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OFFICE OF THE CHIEF ELECTORAL OFFICER
ARUNACHAL PRADESH
ITANAGAR

The 9th March, 2017

No. EN/LEG/43/2017.—The Notification issued by Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi, dated 6th March, 2017, is reproduced below for general information.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi - 110001

Dated 6th March, 2017

15 Palguna, 1938 (Saka)

NOTIFICATION

No. 82/2/AP-LA/2014.—In pursuance of Section 106 of the Representation of People Act, 1951 (43 of 1951), the Election Commission, hereby, publishes the judgement/order dated 8th February, 2017 of the Gauhati High Court in Election Petition No. 02 of 2014.

THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM : NAGALAND : MIZORAM AND
ARUNACHAL PRADESH)

Election Petition No. 2 of 2014.

SHRI ATUM WELLY,
S/O. LT. TANIANG WELLY,
R/O. HOUSE NO. E-322, UPPER SEIJOSA,
NEAR POLICE COLONY,
P.O. & P.S : SEIJOSA, DIST. : EAST KAMENG,
ARUNACHAL PRADESH.

.....Election Petitioner

-Versus-

SHRI KAMENG DOLO,
S/O. LT. LAGUNG PAGIA (DOLO),
R/O. VILLAGE-GOLOSIA
P.O. & P.S. SEIJOSA, DIST. : EAST KAMENG,
ARUNACHAL PRADESH.

..... Respondent

BEFORE

THE HON'BLE MR. JUSTICE UJJAL BHUYAN

Advocates for the Petitioner : Mr. P.K. Tiwari, Senior Advocate.
Mr. R.J. Das, Advocate.

Advocate for the Respondent : Mr. A. Kashyap, Advocate.
Mr. R. Mukherjee, Advocate.
Mr. S.K. Deuri, Advocate.

Dates of Hearing : 17.11.2016, 21.11.2016, 25.11.2016, 05.12.2016 & 19.12.2016.

Date of Judgment : 08.02.2017.

JUDGMENT & ORDER

This petition has been filed under sections 80 and 80A of the Representation of the People Act, 1951 for declaring the election of the respondent from 12-Pakke-Kessang (ST) Legislative Assembly Constituency in the State of Arunachal Pradesh as void under section 98 (b) read with section 100 (1) (d) (iv) of the Representation of the People Act, 1951 (the Act hereafter).

2. Case of the petitioner is that a general notification was issued on 15th March, 2014 notifying holding of general election for constituting a new Legislative Assembly of the State of Arunachal Pradesh with the following schedule : -

(i)	Last date for filing nomination	—	22.03.2014
(ii)	Date for scrutiny of nominations	—	24.03.2014
(iii)	Last date for withdrawal of candidature	—	26.03.2014
(iv)	Date of polling	—	09.04.2014
(v)	Date before which election should be completed	—	28.05.2014

3. Petitioner was nominated by the Bharatiya Janata Party (BJP) as its candidate for the 12-Pakke-Kessang (ST) Legislative Assembly Constituency (Constituency hereafter). On the other hand, respondent was nominated by the Indian National Congress (INC) as its candidate for the said constituency. Accordingly, petitioner filed his nomination papers; so also the respondent. Except petitioner and respondent, no other candidate had filed nomination paper in the said constituency. Only the petitioner and respondent were in the fray in the said constituency.

4. It is stated that petitioner's younger brother, Sri Utung Welly (PW1) was made election agent of the petitioner. He is a registered voter of the constituency. Proposer of the petitioner was Shri Ravindra Tana, also a voter of the said constituency.

5. As per schedule, nomination papers of both petitioner and respondent were taken up for scrutiny on 24th March, 2014. At the time of scrutiny, petitioner along with his proposer were present in the office of the Returning Officer, Sri Tarin Dakpe. His wife and election agent were present at Seppa on that day. On scrutiny, nomination papers of both the candidates i.e., petitioner and respondent were found to be in order.

6. According to the petitioner, he left Seppa in the morning of 25.03.2014 for campaigning at Rilloh village under Passa Valley Circle. On 26th March, 2014, petitioner came back to Itanagar. Petitioner was at Itanagar from 26th March, 2014 to 30th March, 2014.

7. In the evening of 26th March, 2014, petitioner learnt about his withdrawal of candidature when several of his supporters and relations made phone calls to him. Petitioner has stated that he did not write any notice for withdrawal of his candidature and did not withdraw his candidature. Neither he nor his proposer, election agent and his wife were present at Seppa on 26th March, 2014. Therefore, question of withdrawal of candidature by the petitioner did not arise.

8. In the evening of 26th March, 2014, the website of State Election Commission displayed withdrawal of candidature by the petitioner from the constituency and consequential election of respondent from the said constituency. Returning Officer of the constituency declared the respondent as having been elected unopposed from the constituency on 26th March, 2014. Form-21 under Rule 11(1) of the Conduct of Election Rules, 1961 was accordingly issued.

9. Petitioner took up the matter with the police as well as before the Election Commission alleging foul play in the withdrawal of his nomination. Ultimately, FIR No.19/2014 was registered by the Seppa Police Station under Sections 468/469 IPC and investigation of the case was entrusted to Inspector T. Jamoh.

10. After the election process was over, petitioner filed the present election petition challenging the legality and validity of the election of the respondent.

11. Basic contention of the petitioner is that he did not write any notice for withdrawal of his candidature. He neither authorized his election agent nor his proposer to withdraw his candidature. According to the petitioner, somebody had forged his signature and got the application purported to have been filed by the petitioner for withdrawal of candidature accepted by the Returning officer. Such acceptance of withdrawal of candidature was in clear violation of the provisions contained in Section 37 of the Act. That apart, such violation had materially affected the result of the election in the said constituency as it led to unopposed election of the respondent from the said constituency. Therefore, petitioner has sought for a declaration that election of the respondent is void under section 100 (1) (d) (iv) of the Act.

