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ELECTION LAW

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I INTRODUCTION

ELECTION LAW for the year 2015 reveals some significant nuances in the understanding and application of hitherto well-established principles in the arena of elections. Such revelations, in our view, augment the functional value of those very principles. Within the constraint of time and space, in the present survey we have been able to include the following nuances emanating from the Supreme Court judgments reported in AIR (All India Reporter) during the calendar year 2015.

If a candidate's election is assailed through an election petition on grounds of suffering from any basic limitation or disqualification that is spelled out in the law relating to elections, that candidate is obliged to clear himself or herself from any such blemish by raising all kinds of legitimate defences. The critical problem is how the high court, acting as election tribunal, should deal with the election petition expeditiously, bearing in mind the twin objective of allowing neither the election petitioner to resort to frivolous litigation, nor the returned candidate to adopt delaying tactics to unduly stay put in the position to which he has been elected, is dealt with in our analysis of the Supreme Court judgement in *Pukherem Sharatchandra Singh.*[1]

Non-disclosure of 'criminal antecedents', howsoever serious these may be, by an election candidate to the electors of a constituency has been considered, at the best, as a violation of the fundamental right to the freedom of speech and expression of the citizen-voters, and, therefore, their disclosure is a must. However, it is not, as such, a ground to declare the election null and void. The ruling of the Supreme Court in *Krishnamoorthy, explores* a new perspective by dealing with the issue, whether non-disclosure by the election candidates could amount to 'undue influence' as a facet of corrupt practice under section 123(2) of the Act of 1951.[2]

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1 AIR 2015 SC 3783 (hereinafter *Pukherem). Infra,* Part II, "Expeditious disposal of election petition: Its connotative functional significance in parliamentary democracy".

2 *Infra,* Part III, "Non-Disclosure of criminal antecedents: Whether tantamount to 'undue influence' as a facet of corrupt practice under Section 123(2) of the 1951 Act".

Digital technology has revolutionized the way in which evidence is produced before the court. In order to regulate the mode of evidence through electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, *etc*., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence, the Information Technology Act, 2000 has been enacted. How far this Act has impacted the law of evidence under the Indian Evidence Act of 1872, so as to make it align to meet the modern requirements of the emerging technological society, three-judge bench of the Supreme Court in *State (NCT of Delhi)* v. *Navjot Sandhu alias Afsan Guru*[3] has authoritatively stated the special safeguards that are required to be taken to ensure the legitimacy of the source of electronic records without which the whole trial based on the proof of those records can lead to travesty of justice.[4]

Order VII Rule 11(a) of Code of Civil Procedure, 1908 (CPC) empowers the Court to reject an election petition at the very outset where there is no disclosure of "a cause of action." Since the implications of the exercise of this power are loaded with serious consequences, the Supreme Court has critically examined when could be said that a petition or plaint does not disclose 'a cause of action' in *Ashraf Kokkur*,[5] by distinguishing the 'triable issue' from the 'substantive issue', which itself is the subject of trial – a distinction which is "generally more known than clearly understood."[6]

An issue, which is somewhat cognate to the issue dealt with in the preceding paragraph, is when could an election petition be allowed to be amended to make it reasonably triable, or dismissed it at the very threshold without giving an opportunity to amend the same. This issue has been specifically considered by the Supreme Court in *C.P. John*[7] in the light of judicial precedents by raising ancillary issues: whether the high court is bound to give an opportunity to the election petitioner to apply for leave, to amend or amplify the corrupt practice alleged irrespective of all other considerations; whether the high court is justified in rejecting the election petition at the very threshold where the averments were not duly supported in the affidavit in form 25 without giving an opportunity to the election petitioner to rectify those defects; whether an election petition is liable to be dismissed *in limine* under section 86 of the Act, for alleged non-compliance with provisions of section 83(1) or (2) of the Act of 1951 or of its proviso in every case; whether an election petition is liable to be dismissed *in limine* on ground of omission to plead any one of the ingredients of section 123(4) of the Act in order to constitute a complete cause of action to challenge the election on the ground of corrupt practice; and whether an election petition is liable to be dismissed on ground of violation of section 33-A of the Act of 1951 which obliges

3 (2005) 11 SCC 600 (hereinafter simply, *Navjot Sandhu*).

