

Certain documents, including statement of existing contractual commitments, letter regarding completion of works, and Notice to Proceed dated 31.03.2022, were not admitted in evidence. Five additional documents identified by the election petitioner were also not admitted by the returned candidate.

III. Documentary Evidence Adduced by the Returned Candidate

The returned candidate relied upon documents concerning cancellation of his Class 'A' contractor registration, constitution and reconstitution of partnership firm, GST registration particulars, and status of URRDA. The admitted documents included office memorandum dated

16.02.2022 (Exhibit A-1), partnership deeds (Exhibits A-2 and A-5), letter seeking cancellation of contractor registration (Exhibit A-3), GST registration particulars (Exhibit A-4), office memorandum concerning cancellation of registration (Exhibit A-6), and certificate of change of name of registered society (Exhibit A-7).

The retirement letter dated 08.01.2022, related partnership retirement documents, and application dated 16.01.2022 were not admitted in relevant documentary sets.

IV. Additional Documents Filed by the Returned Candidate

The returned candidate subsequently filed additional documents, including RTI correspondence (Exhibit A-8), the corrected Form 26 affidavit (Exhibit A-9), documents relating to URRDA (Exhibit A-10), the PMGSY Procurement and Contract Management Manual (Exhibit A-11), and GST registration particulars (Exhibit A-12). These documents were admitted to the extent recorded in proceedings, with formal proof dispensed with where specified.

Submissions on Behalf of the Election Petitioner

12. Learned counsel appearing on behalf of election petitioner submitted that election of returned candidate, Khushal Singh Adhikari, from 54-Lohaghat Legislative Assembly Constituency was liable to be set aside on grounds of improper acceptance of his nomination paper, concealment of material particulars in Form 26, corrupt practices, and disqualification under Section 9-A of Act of 1951 read with Rule 4-A of Rules of 1961. It was submitted that the election petitioner had secured second-highest number of votes.

With regard to Issue No.3, learned counsel contended that respondent No.1 had furnished false and incomplete information in Form 26 concerning his profession, source of income, and subsisting contractual engagements with the State Government. It was submitted that respondent No.1 was registered as a Class-A contractor with Public Works Department, Uttarakhand, under a registration certificate renewed for period from 27.07.2019 to 30.06.2022. Further, the partnership deed dated 01.01.2022 disclosed that returned candidate held 90 per cent share in partnership firm engaged in construction works under PMGSY.

13. Learned counsel submitted that documents relied upon by returned candidate concerning his retirement from partnership and reconstitution of firm did not establish that he had ceased to be associated with subsisting contractual works on relevant date. Although returned candidate had sought reconstitution of firm and cancellation of his contractor registration on 08.01.2022, amended partnership deed contemplated his retirement with effect from 15.03.2022. His contractor registration was cancelled only subsequently, by Office Memorandum dated 16.02.2022, issued by Engineer-in-Chief, Public Works Department. It was, therefore, contended that returned candidate continued to hold registration on date of scrutiny of nomination papers, i.e., 29.01.2022, as well as on date of polling, i.e., 14.02.2022.

14. Learned counsel further submitted that returned candidate had informed Chief Engineer, URRDA, about his resignation from the partnership on 10.01.2022. Thereafter, on 04.03.2022, he requested transfer of existing construction works to firm of his sons, namely, M/s Khushal Singh Adhikari. Pursuant thereto, an Office

Memorandum dated 29.03.2022 was issued by URRDA transferring subsisting contractual works, including individual and joint-venture works undertaken under PMGSY. According to learned counsel, these subsequent developments demonstrated that contractual works continued to be associated with returned candidate and were transferred only thereafter.

15. It was further contended that returned candidate had failed to disclose his occupation as a Class-A contractor, the relevant source of income, and the subsisting contracts with appropriate Government and public companies, including contracts involving his family members. Such omissions, according to learned counsel, rendered declarations in Form 26 incomplete and misleading and deprived electorate of material information necessary to make an informed choice.