12. Respondent has filed written statement opposing the election petition. In the written statement, preliminary objection has been raised by contending that petitioner has not approached the Court with clean hands. Petitioner was himself instrumental in withdrawing his candidature. Returning Officer had found petitioner signature in the withdrawal form to be genuine. The person who had submitted the withdrawal form was well known to the petitioner and this fact has been suppressed in the election petition. It was only after violent reaction of his supporters that the petitioner has filed the election petition to assuage his supporter. Plea of violation of statutory provision alone would not be enough to set aside an election result. It is to be additionally pleaded that such violation had materially affected the election result. Since such pleading is not available in the election petition, the same should be dismissed.

12.1. Moving on to the merits of the challenge, it is contended that since petitioner had withdrawn his candidature and as the nomination of the respondent was found to be valid, he was rightly declared elected unopposed from the said constituency by the Returning Officer. All the contentions advanced by the petitioner have been denied and disputed. Acceptance of withdrawal of nomination of the petitioner by the Returning Officer was as per procedure of law as the petitioner had sent his authorized representative to withdraw his nomination papers. Allegation made by the petitioner that his signature was forged is an afterthought. Consequently, declaration of the Returning Officer on 26.03.2014 declaring the respondent as being elected unopposed was as per correct and appropriate procedure under the law. Objection raised by the petitioner relating to his withdrawal of candidature is without merit and have been made with *mala-fide* intent. Respondent has asserted that petitioner had withdrawn his nomination papers and consequently his candidature from contesting the election from the said constituency on his own accord and volition. Therefore, unopposed election of the respondent is as per due procedure of law. Action of the Returning Officer in accepting the withdrawal of candidature of the petitioner was as per due procedure and there is no violation of section 37 of the Act. As such respondent prayed for dismissal of the election petition with cost.

13. After considering the pleadings, the following issues have been framed:-

1. *Whether the petitioner gave any notice in writing in terms of section 37(1) of the Representation of the People Act, 1951, read with Rule 9(1) of the Conduct of Election Rules, 1961 for withdrawal of his candidature from 12-Pakke-Kessang (ST) Legislative Assembly Constituency and delivered the same in a statutorily prescribed manner either personally or through his proposer or election agent so authorized in this behalf in writing by petitioner?*
2. *Whether the person who submitted the withdrawal of the nomination form of the petitioner to the Returning Officer of 12- Pakke-Kessang (ST) Legislative Assembly Constituency was authorized to do so by the petitioner himself?*
3. *Whether the Returning Officer of 12-Pakke-Kessang (ST) Legislative Assembly Constituency acted in compliance of the requirement of section 37(3) of the Representation of the People Act, 1951 and Rule 9 of the Conduct of Election Rules, 1961 while accepting the notice of withdrawal of petitioner's candidature from 12-Pakke-Kessang (ST) Legislative Assembly Constituency?*
4. *Whether the Returning Officer of the 12-Pakke-Kessang (ST) Legislative Assembly Constituency acted legally in declaring the result of election to Arunachal Pradesh State Legislative Assembly from 12 Pakke-Kessang (ST) Legislative Assembly Constituency under section 53(2) of the Representation of the People Act, 19651, read with Rule 11(1) of the Conduct of Elections Rules, 1961 and declaring respondent duly elected uncontested from the said constituency?.*
5. *Whether election of the respondent Kameng Dolo to the Arunachal Pradesh State Legislative Assembly from 12-Pakke- Kessang (ST) Legislative Assembly Constituency is liable to be held void?*
6. *Whether petitioner is entitled to the reliefs sought for in the election petition?"*

14. Heard Mr. P.K. Tiwari, learned Senior Counsel assisted by Mr. R.J. Das, learned counsel for the Petitioner and Mr. A. Kashyap, learned counsel for the respondent.

15. Mr. Tiwari, learned Senior Counsel for the petitioner submits that in so far the preliminary objection raised by the respondent is concerned, the same was also raised in MC No. 2627/2014 filed by the respondent, which was dismissed on 27th October, 2014. Therefore, the preliminary objection is no longer open to the respondent. He has placed before the Court the provisions of section 37 of the Act, including the legislative history of the said section. Referring to sub-sections (1) and (3) of Section 37 of the Act, learned Senior Counsel submits that the two provisions would have to be read together. A conjoint reading of the two provisions would go to show that 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. 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 withdrawal. Only after so satisfying himself, withdrawal of candidature is to be accepted. Statutory requirements of election law must be strictly observed. Though election of a successful candidate should not be likely interfered with, yet it is essential that purity of the election process is to be safeguarded and to ensure that a candidate does not get elected by flagrant violation of the law or by corrupt practices. In the instant case, there has been clear violation of section 37 of the Act and such violation has materially affected the outcome of the election, inasmuch as in this particular constituency, there were only two candidates, petitioner and respondent. On account of the withdrawal of candidature by the petitioner, respondent automatically got elected unopposed.