4 *Infra*, Part IV, "Electronic records: Their evidentiary value".

5 *Ashraf Kokkur* v. *K.V. Abdul Khader*, AIR 2015 SC 147 (hereinafter *Ashraf Kokkur*).

6 *Infra* , Part V "Election Petition: When could it be said to disclose 'no cause of action'?".

7 *C.P. John* v. *Babu M. Palissery*, AIR 2015 SC 16 hereinafter *C.P. John.*

the election candidates to reveal information regarding their conviction in certain type of criminal cases.[8]

II EXPEDITIOUS DISPOSAL OF ELECTION PETITION: ITS CONNOTATIVE FUNCTIONAL SIGNIFICANCE IN PARLIAMENTARY DEMOCRACY

One of the main features of parliamentary democracy is the periodicity of elections in which people elect their representatives for the defined duration of five years. It is assumed that the person elected is the one who is without any taint and that he or she has not committed any illegality in the process of his or her being elected. If a candidate's election is assailed through an election petition on grounds of suffering from any basic limitation or disqualification that are spelled out in any law relating to elections, that candidate is obliged to clear himself or herself from any such blemish by raising all kinds of legitimate defences. However, if the candidate arraigned, instead of defending himself or herself by raising legitimate pleas, resorts to delaying tactics or dubious means and tries to stay put as a duly elected candidate for the duration of his or her term, how should the high court discharging the role of an election tribunal deal with this perspective?

In order to avoid such situations of unwarranted delays, the Parliament enacted the Representation of the People Act, 1951(herein after Act, 1951) and its section 86, showing how and in what manner election petitions need to be tried by the high court.[9] The provisions of this section in order to avoid all avoidable delays in trying an election petition, *inter alia*, stipulate that the trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the high court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded;[10] and that every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the high court for trial.[11]

In view of these clear and categorical legislative provisions of the Act of 1951, a question has come up before the Supreme Court in *Pukherem*[12] whether the high court is justified in conducting the proceedings for hearing of election petition in the manner in which it has done in the instant case.

8 *Infra* , Part VI, "Election Petition: When allowed or not allowed to be amended to make it reasonably triable".

9 Representation of the People Act, 1951, s. 86 falls in Ch. III (part VI), dealing specifically with the 'Trial of Election Petitions.'

10 *Id*., sub-s (6) of s. 86.

11 *Id*., sub-s (7) of s.86.

12 *Supra* note 1, see observations of Dipak Misra, J (for himself and Prafulla C. Pant J).

On fact matrix, in *Pukherem*[13] both the appellant and the respondent were candidates in Manipur Legislative Assembly elections held on January 28, 2012. At the time of scrutiny, the appellant objected to the nomination of the respondent on the ground that as per the requirement of section 36(2) of the Act of 1951, he had failed to file the proper affidavit as per article 173 of the Constitution, and that the affidavit was forged one inasmuch as he had falsely stated that his highest educational qualification is MBA, and he had passed out from Mysore University, and that affidavit also contained certain other facts which were incorrect, and he had not subscribed to the oath before the returning officer or any competent authority as directed by the Election Commission of India. However, the returning officer, after affording an opportunity of hearing, declined to reject the nomination. Accordingly, the election was held in which the respondent was declared as the duly elected candidate. The appellant challenged the election by filing an election petition (no.1 of 2012) in the High Court of Manipur at Imphal on various grounds, including the ones on which he had earlier raised objections at the time of scrutiny.

