

भारतीय गैर न्यायिक

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RUPEES

Rs. 10

INDIA NON JUDICIAL

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65AA 228984

Sl. / Rec. No. 227... Reg. No. 6
Page No. 158... Dt. 6.1.24

B. Behera, NOTARY
Regd. No. ON 110/09
SAMBALPUR, ODISHA

BEFORE THE RETURNING OFFICER, THE ELECTION
TO THE LOK SABHA FROM 03 - SAMBALPUR
PARLIAMENTARY CONSTITUENCY

In the matter of:

Election to the Lok Sabha from 03 – Sambalpur Parliamentary
Constituency;

AND

In the matter of:

An application assailing the nomination of Shri Dharmendra
Pradhan, son of Shri Debendra Pradhan, R/o. Ward No 18,
Talcher Municipality . PO/PS: Talcher, Dist.: Angul, Odisha -
759100, the candidate for election to the 03- Sambalpur
Parliamentary Constituency;

AND

Subash Mohapatra

1542
4/5/24

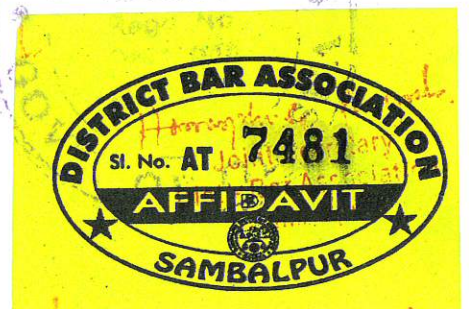
Subash Mahapatra
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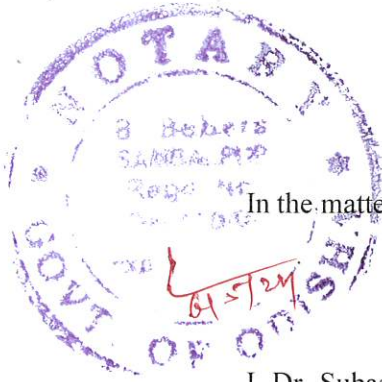


[Signature]
District Treasury Officer
Kandhamal

4/5/24

Subash Mahapatra





In the matter of:

An objection by Dr. Subash Mohapatra, son of Late Jalandhar Mohapatra, R/o. 204, Signature I, Bapuji Nagar, Bhubaneswar, Odisha -751009

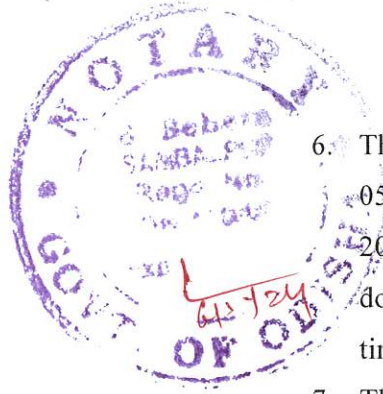
I, Dr. Subash Mohapatra, aged 50 Years, Son of Late Jalandhar Mohapatra, R/o. 204, Signature I, Bapuji Nagar, Bhubaneswar, Odisha -751009, do hereby solemnly affirm and state on oath as follows:

That the humble petition/objection/counter affidavit raised by the undersigned contesting candidate from 03 – Sambalpur Lok Sabha Constituency.

Most respectfully sheweth :

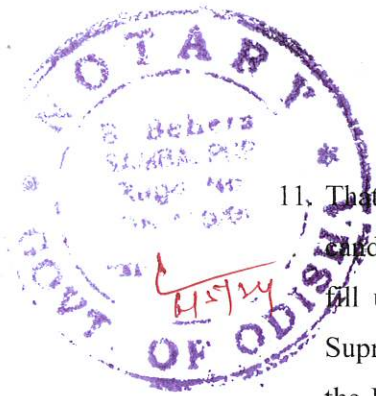
1. That it is stated that this counter affidavit is made against the nomination to the election of 03 – Sambalpur Parliamentary Constituency filed by Shri Dharmendra Pradhan vide affidavit bearing Sl. No. 3815 dated 02-05-2024.
2. That it is stated that Shri Dharmendra Pradhan has altered the prescribed Form - 26 (See Rule 4A) for suppressing the facts regarding pending criminal cases. As prescribed in Para 5 (pending criminal cases) of Part A of the Form – 26, he is duty bound by law to state on oath concerning his pending criminal cases. He altered the Form -26 with malafides, and made untrue statements.
3. That it is stated that Shri Dharmendra Pradhan did not make compliance of the directions of the Supreme Court of India [WP(C) No. 536 of 2011], prescribed form issued by law and instructions of Election Commission of India. Though it is clearly instructed in Para 5(ii)(e) to mention Yes or No, he replied as “final report submitted”. Further, he made untrue statements that he has 3 pending criminal cases in Para 5 of Part B of Form 26; and the said statement is contrary to his statement under Para 5(ii) of Part A of Form -26. There are five criminal cases pending against him.
4. That it is stated that Shri Dharmendra Pradhan has left blank in Para 8(B)(iii)(b) of Part B of Form -26. He suppressed the information on inherited assets of his dependents. He also has chosen not to reply the queries made under 8(ii)B(ii) of Part A of Form B, and left blank.
5. That it is stated that the identification of Shri Dharmendra Pradhan committed by Notary Public himself is illegal and contrary to the law. At the behest of Shri Dharmendra Pradhan, the Notary Public P.R. Barapanda, Sambalpur Regd. No. 106/12 acted as a witness and a judge himself, both.