16. In support of these submissions, learned counsel relied upon *Kisan Shankar Kathore v. Arun Dattatray Sawant and Others,* reported in *(2014) 14 SCC 162*, particularly paragraphs 40 and 43, to contend that material disclosures by candidates are essential and that objections concerning incorrect or incomplete particulars require proper consideration by Returning Officer. It was submitted that such objections cannot be disposed of through a merely summary examination and that suppression of material information may attract consequences contemplated under Section 125-A of the Act of 1951, subject to fulfillment of statutory requirements.

17. Learned counsel also relied upon *Lok Prahari v. Election Commission of India,* reported in *(2018) 4 SCC 699*, particularly paragraphs 55, 61, 79, 82 and 83, and *S. Rukmini Madegowda v. State Election Commission,* reported

in *2022 SCC OnLine SC 1218*, particularly paragraphs 38 and 74, to emphasise that disclosure requirements serve public interest by enabling electors to make an informed choice and ensuring transparency in elections.

18. Reliance was further placed upon *Krishnamoorthy v. Sivakumar,* reported in *(2015) 3 SCC 467*, particularly paragraph 94.3, *Mairembam Prithviraj v. Pukhrem Sharatchandra Singh,* reported in *(2017) 2 SCC 487*, and *Doray Muthuswami v. N. Nachiappan and Others,* reported in *(1973) 2 SCC 45*, in support of contention that concealment of material information undermines fairness and purity of electoral process. On the strength of these authorities and documentary evidence, learned counsel submitted that returned candidate had furnished materially incorrect or incomplete particulars in Form 26.

19. With regard to Issue No.2, learned counsel submitted that Rule 4-A of Rules of 1961, is mandatory and requires a candidate to furnish prescribed affidavit in Form 26, duly sworn, along with nomination paper. It was contended that returned candidate had not furnished requisite affidavit in prescribed and legally compliant form when he submitted his nomination papers on 24.01.2022 and that the Returning Officer had improperly accepted his nomination despite deficiency.

20. Learned counsel argued that the note appended to nomination paper could not cure non-compliance with mandatory statutory requirement. It was submitted that prescribed affidavit containing complete and correct particulars had to accompany nomination paper and that subsequent filing of a corrected affidavit could not validate an otherwise improper acceptance.

21. In support of this contention, learned counsel relied upon *Lok Prahari v. Election Commission of India,* reported in *(2018) 4 SCC 699*, particularly paragraph 61, to submit that requirement of furnishing prescribed affidavit with nomination paper was mandatory and that non-compliance warranted rejection of nomination in accordance with law. It was, therefore, contended that acceptance of returned candidate's nomination was improper.

22. With regard to Issue No.1, learned counsel submitted that returned candidate incurred disqualification under Section 9-A of Act of 1951, as contractual engagements with State Government subsisted on date of filing his nomination and continued until declaration of election result. It was contended that contracts related to construction works under PMGSY in Uttarakhand and that contractual relationship could not be severed merely by executing partnership documents or subsequently cancelling contractor registration.

23. Learned counsel submitted that URRDA was an agency of State Government entrusted with implementation of Government works, including rural road construction under PMGSY. As its composition included State Government officers and its functioning was subject to State Government control, it was contended that URRDA fell within ambit of appropriate Government for purposes of Section 9-A of the Act of 1951. Seeking to distinguish *Shrikant v. Vasantrao* reported in (2006) 2 SCC 682, learned counsel argued that object of Section 9-A the Act of 1951 was to prevent conflicts of interest between Government and elected members of Legislative Assembly. It was submitted that permitting returned candidate to continue contractual engagements with an agency

implementing Government works in the same State would defeat purpose of provision.

24. Learned counsel further referred to paragraphs 19 and 20 of written statement filed by returned candidate, wherein he had acknowledged his status as a Class-A contractor and referred to his letter dated 08.01.2022 seeking discontinuance of his subsisting contracts with appropriate Government. It was contended that returned candidate could not simultaneously assert that he had sought to discontinue his contractual engagements and deny applicability of Section 9-A of Act of 1951 on ground that URRDA was not appropriate Government.