Thenceforth began the chequered history of lingering litigation. Soon after the filing of the election petition, even without filing the written statement, the returned candidate filed a number of miscellaneous applications.[14] Respondent, the election petitioner, also filed miscellaneous case for impleading the returning officer as respondent no. 2 and the said application, after many adjournments, could be disposed of almost after two years, and that too with rejection.[15] This situation led the petitioner to file miscellaneous case on December 11, 2013 to hear the case on day to day basis. This resulted in compelling the returned candidate to file his written statement, almost after two years of filing the election petition, which, as a matter of course, should have been filled soon after filing the election petition.[16]

As the case was not being taken up, as averred, the appellant filed an application forming the subject matter of miscellaneous case no. 7 of 2014 to dispose of the election petition on a preliminary issue on the foundation that the returned candidate had filed a false affidavit while submitting his nomination papers, which was evincible from the admission made in the written statement. The matter was adjourned from time to time. Hence, the present appeal, by special leave, has been filed challenging the manner in which it is conducted and the dilatory tactics ingeniously adopted by the returned candidate to procrastinate the hearing of the election petition.[17]

How has the Supreme Court viewed the conduct of procrastinating proceedings of the high court in the instant case? The very opening statement of Dipak Misra J

13 *Id.* at 3784.

14 See *infra*, note 22 and the accompanying text.

15 Misc. Case (EP) No. 1 of 2013 for impleading the returning officer of the election and the same is rejected on. April 15, 2014. See *Pukherem* at 3785.

16 Election Petition no. 1 of 2012 was filed on June 27, 2012; whereas the written statement was submitted by the returned candidate as late as on April 3, 2014.

17 *Supra* note 1 at 3785-86 (para 6).

who has delivered the judgment for the bench, reveals the clear view of the Supreme Court:[18]

What ordinarily would have entailed dismissal of the special leave petition treating it with loathe, regard being had to the nature of the order passed by the learned Single Judge in Misc. Case (E.P.) No. 1 of 2012 in Election Petition No. 1 of 2012 as he had only adjourned the matter, but the chronology of events, the ultimate consequence that would emerge by efflux of time, the command of the provision contained in Section 86(7) of the Representation of the People Act, 1951 (for brevity, "the Act"), every conceivable stand adopted in a dexterous manner by the Respondent, the elected candidate, harbouring the notion that he singularly has the intellectual imperialism, which has the effect potentiality to frustrate and defeat the election trial, for the High Court has not even been able to frame issues lest proceed with the trial, has impelled us to interfere and write a verdict….

As a matter of course, the returned candidate has every right to raise preliminary objections on the ground of maintainability of the election petition[19] by filing miscellaneous application in the very first instance,[20] and that there is nothing extra-ordinary if the election judge adjourned the matter for its due consideration. However, the Supreme Court has looked at this instance of granting adjournment not in isolation but in the totality of the context in which the returned candidate has been perceived not just to defend himself and his candidature but to "defeat the election trial." This is simply impermissible in view of the clear legislative intent to the contrary as spelled out in section 86 of the Act of 1951.[21]

In order to substantiate this stand, the Supreme Court has thought it "appropriate, for the sake of completeness," to bring on record a series of miscellaneous applications with varying effects:[22]

i Misc. Case (EP) No. 1 of 2012 filed by the returned candidate as preliminary objection on the ground of maintainability of Election Petition No. 1 of 2012-filed on 27-06-2012 and the same is *pending*.

ii Misc. Case (EP) No. 4 of 2012 filed by the returned candidate for amendment of his application in Misc. Case (EP) No. 1 of 2012. The same is *partly allowed*on 06-02-2013.

iii Misc. Case (EP) No. 1 of 2013 filed by the election petitioner for impleading the Returning Officer of the election and the same is *rejected* on 15-04-2014.

iv Misc. Case (EP) No. 5 of 2014 filed by filed by the returned candidate for

18 *Id.* at 3784 (para 1).