15.1. Referring to the evidence on record, Mr. Tiwari, learned Senior counsel submits that PW 1, Atum Welly i.e., the petitioner has clearly stated that he did not sign the notice of withdrawal (Form No.5). He also denied having issued any letter to anyone to submit notice of withdrawal of his candidature; neither did he authorize anyone to hand over any notice of withdrawal of his candidature to the Returning Officer. PW 4, Shri Tarin Dakpe, the Returning Officer in his evidence also stated that it was one Shri Sanjeev Tana who had handed over the Form No.5 notice of withdrawal along with authority letter to him. Even DW 9, Dr. Byabang Rana, in his evidence stated that it was he who had filled up Form No.5 and had handed over the same to Shri Sanjeev Tana for submission before the Returning Officer. Therefore, it is clear that neither the petitioner nor his proposer nor his election agent had submitted the notice of withdrawal. As such, acceptance of notice of withdrawal submitted by Shri Sanjeev Tana, who was neither the candidate nor the proposer nor the election

agent was totally illegal. From the evidence of PW 4, Shri Tarin Dakpe, PW 6, Shri Sandeep Kr. Singh, the present Returning Officer and PW 7, Shri L. Loganathan, the expert witness, it would be evident that the signature of the petitioner was forged. Original of the authority letter i.e., Ext. 9 is not available and what is available is only a photo copy. Therefore, the evidence on record clearly supports the case of the petitioner and as such, election of the respondent should be declared as void under Section 100((1)(d)(iv) of the Act.

15.2. In support of his submissions, Mr. Tiwari, learned Senior Counsel has placed reliance on the following decisions: -

- (1) (1973) 2 SCC 45 (**Durai Muthuswami Vs. N. Nochiappan**),
- (2) (1979) 2 SCC 158 (**State (Delhi Administration) Vs. Pali Ram**),
- (3) (1980) 1 SCC 704 (**Murari Lal Vs. State of Madhya Pradesh**),
- (4) (1994) Supp. (2) SCC 619 (**A. Neelalohithadasan Nadar Vs. George Mascrene**),
- (5) (2007) 3 SCC 617 (**Virender Nath Gautam Vs. Satpal Singh**),
- (6) (2009) 10 SCC 541 (**Ram Sukh Vs. Dinesh Agarwal**),
- (7) (2012) 4 SCC 194 (**Jitu Patnaik Vs. Sanatan Mohakud**),
- (8) (2012) 5 SCC 370 (**Maria Margarida Sequeira Fernandes Vs. Erasmo Jack De Sequeira**),
- (9) AIR 1959 (MP) 109 (**Her Highness Maharani Vijaya Raje Scindhia**),
- (10) AIR 1954 SC 210 (**Jagan Nath Vs. Jaswant Singh**), and
- (11) AIR 1994 (P&H) 258 (**Santokh Singh Vs. Mohan Singh**).

16. Mr. Kashyap, learned counsel for the respondent, on the other hand submits that election law has to be construed strictly. That interpretation must be adopted which upholds election of the returned candidate since election of a returned candidate should not be likely interfered with. There is no place for equitable consideration in election law. Referring to section 100 of the Act, learned counsel submits that on a careful perusal of the section in its entirety, it becomes clear that sub-section (1) is subject to sub-section(2). The use of the expression "subject to the provisions of sub- Section(2)" in the opening sentence of sub-section(1) clearly indicates that sub-section (2) would have overriding effect over sub-section(1). In other words, sub-section (1) would be controlled by sub-section(2). Sub-section (2) deals with indulging in '*corrupt practice*' by an agent other than the election agent of the returned candidate. Therefore, it is necessary to plead '*corrupt practice*' by the returned candidate even though ground of challenge is non-compliance of the provisions of the Constitution or of the Act or of any Rules or orders made under the Act. There is no such pleading that respondent had a role to play in the withdrawal of candidature by the petitioner. In the absence of any such pleading, election of the respondent cannot be unsettled. Mr. Kashyap further submits that all '*material facts*' and particulars must be pleaded to show that not only was there violation of any constitutional or statutory provision but also that such violation had materially affected the result of the election of the returned candidate. Placing reliance on the decision of the Supreme Court in the case of **Mangani Lal Mondal Vs. Bishnudeo Bhandari, (2012) 2 SCC 314**, Mr. Kashyap Submits that it is essential that election petitioner should not only plead breach or non-observance of any constitutional or statutory provision, but must additionally plead that such breach or non-observance had materially affected the result of the returned candidate. Petitioner has only pleaded violation of section 37 of the Act but has not additionally pleaded as to how such violation had materially affected the result of the respondent. On this ground itself, election petition should be dismissed. All that has been pleaded by the petitioner is that the purported notice of withdrawal of candidature was illegally accepted by the Returning Officer which materially affected the election result. In other words, the statutory violation *per se* had materially affected the election result. This contention of the election petitioner is not acceptable on the face of a long line of decisions of the Supreme Court.

16.1. Thus, election petitioner has a two-fold burden of proof-firstly, he has to prove breach of or non-compliance to any provisions of the constitution or of the Act or of any Rules or orders made there under; secondly, election petitioner has further to prove that such breach or non-compliance has materially affected the result of the election of the returned candidate. The real test is whether contravention alleged would change the result of the election. That apart, he submits that the entire case projected by the petitioner is based on falsehood. The notice of withdrawal of candidature of the petitioner' was submitted by a person who was well-known to the petitioner. This person, i.e., PW-9, i.e., Dr. Byabang Rana, in his testimony stated that he had filled up the withdrawal form in the presence of the petitioner and Shri Sanjeev Tana. But in the election petition, all that the petitioner has stated is that he was totally unaware of such withdrawal and came to know about it only when he received telephone calls from his supporters and relatives. The election petition being based on falsehood, it is evident that petitioner has not approached the Court with clean hands and therefore he is not entitled to any relief. Further submission of Mr. Kashyap is that there is presumption of legality in favour of existence or withdrawal of nomination. Burden to prove otherwise vests on the election petitioner. He also submits that testimony of the handwriting expert is not conclusive and no finding can be reached on the basis of such opinion.