25. On the basis of contractor registration certificate, partnership documents, correspondence with URRDA, Office Memorandum dated 29.03.2022, and pleadings of returned candidate, learned counsel for the election-petitioner submitted that contractual engagements had not ceased on relevant date and prayed that Issue No. 1 be decided in favour of election petitioner and accordingly prayed that election petition be allowed with costs and election of returned candidate be declared null and void.

Submissions on Behalf of the Returned Candidate

26. Learned counsel appearing on behalf of returned candidate opposed election petition and submitted that petitioner had failed to establish any ground for declaring election void under Act of 1951. It was contended that returned candidate had neither incurred disqualification under Section 9-A of the Act of 1951 nor violated Rule 4-A of Rules of 1961, or concealed any material information in Form 26.

27. With regard to Issue No. 1, learned counsel submitted that returned candidate had severed his connection with appropriate Government as a Class-A contractor before filing his nomination. He had submitted a letter dated 08.01.2022 to Engineer-in-Chief, Public Works Department, seeking cancellation of his contractor registration. The subsequent cancellation order dated 16.02.2022 was exhibited as Exhibit A-1. It was contended that cancellation was pursuant to his earlier request and that formal delay in issuing order could not result in disqualification. He asserts that after submission of his application on 08.01.2022, rest was ministerial exercise which culminated vide cancellation order dated 16.02.022.

28. Learned counsel further submitted that URRDA is a society registered under the Act of 1860, and is distinct from State Government. It was contended that implementation of Government schemes by URRDA did not, by itself, make it appropriate Government within meaning of Section 9-A of the Act of 1951. Reliance was placed upon *Shrikant v. Vasantrao,* (*supra*), in support of this submission.

29. It was further submitted that returned candidate had retired from partnership firm constituted on 01.01.2022 with his two sons. The partnership deed was exhibited as Exhibit A-2, and letter dated 10.01.2022 seeking cancellation of contractor registration was exhibited as Exhibit A-3.

30. Learned counsel contended that retirement documents and communication to URRDA demonstrated that returned candidate had relinquished his interest in firm before filing his nomination.

31. Learned counsel also referred to the Office Memorandum dated 29.03.2022 issued by URRDA concerning transfer of ongoing PMGSY works to M/s Khushal Singh Adhikari. It was submitted that works thereafter continued through partnership firm and that their subsequent transfer did not establish any subsisting contract between returned candidate personally and appropriate Government on date of nomination. The GST registration particulars of firm, Exhibit A-4, were also relied upon in support of separate identity of partnership business.

32. With regard to Issue No.2, learned counsel submitted that nomination of returned candidate had been validly accepted under Rule 4-A of Rules of 1961. It was contended that the corrected affidavit in Form 26 had been filed on 28.01.2022, within prescribed time, and accepted by Returning Officer before scrutiny. The corrected affidavit was admitted as Exhibit A-9.

33. Learned counsel argued that filing of a corrected affidavit within prescribed period did not constitute a defect warranting rejection of nomination paper. Reliance was placed upon Section 36(4) of Act of 1951, which prohibits rejection of a nomination paper for a defect that is not of a substantial character. It was further submitted that petitioner had been afforded an opportunity to inspect nomination papers during scrutiny on 29.01.2022 but had not raised any objection concerning affidavit. Accordingly, Returning Officer had rightly accepted nomination.

34. With regard to Issue No.3, learned counsel submitted that returned candidate had neither concealed material information nor furnished any false declaration in Form 26. It was contended that, following his letter dated

08.01.2022, no contract with appropriate Government subsisted on date of nomination and, consequently, there was no existing contractual engagement requiring disclosure.