19 Pending Election Petition no. 1 of 2012-filed on June 27, 2012.

20 Misc. Case (EP) No. 1 of 2012.

21 See *supra* note 10 and the accompanying text.

22 During the pendency of the writ petition, as many as ten miscellaneous applications were filed, see *Pukherem*, at 3785 (para 3).

amendment of application in Misc. Case (EP) No. 4 of 2014 was also *allowed* on 14-05-2014.

v Misc. Case (EP) No. 4 of 2014 filed by filed by the returned candidate for condoning the delay in filing the written statement was *allowed* on 02-06-2014.

vi On 02-06-2014 filed another misc. application i.e. Misc. Case (EP) No. 6 of 2014 by the returned candidate for dismissing the Election Petition taking the ground that the Challan Copy for depositing cost Under Section 117 of the RP Act, 1951 is not signed by the Petitioner. The same is *pending.*

vii Misc. Case (EP) No. 8 of 2014 filed by the returned candidate for condonation of delay in filing the misc. application again for amendment of the misc. application in Misc. Case (EP) No. 1 of 2012 was *allowed* on 09-09-2014.

ix Misc. Case (EP) No. 9 of 2014 filed by the returned candidate for amendment of the Misc. Application third time in Misc. Case (EP) No. 1 of 2012 was *allowed* on 09-09-2014.

x Misc. Case (EP) No. 10 of 2014 filed by the returned candidate for dismissal of the election petition on the ground that election petition is incomplete was *withdrawn* on 05-11-2014.

xi On 14-01-2015 the returned candidate filed another misc. application i.e. Misc. Case (EP) No. 1 of 2015 for dismissal of the election petition stating that no cause of action is disclosed. The same is *pending.*

A bare perusal of all the miscellaneous applications hitherto filed by the returned candidate, excepting one filed by the election petitioner for impleading the returning officer and that too was eventually rejected,[23] unmistakably reveal the consistent pattern of delaying the trial of the election petition.[24]

Furthermore, when the election petition was taken up by the high court on August 24, 2015, the returned candidate again tried to get it deferred on the plea that he had filed an special leave petition (SLP) no. 15813/2015 before the Supreme Court and that the same was to be taken up for hearing on September 23, 2015 and thus the hearing of the election petition should be postponed at least till that date. Since no stay order had been passed, there was no impediment on the part of the high court to

23 It was rejected as late as on April 15, 2014.

24 In pursuit of fructifying the result of his Misc. Case (EP) no. 4 of 2012 for amendment of his application in Misc. Case (EP) no. 1 of 2012, which was *partly allowed* on February 6, 2013, the returned candidate promptly preferred an appeal in the Supreme Court by special leave *i.e.*, civil appeal no. 10599 of 2013, which was allowed to the extent as proposed by him, because in the opinion of the Supreme Court "in the interest of justice," "the aforesaid amendment would in no manner change the nature of the plea taken by the Appellant," see, *supra* note 20 at 3785 (para 4). As a footnote to this order of the Supreme Court, the bench in *Pukherem, inter alia*, stated: "The said order was passed on 19.11.2013. It is asserted in the memorandum of appeal that the Respondent filed Misc. Case E.P. No. 1 of 2013 for impleading the Returning Officer as Respondent No. 2 and the said application has not been disposed of and the matter was adjourned on many an occasion." See *supra* note 20 at 3785 (para 5).

proceed with the election petition, nevertheless the election judge still agreed to list the matters on September 9, 2015 "as prayed by the parties."[25] The returned candidate did not abandon his persistency of delaying the trial of election petition even after the matter reached the Supreme Court, and this is evident from the statement made by the court:[26]

When the matter was listed on the first occasion, we had issued notice fixing a returnable date. Despite service of notice, no one has entered appearance on behalf of the Respondent.

In view of this backdrop, the Supreme Court has made a cryptic observation about the conduct of the returning candidate: "The adroit effort to cause delay is absolutely manifest."[27] Bearing this observation in mind, the issue for serious consideration of the Supreme Court revolves around: why the returning candidate had hitherto succeeded in getting the matter adjourned on numerous occasions by filing variety of applications; how could be choose not to file the written statement for two years; and why did the high court fail to frame the issues for the trial of the election petition almost for three and a half years after filing of the election petition on June 27, 2012, especially more in view of the legislative clear commandment contained in section 86(7) of the Act of 1951that every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the high court for trial?