16.2. Mr. Kashyap has also tried to distinguish the decisions cited by learned counsel for the petitioner. Non-examination of star witnesses like Shri Sanjeev Tana and Dr. Byabang Rana by the petitioner creates grave doubts about the veracity of the statements made by the petitioner. Contending that election petition should be dismissed, learned counsel for the respondent places reliance on the following decisions: -

- (1) (1954) 1 SCR 892, *Jagan Nath Vs. Jaswant Singh* ;
- (2) (1964) 6 SCR 54, *Jabar Singh Vs. Gendalal*;
- (3) AIR 1964 SC 207 = *South Indian Corporation (P) Ltd Vs. Secretary, Board of Revenue* ;
- (4) (1969) 1 SCC 636 = *Khaji K.K. Khan Vs. Siddavanbari N.* ;
- (5) (1969) 3 SCC 238 = *Samant N. Balkrishna Vs. George Fernandes* ;
- (6) (1973) 4 SCC 46 = *Smti Bhagwan Karu Vs. Maharaja Krishna Sharma* ;
- (7) (1977) 2 SCC 210 = *Magan Biharilal Vs. State of Punjab* ;
- (8) (1999) 8 SCC 198 = *Narender Singh Vs. Mala Ram* ;
- (9) (1999) 9 SCC 386 = *Jeet Mohendra Singh Vs. Harminder Singh Jassi* ;
- (10) (2001) 9 SCC 1 = *K. T. Plantation Pvt. Ltd Vs. State of Karnataka* ;
- (11) (2003) 5 SCC 650 = *T.A. Ahammed Kabeer Vs. A.A.Azeez* ;
- (12) (2009) 10 SCC 541 = *Ram Sukh Vs. Dinesh Agarwal* ;
- (13) (2012) 3 SCC 314 = *Mangani Lal Mandal Vs. Bishnu Deo Bhandari* ; and
- (14) (2014) 105 ALR 140 = *Rajpal Sarma Vs. State of Uttar Pradesh*.

17. Submissions made by learned counsel for the parties and the decisions cited at the Bar have been duly considered. Also perused and considered the evidence and other materials on record.

18. Before proceeding further, it would be apposite to briefly refer to and examine the relevant provisions of the Act. As per Section 30(c) of the Act, last date for withdrawal of candidature shall be the second day after the date of scrutiny of nomination; if that day happens to be a public holiday, the next succeeding day, which is not a public holiday, shall be the last date for withdrawal of candidature.

19. Section 37 deals with withdrawal of candidature. Section 37 has three sub-sections. As per sub-section(1), a candidate may withdraw his candidature by a notice in writing containing such particulars as may be prescribed and shall be subscribed by him and delivered before 3 pm of the last day of withdrawal of candidature. Such delivery of notice must be to the Returning Officer either by the candidate in person or by his proposer or by his election agent who has been authorized in this behalf in writing by the candidate. As per sub-section (2), no person who has given a notice of withdrawal of his candidature under sub-section (1), shall be allowed to cancel such notice. Finally, under sub-section (3), the Returning Officer on being satisfied as to the genuineness of the notice of withdrawal and the identity of the person delivering it under sub-section(1) shall cause the notice to be affixed in some conspicuous place in his office.

19.1. Thus, sub-section (1) and sub-section (3) of section 37 are material in so far the present case is concerned. While sub-section (1) concerns the candidate, sub-section (3) is relatable to the Returning Officer. Under sub-section (1), a candidate may withdraw his candidature by a notice in writing in the prescribed format and deliver the same to the Returning Officer within the period specified either by himself in person or by his proposer or by his election agent. Thus, sub-section (1) empowers only three persons to withdraw the candidature of a candidate-candidate himself in person, his proposer or his election agent. But in the case of election agent, he must be authorized in this behalf in writing by such candidate. As noticed above, sub-section (3) is relatable to the Returning officer. The Returning officer is under legal obligation to satisfy himself as to the genuineness of the notice of withdrawal and as to the identity of the person delivering it before affixing the notice in a conspicuous place in his office.

20. Rule 9 of the conduct of Election Rules, 1961 mentions that notice of withdrawal of candidature under section 37(1) shall be in Form-5 appended to the Rules and contain particulars set out therein. On receipt of such notice, the Returning Officer shall note thereon the date and time when the notice was delivered. The notice under sub-section (3) shall be in Form-6.

21. Sections 80 to 84 of the Act deal with presentation of election petition to the High Court. Under section 81 of the Act, an election petition may be presented before the jurisdictional High court calling in question any election on one or more of the grounds specified in sub-section(1) of Sections 100 and 101.

22. While section 100 mentions the grounds for declaring an election to be void, section 101 deals with grounds for which a candidate other than the returned candidate may be declared to have been elected. In the present case, petitioner wants a declaration that the election of the respondent is void under section 100(1)(d)(iv). Since petitioner has not sought for a declaration that he be declared elected, Section 101 of the Act would not be relevant. Therefore, only section 100 of the Act would have relevance.

23. Before proceeding to section 100, a brief reference to section 83 of the Act would be in order. As per sub-section (1) of section 83, an election petition shall contain a concise statement of the 'material facts' on which the petitioner relies upon. Thus 'material facts' have to be pleaded by the petitioner. Adverting to Section 100 of the Act, it is seen that it has got two sub-sections, i.e., sub-sections (1) and (2). For better appreciation, section 100 is extracted hereunder:-

"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 ; 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, insofar as it concerns a returned candidate, has been materially affected-*
 - (i) by the improper acceptance of 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. The argument of learned counsel for the respondent that sub-section (1) of section 100 is subject to sub-section(2), which deals with 'corrupt practice' and therefore irrespective of the ground taken under sub-section(1), 'corrupt practice' has to be pleaded by the petitioner was gone into by this Court in Misc. Case No. 2627/2014. After minutely examining the provisions of the two sub-sections, this Court by order dated 27th October, 2014 held as under:-