35. Learned counsel relied upon Exhibits A-1, A-2 and A-3, together with GST registration particulars of partnership firm, Exhibit A-4, and corrected Form 26, Exhibit A-9, to support contention that returned candidate had disclosed particulars required by law. The URRDA-related documents admitted as Exhibits A-8 and A-10, PMGSY Manual on Procurement and Contract Management, Exhibit A-11, and GST registration particulars of M/s Khushal Singh Adhikari, Exhibit A-12, were also relied upon in support of respondent's case concerning nature of URRDA, reconstitution of firm and continuation of works through that firm.

36. Learned counsel further submitted that petitioner had failed to establish deliberate suppression of material information or any false declaration. With regard to allegations of corrupt practice, it was contended that election petition was required to contain material facts and particulars constituting alleged corrupt practice. Reliance was placed upon the case of *Ravinder Singh v. Janmeja Singh and Others,* reported in *(2000) 8 SCC 191*, in support of submission concerning requirement to plead material facts and particulars of corrupt practice.

37. Learned counsel also relied upon *Mahendra Pal v. Ram Dass Malanger and Others,* reported in *(2000) 1 SCC 261*, in support of contention that an election petition must disclose a complete cause of action and contain material facts necessary to sustain relief claimed. It was submitted that allegations unsupported by requisite material facts

could not form basis for invalidating election. Further, placing reliance upon the case of *Prakash Khandre v. Dr. Vijay Kumar Khandre and Others,* reported in *(2002) 5 SCC 568*, learned counsel submitted that declaration of a candidate other than the returned candidate as duly elected is governed by statutory conditions contained in Sections 84 and 101 of Act of 1951, and cannot be granted unless those conditions are satisfied.

38. In conclusion, learned counsel submitted that returned candidate had not incurred disqualification under Section 9-A of Act of 1951; that his nomination had been validly accepted under Rule 4-A of Rules of 1961; and that no concealment or false declaration in Form 26 had been established. It was, therefore, prayed that election petition be dismissed with costs.

Consideration and Findings

39. Having heard learned counsels for both parties and after perusal of pleadings, oral and documentary evidence, this Court proceeds to consider surviving issues. Since principal controversy concerns alleged disqualification of returned candidate under Section 9-A of Act of 1951, documentary evidence relating to his contractor registration, subsisting contracts and his association with partnership firm must be examined with reference to date of nomination, i.e., 24.01.2022.

40. **Issue No.1:** Whether on 24.1.2022, when respondent no.1 filed nomination papers for contesting Legislative Assembly election of Uttarakhand from 54, Lohaghat Assembly Constituency, there subsisted contract(s) entered into by respondent no. 1 in course of his trade or business with State Government, as alleged in

paras 10, 11, 12, 15, 16, 17, 18 & 19 of Election Petition? If so, its effect?

41. Section 9-A of Act of 1951, provides as follows:

> "9-A. Disqualification for Government contracts, etc.- A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government.
>
> Explanation.—For the purpose of this section, where a contract has been fully performed by the person by whom it has been entered into with the appropriate Government, the contract shall be deemed not to subsist by reason only of the fact that the Government has not performed its part of the contract either wholly or in part."

42. Section 7(a) of Act of 1951 defines expression "appropriate Government" to mean, in relation to a disqualification for being chosen as or for being a member of Legislative Assembly or Legislative Council of a State, State Government. The statutory language makes it clear that existence of an ongoing government-funded work, by itself, does not attract disqualification. The contract must have been entered into by candidate in course of his trade or business; it must be with appropriate Government; and it must subsist and relate to supply of goods or execution of works of nature specified in Section 9-A of Act of 1951. These are cumulative requirements, and each must be established before disqualification can be sustained.

43. In *Kartar Singh Bhadana v. Hari Singh Nalwa, (2001) 4 SCC 661*, Hon'ble Supreme Court emphasised that Section 9-A Act of 1951 imposes a statutory disqualification and that a candidate may be disqualified only where facts of case squarely fall within conditions prescribed by provision. Relevant para of *Kartar Singh Bhadana* (supra) quoted herein below:

"8. Insofar as is relevant to a case where it is alleged that a candidate holds a contract for the execution of works undertaken by an appropriate Government, Section 9-A requires;
(i) that there should be a contract entered into by the candidate;
(ii) such contract should be entered into by him in the course of his trade or business;
(iii) the contract should be entered into with the appropriate Government;
(iv) the contract should subsist;
(v) the contract should relate to the works undertaken by the appropriate Government; and
(vi) the contract should be for execution of such works;

44. The provisions of Section 9-A of Act of 1951 disqualify a citizen from contesting an election; a citizen may, therefore, be disqualified only if facts of his case squarely fall within conditions prescribed by Section 9-A of Act of 1951.