This led the Supreme Court in the instant case to explore the role of election tribunal and the conception of disposal of a challenge to election in the light of judicial precedents. In this respect, the following propositions may be abstracted: [28]

i. For proper functioning of democracy, the principal object of the Act of 1951, namely, the "purity of elections", must be maintained.[29]
ii. Whenever an election of a returned candidate is challenged under the Act of 1951, "expeditious trial of the election dispute is sought to be enforced by the Legislature making all safeguards against delay."[30]
iii. The trial "has to be necessarily expedited to rid the candidate as well as the constituency interested in the result of the election, of any taint or suspicion of corrupt practices which are again clearly enumerated in the Act."[31]

25 *Supra* note 1 at 3786 (para 8).

26 *Id*. at 3786 (para 7).

27 *Id*. at 3786 (para 9).

28 *F.A. Sapa* v. *Singora* (1991) 3 SCC 375, a three-judge bench decision, cited in *Pukherem*, at 3787 (para 13).

29 *Narain* v. *Dhuja Ram* (1974) 4 SCC 237; AIR 1974 SC 1185 a three-judge bench decision, cited in *Pukherem*, at 3786 (para 11).

30 *Ibid.*

31 *Ibid*.

iv. "The very object of expeditious trial will be defeated if the presentation of the election petition should be treated casually and lightly permitting all kinds of devices to delay the ultimate trial…."[32]

v. In view of the statutory mandate that "an election petition shall be disposed of as far as practicable within six months from the date of presentation of the election petition as required by Section 86(7) of the Act," the Election Judge is obliged to give "justification" while granting even "one adjournment as a last chance."[33]

vi. In deciding an election petition "if the vexatious applications are entertained, it would defeat the very object of expeditious disposal of election petition as envisaged in Section 86(7) of the Act.

In the light of these precedent-propositions, the bench in *Pukherem* has culled the following principles for their decision-making:

i. The Election Court is legislatively mandated to decide an election petition "in quite promptitude" so as to be able to finally "dispose of the same within a period of six months" without allowing the parties "to take resort to unnecessary adjournments or file vexatious applications."[34]

ii. The Court trying an election petition must bear in mind that "the fundamental purpose for expeditious disposal of an election petition is to sustain the purity of parliamentary democracy,"[35] and that "democracy"[36] is "an essential feature of the Constitution", which is "unassailable,"[37] and that it is "not only a political philosophy but also an embodiment of constitutional philosophy."[38]

32 *Id*. at 2387 (para 11). This objective of expeditious nature of election trial under the Act of 1951 has been reinforced by the three-judge bench by observing that the very purpose of enclosing the copies of the election petition for all the respondents is to enable quick despatch of the notice with the contents of the allegations for service on the respondent or respondents so that there is no delay in the trial at this very initial stage when the election petition is presented. if there is any halt or arrest in progress of the case, the object of the Act will be completely frustrated. Accordingly in their considered opinion the first part of section 81(3) with which they were mainly concerned in that appeal "is a peremptory provision and total non-compliance with the same will entail dismissal of the election petition Under Section 86 of the Act." *Ibid*.

33 *P. Nalla Thampy Thera* v. *B.L. Shanker* (1984) Supp. SCC 631: AIR 1984 SC 135, *Supra* note 10 at 3787 (para 12).

34 *Pukherem* at 3787 (para 14).

35 As "emphatically stated by the Supreme Court in *Rameshwar Prasad and Ors. v. Union of India and Anr.*" (2006) 2 SCC 1: AIR 2006 SC 980, *Supra* note 10 at 3787.

36 "Democracy, which has been best defined as the government of the people, by the people and for the people, expects prevalence of genuine orderliness, positive propriety, dedicated discipline and sanguine sanctity by constant affirmance of constitutional morality which is the pillar stone of good governance." See *Manoj Narula* v. *Union of India* (2014) 9 SCC 1: 2014 AIR SCW 5287, majority view of the Constitution Bench, *supra* note 10 at 3788 (para 17).