"Sub-section(1) of Section(1) 100 lays down the grounds for declaring the election of the returned candidate as void. As already mentioned at the very beginning, election petitioner has challenged the election of the respondent under Section 100(1)(d)(iv) of the Act for non-compliance with a provision of the Act i.e. Section 37. Though sub-section (1) is couched in the language that the said sub-section is subject to sub-section (2), a minute reading of the two sub-sections would reveal a subtle yet significant difference. It is only when election petitioner alleges Corrupt practice and urges the grounds under Section 100 (1) (b) or 100(1) (d) (ii) that sub-section (2) would come into play. What sub-section (2) says is that even if the High Court is of the opinion that there was corrupt practice which materially affected the election of the returned candidate, the High Court can still save the election of the returned candidate if in the opinion of the High Court corrupt practice was indulged in without the consent of the candidate or his election agent or contrary to the orders of the returned candidate or his election agent. Therefore, sub-section (2) is basically a saving clause to save the election of a returned candidate even it is proved that there was corrupt practice on behalf of the returned candidate provided the High Court is satisfied that such corrupt practice was committed by an agent other than the election agent without the consent or contrary to orders of the returned candidate or his election agent. In a case which is not based on allegation of corrupt practice, provisions contained in sub-section (2) will not come into play. Therefore, learned counsel for the election petitioner is right in contending that in such a scenario sub-section (2) of section 100 would stand excluded altogether."

25. From what was discussed above, it is clear that it is only when 'corrupt practice' is alleged in an election petition and grounds under section 100(1)(b) or section 100(1)(d)(ii) are urged that sub-section(2) would come into play. This Court held that what sub-section(2) provides is that even if the High Court is of the opinion that the returned candidate was guilty of 'corrupt practice', High Court can still save the election of the returned candidate if in the opinion of the High Court, 'corrupt practice' was indulged in or committed by an agent other than the election agent contrary to the orders or without the consent of the candidate or his election agent. Therefore, it was held that sub-section (2) is basically a saving clause to save the election of a returned candidate guilty of 'corrupt practice' subject to the satisfaction of the High Court as above. In a challenge which is not based on allegation of 'corrupt practice', provisions contained in sub-section (2) will have no application. There is no reason to take a different view. Therefore, this position as reflected in the order dated 27th October, 2014 and as extracted above is reiterated.

26. Having noticed the relevant legal provisions, the evidence on record, both oral and documentary, may now be examined.

27. PW 1, Atum Welly is the petitioner himself. In his evidence-in-chief, he has stated that his election agent was his younger brother, Shri Utung Welly, a registered voter of the constituency. His proposer was Shri Ravindra Tana, also a voter of the said constituency. For the said constituency, there were only two candidates, petitioner representing BJP and respondent representing INC. On 24th March, 2014, nomination papers of both the candidates were scrutinized by the Returning officer, Sri Tarin Dakpe. During scrutiny, petitioner along with his proposer, Shri Ravindra Tana were present. His wife and election agent were also at seppa. After scrutiny, nomination papers of both the candidates were found valid. On 25th March, 2014, petitioner left Seppa in the morning for campaigning. After campaigning, he reached Itanagar in the morning of 26th March, 2014 and remained at Itanagar in his residence from 26th March, 2014 to 30th March, 2014. On 26th March, 2014, petitioner's wife, election agent and proposer campaigned in the palin area. After campaigning was over, the proposer stayed back at palin though election agent and wife returned to Seppa in the evening of 27th March, 2014. Petitioner stated that in the evening of 26th March, 2014 while he was at Itanagar, he received phone calls from many of his supporters and relatives and from the said phone calls, he learnt about withdrawal of his candidature. Petitioner has stated that he had not prepared any notice for withdrawal of his candidature and had not got it delivered either personally or through anybody else to the Returning Officer at Seppa. He also stated that he did not authorize anyone, including his proposer and election agent, to deliver such notice on his behalf. Stunned by the news, petitioner tried to fax an FIR to the officer-in-charge of Seppa Police Station through his son on 26th March, 2014 itself. But the fax could not be transmitted. On the same day, he lodged a complaint before the Returning Officer at seppa through his son with a copy to the chief Election officer, Itanagar. The following day, his lawyer, Shri Taba Tagum handed over a copy of his complaint to the Deputy Chief Election officer by hand, receipt of which was acknowledged. The complaint was forwarded to the Election commission of India on the same day. Though his election agent went to meet the Returning officer on 28th March, 2014, he was not allowed to meet the Returning Officer by the security personnel. Since the FIR was not registered in the meanwhile, communication was made to the Superintendent of Police at Seppa on 29th March, 2014 whereafter, petitioner's complaint was registered as FIR No.19/2014 under sections 468/469 IPC and investigation of the case was entrusted to Shri T. Jamoh of Seppa Police Station.

27.1. After filing of the election petition, petitioner received notice dated 3rd May, 2014 from the District Election Officer, Seppa to be present on 6th May, 2014 in his office for opening of sealed packet containing the documents related to withdrawal of nomination of the petitioner and election of the respondent. Accordingly, petitioner was present, so also representative of the respondent. The sealed packet was opened and a list of documents found inside the sealed packet was prepared. Amongst the documents found in the sealed packet was a photo copy of authority letter written by the petitioner authorizing Shri Sanjeev Tana for withdrawal of his nomination and also a photo copy of receipt of notice of withdrawal of candidature, In the course of investigation, police had arrested Shri Sanjeev Tana, younger brother of petitioner's, proposer Shri Ravindra Tana on 19th September, 2014. However, Shri Sanjeev Tana was granted bail by the competent Court on the same day. Petitioner reiterated that no notice of withdrawal as envisaged under Rule 9(1) of the Conduct of Election Rules, 1961 was made or instructed by him or signed. He did not issue any notice of withdrawal of candidature. Stating that acceptance of such withdrawal was illegal and such illegal acceptance of the purported withdrawal of his candidature by the Returning Officer had materially affected the result of the election in the said constituency, it was asserted that the unopposed election of the respondent was *ab initio void*.