45. The purpose and scope of Section 9-A of Act of 1951, were considered by the Hon'ble Supreme Court in the case of *Shrikant v. Vasantrao* (*supra*). The provision seeks to prevent conflicts between a legislator's public duties and private interests arising from subsisting contractual obligations towards Government. However, statutory disqualification must be determined strictly in accordance with conditions prescribed therein.

46. In paragraph 19 of *Shrikant v. Vasantrao* (*supra*), Hon'ble Supreme Court, while distinguishing an instrumentality of State from State Government itself, observed as follows:

"19. .....The decisions rendered under Article 12 lay down that a body would answer the definition of State under Article 12 if it is financially, functionally and administratively dominated by or under all-pervasive control of the 'Government'. On the other hand, where the control by the 'Government' is merely regulatory, whether under any statute or otherwise, it would not serve to make the body 'State'. Thus the very decisions relied on by the High Court make it clear that 'instrumentalities of State' are different from 'State Government', though both may answer

the definition of 'State' under Article 12 for the limited purpose of Part III of the Constitution. Further, the very inclusive definition of 'State' under Article 12 by referring to the Government of India, the Government of each of the States and the local and other authorities, makes it clear that a 'State Government' and a local or other authorities, are different and that they fall under a common definition only for the purpose of Part III of the Constitution..."

47. The aforesaid distinction is material to present case, as election petitioner contends that URRDA, being involved in the implementation of PMGSY works and subject to control of State Government, falls within ambit of appropriate Government under Section 9-A of Act of 1951. The principle laid down in the case of *Shrikant v. Vasantrao* (*supra*), however, makes it clear that an entity does not become State Government for purposes of Section 9-A of Act of 1951 merely because it qualifies as an instrumentality of the State under Article 12. The Hon'ble Supreme Court held that contracts with statutory corporations do not, merely by reason of their governmental character, constitute contracts with appropriate Government for purposes of said provision.

48. The six requirements summarised in the case of *Kartar Singh Bhadana (supra*) further require, *inter alia*, that contract must have been entered into by candidate in course of his trade or business, must be with appropriate Government, must subsist, and must relate to works undertaken by that Government and be for execution of such works. Accordingly, existence of ongoing Government-sponsored works, by itself, is insufficient; evidence must establish a subsisting contract satisfying statutory conditions.

49. In the present case, the election petitioner relies upon documents forming part of Document No.1 of Additional List of Documents, including certificates dated

14.07.2021 and 14.12.2021 concerning the Dhyari–Bhanoli road and the Basolikhan–Chamtola Motor Road, respectively. These documents indicate that works were ongoing and that extensions of time had been sought. They are relevant to status of projects; however, they do not, by themselves, establish identity of contracting party or that returned candidate remained personally bound by contracts.

50. The returned candidate has specifically pleaded that works were being executed through URRDA, a society registered under the Act of 1860, and that Agency does not fall within the expression "appropriate Government" under Section 9-A of Act of 1951. He has further pleaded that he ceased to be a partner of M/s Khushal Singh Adhikari with effect from 10.01.2022 and that his interest in partnership was transferred in favour of his sons. He has also relied upon his request for cancellation of his Class-A contractor registration and subsequent cancellation order dated 16.02.2022, marked as Exhibit A-1.

51. The question of returned candidate's retirement from partnership must be distinguished from question whether URRDA constitutes appropriate Government. Retirement from a partnership does not, by itself, establish that all contractual obligations previously undertaken have ceased; conversely, continued execution of works by firm does not necessarily establish that returned candidate remained personally bound by those contracts. The effect of retirement and identity of party to subsisting contracts must be determined from relevant contractual documents and evidence on record.