Subash Mohapatra



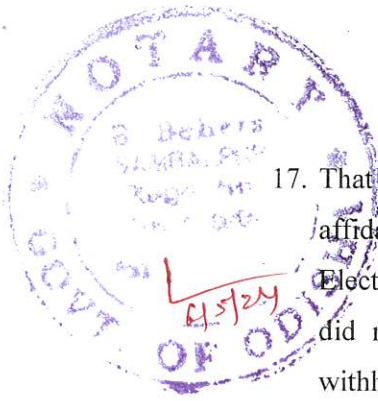
6. That it is stated that all four so-called affidavit i.e. Serial No. 3813 dated 02-05-2024, 3814 dated 02-05-2024, 3815 dated 02-05-2024 and 3816 dated 02-05-2024 have been sworn at 8.00 AM of 2-5-2024 as revealed from the said documents, and the said sacred acts (swearing) can't be completed at same time.
7. That it is stated that as the swearing in is not duly conducted, the said documents can't be said that the affidavit is duly made by Shri Dharmendra Pradhan before the concerned Notary Public. The documents submitted by Shri Pradhan to the Returning Officer of 03- Sambalpur Lok Sabha Constituency as affidavit is not an affidavit; and a falsified and invalid document.
8. That it stated that it is self-admitted by Shri Dharmendra Pradhan in Para 9 of Part A that presently he holds the position of Chairman and Member, Board of Trustees of the Odisha Research Centre, and the said Odisha Research Centre is under a public charitable agency under Government of India established by by Indian Council of Social Science Research (ICSSR) in collaboration with the Indian Knowledge Systems Division, Ministry of Education, IIM Sambalpur, IIT Kharagpur, and IIT Bhubaneswar. Further, it is stated that he, being Chairperson of Odisha Research Centre, holds Office of Profit. As Chairperson is entitled to receive allowances.
9. That it is held in Jaya Bachan V. Union of India that "It is well settled that where the office carries with it certain emoluments or the order of appointment states that the person appointed is entitled to certain emoluments, then it will be an office of profit, even if the holder of the office chooses not to receive/draw such emoluments. What is relevant is whether pecuniary gain is "receivable" in regard to the office and not whether pecuniary gain is, in fact, received or received negligibly".
10. That at the outset it is submitted that the Hon'ble Supreme Court of India in W.P.C.No-121 of 2008 in the matter of Resurgence India Vs Election Commission of India and others, issued guidelines regarding filing of incomplete affidavit of candidates wherein it is held that the voter has the elementary right to know or get information about full particulars of the candidates who is to represent him in the parliament / assemblies and such right to get information is universally recognized natural right following from the concept of democracy and is an integral part of Article 19 (1) (A) of the Constitution of India.