27.2. In his further examination, PW 1 stated that authority letter dated 26th March, 2014 (Ext. 9) was not issued by him. Signature appearing in the authority letter (Ext.9 (2)) appears to be a scanned one and he had not made such signature. He further stated that notice of withdrawal of his candidature dated 26th March, 2014 (Ext.10) was not issued by him. Signature appearing in the notice of withdrawal (Ext.10 (1)) was not his signature. Referring to Shri Sanjeev Tana, petitioner stated that he was personally known to him as he was his election agent in the previous election. In the year 2009 when he had contested the election as INC candidate, Shri Sanjeev Tana was made the election agent because he was working member of the INC. During 2014 election, Sri Sanjeev Tana had no association with PW 1, as unlike petitioner, he did not join BJP and remained in the INC. He stated that he did not meet Shri Sanjeev Tana on 24th, 25th and 26th March, 2014. Referring to Dr. Byabang Rana, PW 1 stated that he knew him because when he was Minister of Health & Family welfare, Dr. Byabang Rana was his officer on special Duty. After he ceased to be a minister, all his official relationship with Dr. Rana got severed. During 24th, 25th and 26th of March, 2014 he did not meet Dr. Rana.

27.3. Though PW 1 was cross-examined at length, evidence given by him in-chief could not be dislodged' though it could be deduced that there was variation in the different signatures of PW 1. It also came on record that from the night of 26th March, 2014 to 28th March, 2014, there was severe disturbance at the residence of PW1 where his wife was surrounded by his supporters who agitated angrily.

28. Election agent of the petitioner, Shri Utung Welly deposed as PW 2. He corroborated the evidence of PW 1.

29. The Returning officer of the constituency at the relevant point of time, Shri 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. 26th March, 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 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 Shri Sanjeev Tana. Thereafter, Shri sanjeev Tana personally came to the office of PW 4 at 01.30 p.m. on 26th March, 2014 and handed over the duly filled up Form No. 5 in original bearing signature of the petitioner along with his authority letter. He admitted that Shri 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 03.00 p.m. Thereafter, he declared respondent to be the elected candidate at around 06.00 p.m. of 26th March, 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 27th March, 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 T Jamoh was the Investigating Officer of 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 26th March, 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.

31. PW 6 is the present Returning Officer of the constituency. He stated that as per instruction of Election Commission of India, he had contacted the Director of Forensic Science Laboratory at Guwahati regarding verification of signature of the petitioner appearing in the authorization letter, Signatures of the petitioner appearing in notice of withdrawal and authority letter were sent to the Central Forensic Science Laboratory for verification. In his cross-examination, he stated that he cannot say that what came out of the sealed envelope was exactly what was received. Though specimen signatures of the petitioner were sent for examination, no signatures were obtained afresh from the petitioner or from Government record for the purpose of verification of signature on questioned documents. The signatures sent for examination were the signatures on affidavit enclosed with nomination papers to be compared with the questioned documents.

32. PW 7, Sri Loganathan deposed as the expert witness. At the time of deposition, he was the Assistant Govt. Examiner of questioned documents. He stated that forensic examination report dated 15th May, 2014 (Ext.9) was prepared by him. PW 7 was cross-examined at length.

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 26th March, 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 also sent by petitioner to the Returning officer by fax and telephonically requested the Returning Officer to accept the same. Further, he sent text message (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.

34. Ext. 9 is the authority letter dated 26th March, 2014 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 in 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 6th May, 2014 in the presence of petitioner and representative of respondent. At Sl. No. 3 thereof corresponding to page 73, it is a photo copy of notice of withdrawal. At Sl. No.4 corresponding to page 74, it is photo copy of receipt of notice of withdrawal. At Sl. No. 5 corresponding to page 75, it is photo copy of authority letter of the petitioner authorizing

Shri Sanjeev Tana for withdrawal of candidature. At Sl. No.6 corresponding to page 76 is the notice of withdrawal of candidature in original. Ext. 19 is the forensic examination report of Central Forensic Science Laboratory, Guwahati dated 15th May, 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.

35. Having noticed the relevant legal provisions and the evidence on record, an endeavour may now be made for an analysis of the two to see that a just and correct conclusion can be reached.

36. Section 83(1) (a) stipulates that an election petition shall contain a concise statement of the '*material facts*' on which the petitioner relies. Section 100(1) mentions the grounds for declaring an election to be void. As per section 100(1)(d)(iv), subject to the provisions of sub-section (2), if the High Court is of the opinion that the result of the election in so far as it concerns a returned candidate has been materially affected by any non-compliance of the provisions of the Constitution or of the Act or of any Rules or orders made under the Act, the High Court shall declare the election of the returned candidate to be void. The question as to whether section 100(1) in its entirety is subject to sub-section (2) of the said section or more specifically whether clause (d) (iv) of sub-section (1) is subject to the provisions of sub-section (2) has already been gone into by this Court in the order dated 27th October, 2014 passed in Misc. Case No.2627/2014 as extracted above and reiteration of the same is considered not necessary.