52. Applying the principle laid down in the case of *Shrikant v. Vasantrao* (*supra*), the fact that URRDA

implements road construction works under the PMGSY scheme does not, by itself, establish that a contract executed through the Agency is a contract with State Government for purposes of Section 9-A of Act of 1951. The legal identity of contracting party must be established from contracts and other relevant material. In the present case, the election petitioner has not established that State Government was itself the contracting party to the works relied upon.

53. It is also relevant that the returned candidate's contractor registration was cancelled by order dated 16.02.2022 (Exhibit A-1). However, cancellation of registration and subsistence of an individual works contract are distinct matters. The cancellation order, by itself, neither establishes nor disproves existence of a qualifying contract with appropriate Government at legally relevant time.

54. Consequently, although material relied upon by election petitioner indicates that road construction works remained ongoing, it does not establish essential statutory link between returned candidate and appropriate Government. In the absence of proof of a subsisting contract satisfying requirements of Section 9-A of Act of 1951, the alleged disqualification cannot be sustained. Accordingly, election petitioner has failed to establish that returned candidate incurred disqualification under Section 9-A of the Act of 1951.

55. Accordingly, even though documentary evidence indicates that certain PMGSY works were ongoing, petitioner has not established that contracts in-question were contracts with appropriate Government within meaning of Section 9-A of the Act of 1951. Nor does mere

continuation of works by partnership firm establish that the returned candidate personally continued to be bound by a qualifying contract after his claimed retirement. The essential ingredients of alleged disqualification have, therefore, not been proved.

56. Issue No.1 is, accordingly, decided in favour of the returned candidate and against petitioner.

57. **Issue No.2:** What is the effect of non-submission of an affidavit sworn by respondent no. 1 before a Magistrate of First Class or Notary in Form 26, while delivering to the Returning Officer nomination papers, as required under Rule 4A of Rules of 1961?

58. The controversy under this issue concerns deficiencies noted in columns 7(i) and 9 of original affidavits in Form 26 filed by returned candidate and subsequent filing of supplementary affidavits to rectify them. Section 33-A of the Act of 1951, read with Rule 4A of the Rules of 1961, requires a candidate to furnish prescribed information in Form 26. This requirement enables electors to make an informed choice. In the case of *Union of India v. Association for Democratic Reforms,* reported in *(2002) 5 SCC 294*, Hon'ble Supreme Court recognised voter's right to relevant information concerning candidates as an aspect of Article 19(1)(a) of Constitution of India. Similarly, in the case of *Resurgence India v. Election Commission of India,* reported in *(2014) 14 SCC 189*, Hon'ble Supreme Court emphasised complete disclosure and Returning Officer's duty to deal with deficiencies in accordance with law. At the same time, Section 36(4) of the Act of 1951 provides that a nomination shall not be rejected for a defect which is not of a substantial character. Thus, the legal consequence of a deficiency must be

determined in light of its nature and statutory scheme governing scrutiny.

59. RW-3, Smt. Rinku Bisht, the Returning Officer for 2022 Assembly Elections in Lohaghat constituency, produced official record relating to returned candidate's nomination, including nomination papers and checklists. She stated that nomination papers were filed on 24.01.2022, each accompanied by an affidavit. Upon preliminary examination, she noticed deficiencies in columns 7(i) and 9, recorded them in checklist and directed returned candidate to rectify them by 29.01.2022, before scrutiny commenced. RW-3 further deposed that returned candidate furnished supplementary affidavits with relevant columns filled in on 28.01.2022. The second checklist, bearing Paper No.432 on the writ file, was prepared on that date, and supplementary affidavits were received at 02:25 p.m. Both the original affidavits dated 24.01.2022 and supplementary affidavits dated 28.01.2022 formed part of official record.