37 *Ibid*, citing the majority in *Indira Nehru Gandhi* v. *Raj Narain*, 1975 Supp SCC 1: AIR 1975 SC 2299. This principle was reiterated in *T.N. Seshan, CEC of India* v. *Union of India* (1995) 4 SCC 611: 1995 SC SCW 3341 and *Kuldip Nayar* v. *Union of India* (2006) 7 SCC 1: AIR

Following these principles, it is held that the elected candidate, who is a repository of "the trust of the electorate," should face "assail to his election" and not to "take shelter seeking adjournments with the elated hope that he can be triumphant in the contest by passage of time."[39] "This kind of attitude has to be curbed from all angles because law does not countenance it."[40] Being so convinced, the bench of the Supreme Court has decided the appeal by directing "that the election petition pending before the High Court has to be decided with extreme alertness and in quite promptitude."[41]"As the court has not framed issues, it shall proceed to frame issues," and thereafter, "the evidence shall commence and the court shall, regard being had to the statutory command and the norms in a democratic polity, dispose of the election petition by end of February 2016."[42] For the expeditious disposal of the Election petition, it is further added that "the miscellaneous applications shall be decided at the time of final hearing so that the procrastination is totally ostracised."[43]

The emerging lesson is, the election court needs to be sensitized about the singular objective of the use of section 86 of the Act of 1951 and how does it operate to bring about purity in the election process.

III NON-DISCLOSURE OF CRIMINAL ANTECEDENTS: WHETHER TANTAMOUNT TO 'UNDUE INFLUENCE' AS A FACET OF CORRUPT PRACTICE UNDER SECTION 123(2) OF THE 1951 ACT[44]

One of the established principle of election jurisprudence is that an election can be set aside by declaring it null and void only on grounds provided in the relevant statutory enactment and none else. And 'non-disclosure' of criminal antecedents, may be in the nature of heinous or serious offences or moral turpitude or corruption pending against, as such, is not one of the specified grounds for such a drastic result.

2006 SC 3127, pronouncing with asseveration that "democracy is the basic and fundamental structure of the Constitution and that there is no shadow of doubt that democracy in India is a product of the rule of law and aspires to establish an egalitarian social order."

38 *Ibid.*

39 *Supra* note 1 at 3788 (para 19). Earlier, the court has clearly found that the elected candidate was allowed to deal with the election petition at his "own pleasure and leisure and filing applications as he desired giving vent to his whim and fancy," and the Election Court has been granting "adjournment in an extremely liberal manner," and all these aspects can be taken "exception to," as "they really run counter to the conception of expeditious disposal." *Id.* at 3787 (para 15).

40 *Ibid.*

41 *Id.* at 3788 (para 20).

42 *Ibid.*

43 *Ibid.*

44 See also, Virendra Kumar, "Nomination paper accompanied by affidavit with blank particulars: whether returning officer is empowered to reject such a nomination at the threshold" L *ASIL* 568-574 (2014); Virendra Kumar, "Nomination papers without affidavits in prescribed format: whether their acceptance is invalid" XLVIII *ASIL* 409-414 (2012); Virendra Kumar, "Improper rejection of nomination paper," XLV *ASIL* 359-366 (2009).

However, gradually, we moved on and started pondering whether, in order to establish a republican and democratic form of government through elected representatives, citizen-voters should have the right to know the antecedents of their election candidates; and whether a denial of the same by the election candidates could amount to 'undue influence' as a facet of corrupt practice under section 123(2) of the Act of 1951. This, in fact, is the issue that has come up before the Supreme Court in *Krishnamoorthy* v. *Sivakumar.*[45]

In *Krishnamoorthy*, the respondent (the election petitioner) challenged the election of the appellant (the returned candidate)to the post of President of Panchayat in the State of Tamil Nadu before the election tribunal (the Principal District Judge of Coimbatore) by specifically pleading that he had not disclosed full particulars of criminal cases at the time of filing his nomination; that he had deliberately omitted to provide the details of charge sheets having been filed against him which have been on file in eight cases; and that he had filed a false declaration suppressing the details of those criminal cases pending trial against him;[46] and, therefore, his election should be declared null and void on the ground that he could not have contested the election and, in any case, his election was unsustainable, inasmuch as he had not declared the particulars regarding the criminal cases pending against him.[47]