37. As has been held, provision of sub-section (1) (d) (iv) is not subject to the provisions of sub-section (2) of section 100. What, therefore, is the legal requirement is that the High Court must be of the opinion that the result of the election in so far it concerns the returned candidate has been materially affected by non-compliance of any constitutional or statutory provision in which event High Court shall declare the election of the returned candidate to be void. Therefore the requirement is that the petitioner must not only prove non-compliance of any constitutional or statutory provision but must additionally prove to the satisfaction of the High Court that such non-compliance has materially affected the result of the election of the returned candidate. To enable the High Court to form such an opinion, petitioner must plead '*material facts*' in the election petition as per requirement of section 83(1) (a), which '*material facts*' must thereafter be proved. In the instant case, it is the pleaded case of the petitioner, details of which would be adverted to in the subsequent paragraphs that there has been violation of section 37 of the Act and such violation has materially affected the election of the respondent.

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 the 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 the 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 26th March, 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 did not 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 matter of fact, on 26th March, 2014, both of them were not at Seppa. The averments from paragraphs 10 to 13 and from paragraphs 16 to 26 of the election petitioner 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 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 the illegal acceptance of his purported withdrawal of 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.

41. PW1, in his evidence, categorically stated that he did not write any notice of withdrawal of candidature; neither did he authorize anyone including his proposer and election agent to write such notice. Therefore, neither he nor his election agent nor his proposer submitted such application. PW4, in his evidence, stated that he received a call from Dr. Byabang Rana (DW9) requesting him to accept the notice of withdrawal of candidature of the Petitioner. According to this witness, DW9 informed him that notice of withdrawal in Form-5 was being sent through Shri Sanjeev Tana and the said Shri Sanjeev Tana handed over the notice of withdrawal in Form-5 to PW4 along with the authority letter. The authority letter in original is not available; only a photocopy of the same is available which has been proved as Ext.9.

42. DW9, in his evidence, stated that he had filled up Form-5, i.e., notice of withdrawal in his own hand writing in the presence of the Petitioner. He deposed that petitioner had signed the said notice in his presence whereafter it was handed over to Shri Sanjeev Tana who was present at the time of filling up of Form-5. He also stated that Shri Sanjeev Tana went to the Returning Officer with Form - 5 along with the authority letter signed by the petitioner whereafter those were handed over to the Returning Officer. He further stated that he had spoken to the Returning Officer from his mobile phone and that petitioner had also sent SMS to the Returning Officer from his (DW9's) mobile phone.

43. From an analysis of the above evidence, what is clearly discernible is that notice of withdrawal in Form - 5 was handed over to the Returning Officer by Shri Sanjeev Tana who also handed over an authority letter stated to have been issued by the petitioner. Shri Sanjeev Tana was neither the candidate himself nor his proposer nor his election agent. He is not one of the three specified persons legally empowered under sub-section (1) of section 37 of the Act to deliver the notice of withdrawal in Form-5 to the Returning Officer. Therefore, there is clear violation of section 37(1) of the Act. In so far section 37(3) is concerned, PW4 the then Returning Officer admitted that it was Shri Sanjeev Tana who had handed over the notice of withdrawal to him and that Shri Sanjeev Tana was not one of the three persons empowered to deliver the notice of withdrawal under sub-section(3). Yet he accepted it and got the notice affixed. Therefore, there is breach of section 37(3) as well. Over all, there is no doubt about the breach of section 37 of the Act. Viewed in that context, the debate as to whether petitioner's signature appearing in the notice of withdrawal and the authorization letter are genuine or not or whether petitioner had really filled up the Form - 5 and signed it and thereafter authorized Sri Sanjeev Tana to hand-over the same to the Returning Officer pales into insignificance.

44. The question as to whether section 37 of the Act is mandatory or directory is also not very significant in the sense that even in the case of **Vijay Raje Schindia** (supra), it was held by the Madhya Pradesh High Court that even if there is a breach of section 37, what has to be seen is that such violation of the statute must materially affect the result of the election.

45. Having said that, we need to remind ourselves of the observations of the Supreme Court in **Jagan Nath** (Supra) that statutory requirement of election law 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. As has been held by the Supreme Court, it is the cardinal rule of interpretation that where a statute provides that a thing should be done in a particular manner, it should 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 vs. Taylor**, followed by the Privy Council in **Nazir Ahmed Vs. King Emperor**. This rule has since been applied by Indian Courts across jurisprudences.

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 Gautan** (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).

47. It has already been discussed above that there are adequate pleadings to that effect in the election Petition.

48. Learned counsel for the respondent had vehemently argued and had placed reliance on a number of judgments to press home the point that even if there is violation of a statutory provision, it must be demonstrated that such violation had materially affected the election of the returned candidate. What was sought to be impressed upon was that it would not be enough to say that such violation had materially affected the result of the election; it has to materially affect the election of the returned candidate. This aspect of the matter has already been gone into by this Court in the order dated 27th October, 2014 passed in Misc Case No. 2627/2014 and is extracted hereunder: -

" The last limb of argument of Mr. Kashyap is that the election petitioner has not only to plead violation of any statutory provision but in addition, has also to plead that such violation materially affected the election of the returned candidate. In my understanding, this proposition would have to be examined in the context of the basic facts of each case. No straight jacket formula can be laid down in this regard. In the election petition, the following are the relevant paragraphs in support of the contention of the election petitioner that the election of the respondent should be declared void under Section 100 (1)(d)(iv) of the Act ;-