60. In cross-examination, RW-3 clarified that checklists had been filled in by Assistant Returning Officer and that two sets of nomination papers had been filed at 11:26 a.m. and 11:40 a.m., respectively, both accompanied by affidavits. She admitted that both affidavits contained deficiencies but explained that the returned candidate had been permitted to rectify them by 29.01.2022, before scrutiny commenced. She also clarified that only the corrected affidavits, and not nomination papers themselves, were submitted on 28.01.2022.

61. This testimony establishes that deficiencies were recorded during preliminary examination, that an opportunity for rectification was afforded and that

supplementary affidavits were received within the time allowed. The fact that nomination papers were not resubmitted does not, by itself, establish any illegality, as subsequent filing concerned accompanying affidavits. RW-3 also stated that nomination papers were made available for inspection and that no objection had been filed against them before her. Though absence of an objection cannot validate a nomination otherwise contrary to law, it forms part of procedural background in which nomination was scrutinised.

62. The decisive question is whether deficiencies remained unrectified so as to render acceptance of nomination, contrary to law. In the case of *Resurgence India v. Election Commission of India* (*supra*), Hon'ble Supreme Court, in paragraph 23, observed as follows:

> "23. For that purpose, the Returning Officer can very well compel a candidate to furnish information relevant on the date of scrutiny. We were appraised that the Election Commission already has a standard draft format for reminding the candidates to file an affidavit as stipulated. We are of the opinion that along with the above, another clause may be inserted for reminding the candidates to fill the blanks with the relevant information thereby conveying the message that no affidavit with blank particulars will be entertained. We reiterate that it is the duty of the Returning Officer to check whatever the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the 'right to know' of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. We do comprehend that the power of the Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced."

63. The aforesaid judgment clarifies that material omissions remaining unrectified despite an opportunity to rectify them may warrant rejection of nomination. In the present case, RW-3's testimony establishes that deficiencies were identified, an opportunity for rectification was granted, and supplementary affidavits were received on

28.01.2022. The petitioner was, therefore, required to establish that a material defect persisted or that the Returning Officer otherwise acted contrary to law in accepting nomination.

64. Upon consideration of RW-3's testimony and official record, petitioner has failed to establish that the Returning Officer acted contrary to prescribed procedure merely by accepting supplementary affidavits before scrutiny. In the absence of proof that a material and legally impermissible omission persisted despite corrections, acceptance of nomination cannot be held improper merely because deficiencies were initially noted.

65. Issue No.2 is, accordingly, decided in favour of the returned candidate and against petitioner.

66. **Issue No.3** Whether the returned candidate concealed material facts and filed a false affidavit in Form 26, as alleged in paragraphs 8, 9 and 10 of the Election Petition?

67. The allegation under this issue concerns declaration made by the returned candidate in paragraph 9(ख) of Form 26, wherein entries relating to contracts with appropriate Government or a public-sector undertaking were recorded as "लागू नहीं" (not applicable). The petitioner alleges that this declaration was false in view of returned candidate's Class-A contractor registration, his association with M/s Khushal Singh Adhikari, and ongoing road construction works undertaken under the PMGSY scheme.

68. The requirement of disclosure in Form 26 is intended to ensure transparency in electoral process and to enable electors to make an informed choice. In the case of *Union of India v. Association for Democratic Reforms*,

(*supra*), Hon'ble Supreme Court recognised right of electors to obtain relevant information concerning candidates. Similarly, in the case of *Resurgence India* (*supra*), Hon'ble Supreme Court emphasised obligation to furnish complete information in prescribed affidavit. However, whether a particular declaration is false or amounts to concealment must be determined with reference to information required to be disclosed and evidence establishing actual position.