Sudesh Mohapatra



11. That in the aforesaid judgment it is held that in the affidavits filed by the candidates along with their nomination papers, the candidates are required to fill up all columns therein and no column can be left blank. The Hon'ble Supreme Court has accordingly held that at the time of filing of the affidavit, the Returning Officer (RO) has to check whether all columns of the affidavit filed with the nomination paper are filled up and no columns should be left blank. Therefore, at the time of filing of affidavit, the Returning Officer has to check whether all columns of the affidavit are filled up and if candidates fail to do so even after reminder by the RO, his nomination is liable to be rejected at the time of scrutiny of nomination papers. The Hon'ble Supreme Court further observed that it is the duty of the Returning Officer to check whatever the information is 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 citizen". The aforesaid guideline is brought to notice of all concerned vide letter dated 30/09/2013 of the Election Commission of India.
12. That it is stated that it is noteworthy to state that the said nomination paper has not been submitted by Shri Dharmendra Pradhan as required under law, compliance of the Supreme Court directions, and as prescribed by the Election Commission of India.
13. That it is stated that while filing his nomination papers, Shri Dharmendra Pradhan has failed to submit his nomination form complete in all respects. He has suppressed information about his criminal antecedents as required Para 6A of Form - 26, and left Blank which is complete violation of the directions of the Hon'ble Supreme Court and the Election Commission of India.
14. That it is stated that it is crystal clear that the "sworn" of the said document as affidavit is not completed as Shri Dharmendra Pradhan has not taken oath duly and the Section 8 of the Notary Act is incomplete, and thus it cannot be said as affidavit has been duly made as per the law.
15. That it is stated that Shri Dharmendra Pradhan has altered the Form 26 and the alteration is violation of the prescription made by the rule and instruction of ECI.
16. That it is stated that Shri Dharmendra Pradhan did not answer the query about the inherited assets of his dependents as required in Form 26. He left blank the query as prescribed in Para 8(B)(iii)b of Part B of Form 26/Affidavit.

S. Behera



17. That it is stated that the said Shri Dharmendra Pradhan has not filed a valid affidavit along with his nomination paper before the Returning Officer for the Election to 03 – Sambalpur Lok Sabha Constituency as required under law and did not provide the required correct information as per the mandate and withhold the vital information as per his need for which the nomination paper submitted by him and the same can never be treated as a valid nomination as per section 33 of the R.P Act and the same is required to be rejected by the Returning Officer. It is reiterated that he has not furnished the detailed information as prescribed by Election Commission of India in compliance with the direction of the Hon'ble Supreme Court. As per the provisions of the RP Act, a candidate is required to furnish the desired information in a prescribed format and no column should be left blank, and he is not empowered and/or authorized to alter the Form - 26.
18. In view of the aforesaid fact the Returning Officer is required to reject the nomination of Shri Dharmendra Pradhan in exercising its power under section 36 of the Representation of the peoples Act 1951 taking into consideration the violation of section 33 of the Representation of the Peoples Act.
19. That it is relevant to bring to the kind notice of your good office that Shri Dharmendra Pradhan while filing his nomination paper in Form- 26 of Rule 4 (4) of Conduct of election Rules 1961 has failed to categorically state true and correct information in detail.
20. That it is stated that Shri Dharmendra Pradhan has suppressed the material facts and particulars in his affidavit (Form 26) as required under section 4(A) of the Conduct of the Election Rules 1961 at the time of his filing for his nomination for applying fraud on the constitution and the voters of the 03- Sambalpur Lok Sabha Constituency.
21. That it may be considered that while verifying the information that has been submitted in Form -26, Shri Dharmendra Pradhan has declared that the contents of the affidavit are true and correct to the best of his knowledge and believe and no part of the said affidavit is false and nothing material has been concealed there from.
22. That in view of the facts and situation, it is submitted that Shri Dharmendra Pradhan has suppressed the material facts and particulars in his affidavit (Form 26) as required under section 4(A) of the Conduct of the Election Rules 1961

Smt. An. Mohapatra

at the time of filing his nomination paper thereby applying fraud on the constitution and the voters of 03 Sambalpur Lok Sabha Constituency.

23. In view of the aforesaid fact the Returning Officer is required to reject the nomination of Shri Dharemendra Pradhan in exercising its power under section 36 of the Representation of the peoples Act 1951 taking into consideration the violation of section 33 of the Representation of the Peoples Act on the ground that there has been a failure on his part to comply with provisions of the said section. And such power of the RO is also supported by the instruction noted in the hand book for Returning Officer, empowering the Returning Officer to must reject a nomination paper where any columns were left blank in the affidavit.

PRAYER

Therefore, in consideration with the aforesaid facts and circumstances, it is submitted that the nomination of Shri Dharmendra Pradhan be rejected in the better of interest of justice and democracy.

Place: Sambalpur

Date: 06-05-2024

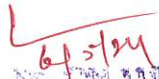

Signature of Objector

IDENTIFIED BY ME


ADVOCATE, SAMBALPUR

6/5/24

The deponent being identified by
Sri. P. N. Pradhan Advocate
solemnly affirmed before me
today at 8:32 A.M.


NOTARY, Regd. No. 110/09
SAMBALPUR, ODISHA