In the counter-statement, the appellant stated that the respondent, though present at the time of scrutiny of the nomination papers and yet, failed to raise any objection and, in any case, he (the appellant) had mentioned all the necessary details about the case Cr. No. 10/2001 pending before the concerned Judicial Magistrate in the relevant column of the pro-forma, 'details of candidate', while presenting his nomination papers. Accordingly he contended that all the averments are false, misleading and unsustainable.

On perusal of the allegations and the evidence brought on record, the election tribunal came to hold that nomination papers filed by the appellant, the first respondent to the election petition, deserved to be rejected and, therefore, he could not have contested the election, and accordingly he declared the election as null and void and ordered for re-election of the post of the President in question.[48] The said order was challenged in revision before the high court.

The high court, in revision, in order to apply the principles hitherto propounded by the Supreme Court in the arena of election law, has, in the first instance, compared the mandatory requirements under notification issued by the Election Commission of

45 AIR 2015 SC 1921, See observations of Dipak Misra J (for himself and Prafulla C. Pant J). Hereinafter simply *Krishnamoorthy.*

46 In the election petition, the respondent (petitioner) mentioned all the eight cases by way of a chart. *Id*. at 1924.

47 *Id*. at 1924 (para 5).

48 *Id.* at 1925 (para 7).

India and the notification on September 1, 2006 of the state election commission,[49] and found those are absolutely similar. Referring to the 'Form' to be filled up by a candidate as per the state notification on September 1, 2006 disclosing information about his antecedents on oath, the high court opined that "an element of sanctity and solemnity is attached to the said declaration, by the very fact that it is required to be in the form of an affidavit sworn and attested in a particular manner," followed by verification that "nothing material has been concealed."[50] On the basis of this analysis, the high court held that the elected candidate had not disclosed the full and complete information.[51]

Thereafter, on the strength of the propounding of the Supreme Court in catena of cases, incorporation of sections 33A and 44A in the 1951 Act, Rule 4A of the Conduct of Election Rules, 1961 and Form 26 to the said rules, section 125A of the 1951 Act, the definition of 'Affidavit' as per section 3(3) of the General Clauses Act, 1897, the conceptual meaning of Oath, section 8 of The Oaths Act, 1969, analogous provisions of sections 259 and 260 of the Tamil Nadu Panchayats Act, 1994, and the principles that have been set out in various other related decisions of the Supreme Court, held that the non-disclosure of full and complete information by the appellant (returned candidate) relating to his implication in criminal cases[52] amounted to an attempt to interfere with the free exercise of electoral right which would fall within the meaning of 'undue influence' and consequently 'corrupt practice' under section 259(1)(b) read with section 260(2) of the Tamil Nadu Panchayats Act, 1994.[53]

49 Every election candidate desiring to contest an election to a local body, in terms of notification bearing S.O. No. 43/2006/TNSEC/EG on Sep. 1, 2006 issued by the state election commission, is required to furnish full and complete information in regard to five categories at the time of filing his nomination paper. One of the mandatory requirements of the disclosure was whether the candidate was accused in any pending case prior to six months of filing of the nomination of any offence punishable with imprisonment for two years or more and in which, charges have been framed or cognizance taken by a court of law.

50 *Supra* note 45 at 1925 (para 8).

51 *Ibid*.