69. In the present case, the original affidavit in Form 26, filed on 24.01.2022, records relevant entries under paragraph 9(ख) as "not applicable". The supplementary affidavit filed on 28.01.2022 contains same declaration. The correctness of this declaration must be examined in context of returned candidate's contractor registration, his relationship with partnership firm, nature of contracts relied upon by petitioner, and identity of contracting party. The documentary record establishes that returned candidate was associated with M/s Khushal Singh Adhikari, a partnership firm engaged in construction work. The partnership deed dated 01.01.2022, marked as Exhibit A-2, records partnership arrangement. The returned candidate has relied upon documents concerning his retirement from partnership, including request dated 08.01.2022 for removal of his name as a partner and acceptance of his resignation on 10.01.2022. These documents are material to determine his status as a partner when he filed his nomination and affidavit on 24.01.2022.

70. The record further shows that the returned candidate sought cancellation of his Class-A contractor registration, which was formally cancelled by order dated 16.02.2022, marked as Exhibit A-1. The subsequent cancellation of registration does not, by itself, establish that

declaration made on 24.01.2022 was either true or false. Contractor registration and subsisting contractual obligations are distinct matters. Similarly, retirement from a partnership does not, without examination of relevant contractual arrangements, necessarily extinguish every obligation arising from contracts previously undertaken. The question is whether returned candidate remained connected with any contract that was required to be disclosed under paragraph 9(ख).

71. The certificates relied upon by petitioner concerning Basolikhan–Chamtola Motor Road and Dhyari–Bhanoli road indicate that works were ongoing beyond their originally stipulated completion dates. These documents establish continuation of works, but they do not, by themselves, establish that the returned candidate personally remained bound by relevant contracts on date of his affidavit. The continued execution of works by the partnership firm cannot automatically be equated with the continued existence of a contract personally entered into by the returned candidate.

72. Further, petitioner has not established that State Government was contracting party to works relied upon. The fact that the URRDA implements works under the PMGSY scheme does not, by itself, establish that the contracts were entered into with the State Government. In the case of *Shrikant v. Vasantrao* (*supra*), the Hon'ble Supreme Court explained that requirements of Section 9-A of the Act of v1951, must be satisfied before a candidate can be held disqualified on account of a subsisting contract. The identity of contracting party is, therefore, material to allegation founded upon existence of government contracts.

73. It must, however, be clarified that failure to establish a disqualification under Section 9-A of the Act of 1951 does not automatically determine whether a declaration in Form 26 was false. The present issue requires an independent assessment of whether contracts relied upon by petitioner fell within category covered by paragraph 9(ख) and whether the returned candidate's declaration of "not applicable" was contrary to actual position. The existence of ongoing works, without establishing nature of relevant contracts and returned candidate's legal relationship with them, is insufficient to prove the alleged concealment.

74. The evidence concerning original and supplementary affidavits, considered under Issue No.2, establishes that deficiencies in columns 7(i) and 9 were noticed during preliminary examination and that supplementary affidavits were filed on 28.01.2022, before stipulated deadline. The timely filing of supplementary affidavit explains the procedure followed by the Returning Officer; it does not, by itself, resolve the allegation of falsity. Nevertheless, mere existence of deficiencies in the original affidavit cannot conclusively establish concealment without proof of material information that remained undisclosed or particular declaration that was false.

75. Upon an overall consideration of original and supplementary affidavits, partnership deed, documents concerning retirement from partnership, contractor registration records and certificates relating to ongoing works, this Court finds that petitioner has established existence of ongoing construction works and returned candidate's prior association with partnership firm. However, petitioner has failed to establish that relevant contracts were of the nature required to be disclosed under

paragraph 9(ख), that the returned candidate remained personally bound by those contracts on the relevant date, or that declaration of “not applicable” was consequently false. The necessary evidentiary link between ongoing works and specific allegation of concealment in Form 26 has, therefore, not been established.

76. Accordingly, petitioner has failed to prove that returned candidate concealed material facts or filed a false affidavit in Form 26, as alleged in paragraphs 8, 9 and 10 of the Election Petition.

77. Issue No.3 is, therefore, decided in favour of the returned candidate and against petitioner.

78. In view of findings recorded hereinabove, the Election Petition fails.

79. Accordingly the Election Petition is dismissed.

(Pankaj Purohit, J.)
18.11.2026

SK