- "27. That in the present case, purported withdrawal of petitioner's candidature from 12-Pakke-Kessang (ST) Legislative Assembly Constituency is in violation of Section 37 Sub-section (1) of the Representation of people Act, 1951, Moreover, the Returning Officer did not follow the mandate of Sub-section (3) of Section 37 while accepting the purported withdrawal of petitioner candidature from 12- Pakke-Kessang (ST) Legislative Assembly Constituency.
- 28. That since the petitioner did not write any notice for withdrawal of his candidature from 12-pakke-Kessang (ST) Legislative Assembly Constituency nor did he authorize either his election agent Sri Utung Welly or his proposer Sri Ravindra Tana for withdrawal of his candidature, there has been no withdrawal of petitioner's candidature from 12-Pakke- Kessang (ST) Legislative Assembly Constituency within the meaning of Section 37(1) of the Representation of People Act, 1951 and as such, acceptance of purported withdrawal of petitioner's candidature from 12-Pakke-Kessang (ST) Legislative Assembly Constituency by the Returning Officer of 12-Pakke-Kessang (ST) Legislative Assembly Constituency, is not tenable and is in violation of Section 37(1) of the Representation of People Act, 1951.
- 29. That no notice as envisaged under Rule 9(1) of the Conduct of Election Rules, 1961 was ever signed, made or instructed to be made by the election petitioner. It is, therefore, stated that the petitioner did not issue any notice of withdrawal of his candidature from 12-Pakke- Kessang (ST) Legislative Assembly Constituency within the meaning of Rule 9(1) of the conduct of Election Rules, 1961 and as such acceptance of purported notice of withdrawal allegedly delivered by the so called authorized representative or the petitioner, is not tenable in law and is ab-initio void.
- 30. That the illegal of acceptance of purported withdrawal of petitioner's candidature has materially affected the result of the election in 12 Pakke-Kessang (ST) Legislative Assembly Constituency under Section 100(1) (d)(iv) of the Representation of People Act, 1951 and as such, the unopposed election of the respondent from the 12-Pakke-Kessang (ST) Legislative Assembly Constituency has been rendered void.
- 31. That on the facts and grounds stated above, the Hon,ble Court may be pleased to declare the election of the respondent from 12-Pakke-Kessang (ST) Legislative Assembly Constituency to be void under Section 100(1) (d) (iv) of the Representation of People Act, 1951." From a reading of the above, it is quite evident that the election petitioner has not only pleaded violation of statutory provision but has also pleaded that such violation has materially affected the result of the election. Thus, the election petitioner has complied with the requirement of Section 83(1) (a) of the Act.

In a case of this nature where there were only two candidates in the fray, it is obvious that withdrawal of the candidature of the petitioner has materially affected the election in as much as the respondent stood automatically elected unopposed. Both the decisions in Mangani Lal Mandal (supra) and Ram Sukh (supra) would not be applicable in a case of this nature. At this stage, relevant portion of the decision of the Apex Court in Durai Muthuswami (supra) may be quoted hereunder:-

"3.

Therefore, what Section 100 requires is that the High Court before it declares the election of a returned candidate is void should be of opinion that the result of the election insofar as it concerns a returned candidate has been materially affected by the improper acceptance of any nomination. Under Section 83 all that was necessary was a concise statement of the material facts on which the petitioner relies. That the appellant in this case has done. He has also stated that the election is void because of the improper acceptance of the 1st respondent's nomination and the facts given showed that the 1st respondent was suffering from a disqualification which will fall under Section. 9-A. That was why it was called improper acceptance. We do not consider that in the circumstances of this case if was necessary for the petitioner to have also further alleged that the result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of the 1st respondent's nomination. That is the obvious conclusion to be drawn from the circumstances of this case. There was only seat to be filled and there were only two contesting candidates. If the allegation that the 1st respondent's nomination has been improperly accepted is accepted the conclusion that would follow is that the appellant would have been elected as he was the only candidate validly nominated. There can be, therefore, no dispute that the result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination because but for such improper acceptance he would not have been able to stand for the election or be declared to be elected.

* * * * *

It is not intended to provide a convenient technical plea in a case like this where there can be no dispute at all about the election being materially affected by the acceptance of the improper nomination. "Materially affected" is not a formula that has got to be specified but it is an essential requirement that is contemplated in this section. Law does not contemplate a mere repetition of a formula. The learned Judge has failed to notice the distinction between a ground on which an election can be declared to be void and the allegations that are necessary in an election petition in respect of such a ground. The petitioner had stated the ground on which the 1st respondent's election should be declared to be void. He had also given the material facts as required under Section 83(1)(a). We are, therefore, of opinion that the learned Judge erred in holding that it was not competent for him to go into the question whether the 1st respondent's nomination had been improperly accepted."

The above decision is a clear answer to the third objection raised by the applicant/respondent,"

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 applicable 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 candidate B. This is precisely what was held in **Vijay Raje Scindia** (supra). But as has been held by this Court in the order dated 27th October, 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 candidature and such withdrawal is contended to be illegal being in violation of section 37 of the Act, it would be obvious that such 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 the 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.

51. Thus, from a thorough consideration of the entire matter, Court is of the clear opinion that in the present case, there has been violation of section 37 of the Act and such violation has materially affected the election of the respondent. Therefore, the issues framed are answered in the following manner:-

Issue No. 1	—	Negative ;
Issue No. 2	—	Negative ;
Issue No. 3	—	Negative ;
Issue No. 4	—	Negative ;
Issue No. 5	—	Affirmative ;
Issue No. 6	—	Affirmative.

52. Consequently and having answered the issues as above, election of the respondent from No.12 Pakke-Kessang (ST) Legislative Assembly Constituency in the election held pursuant to General Notification dated 15th March, 2014 is declared void under section 100(1) (d) (iv) of the Act.

53. Election petition is accordingly allowed parties to bear their own costs.

UJJAL BHUYAN
JUDGE.

By Order,

Joint Registrar (Judicial)
Gauhati High Court, Guwahati.

By Order,

S.B. JOSHI
SECRETARY,
ELECTION COMMISSION OF INDIA.

Kaling Tayeng, IAS
Chief Electoral Officer,
Arunachal Pradesh,
Itanagar.