52 The appellant, the returned candidate, who was the President of a cooperative society, on allegations of criminal breach of trust, falsification of accounts, etc., was arrayed as an accused in complaint case in crime no. 10 of 2001. During investigation, the police found certain other facets and eventually placed eight different charge-sheets, [being C.C. Nos. 3, 4, 5, 6, 7, 8, 9 and 10 of 2004] before the Judicial Magistrate-IV, Coimbatore and the magistrate had taken cognizance much before the election notification. Factum of taking cognizance and thereafter framing of charges in all the eight cases for the offences under ss. 120-B, 406, 408 and 477-A of the Indian Penal Code, 1860 prior to the cut-off date, about which there is no dispute. The appellant had filed a declaration and the affidavit only mentioning crime no. 10 of 2001 and did not mention the details of the charge-sheets filed against him which were pending trial. This factual position prompted the respondent (election petitioner) to file his petition to declare the election of the appellant as null and void premising on the ground that he could not have even contested the election. See, *id.* at 1923-24 (para 3).

53 *Ibid.*

Accordingly, the high court eventually affirmed the decision of the election tribunal, though from a distinctly different constitutional perspective.[54]

Now the appellant, the returned candidate, is before the Supreme Court in appeal. Since the construction of 'non-disclosure' of criminal antecedents in a manner that would bring it within the ambit of 'undue influence', which is statutorily an integral part of corrupt practice, and, according to Misra J (speaking for the bench), it would have an "impact" "on the principle relating to corrupt practice in all election matters as interpretation of the words 'undue influence' due to non-disclosure of criminal antecedents leading to 'corrupt practice' under the 1951, Act."[55] Realising the far reaching effect of such an interpretation, the bench in order to settle this relatively a new exploration in somewhat authoritative manner, has sought the assistance of a senior counsel, a constitutional expert and the Additional Solicitor General for Union of India, as *amicus curiae*. In short**, "**whether non-disclosure of criminal antecedents tantamount to undue influence**,** which is a facet of corrupt practice as per Section 123(2) of the Act,"[56] resulting into declaring the election of the returned candidate null and void, is the critical question for the consideration of the court in the instant case.

In order to answer this question, the Supreme Court has peeped into the history, how the apex court has hitherto viewed the consequences of non-disclosure of criminal antecedents in terms of affecting the body politic in general, and the citizen's right to vote in establishing an healthy democratic system of governance in particular, and in what manner it has succeeded in filling lacunas for realising the ideals of the Constitution. The leading propositions may be abstracted as under:

i. Eradication of criminalisation of politics and corruption in public life is the crucially "recognized ideal," for "[w]en criminality enters into the grass-root level as well as at the higher levels there is a feeling that 'monstrosity' is likely to wither away the multitude and eventually usher in a dreadful fear that would rule supreme creating an incurable chasm in the spine of the whole citizenry."[57]
ii. The superintendence, direction and control of the "conduct of all elections" to Parliament and to the legislature of every State, in the opinion of the Supreme Court, empowers the Election Commission under Article 324 of the Constitution "to make all necessary [ancillary]provisions for conducting free and fair elections."[58]

54 *Ibid*.

55 *Id*. at 1925 (para 9).

56 *Supra* note 45 at 1926 (para 10).

57 *Id.* at 1923 (para 1).

58 *Id*. at 1926 (para 12) citing *Vineet Narain* v. *Union of India* (1998) 1 SCC 226 and *Kihoto Hollohan* v. *Zachillhu* 1992 Supp (2) SCC 651. And the Supreme Court is empowered to "direct" the election commission to call for information on affidavit by issuing necessary order in exercise of its power under art. 324 of the Constitution of India from each candidate seeking election to Parliament or a state legislature as a necessary part of his nomination paper, furnishing therein, information on the aspects specified by the Court, see *id*., (para 14), citing *P.V. Narasimha Rao* v. *State* (1998) 4 SCC 626.

iii. It is the citizen-voter's right to know the antecedents of election candidates is an integral part of his fundamental right to freedom of speech and expression under Article 19(1)(a) of the Constitution, else "one-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce."[59]

iv. The right to know the antecedents of a candidate is voters' fundamental right guaranteed under the Constitution, which is independent of statutory rights under the election law, "so that they may cast their votes intelligently in favour of persons who are to govern them."[60]

v. "This freedom of a citizen to participate and choose a candidate at an election is distinct from exercise of his right as a voter which is to be regulated by statutory law on the election like the RP Act."[61]

vi. "It is the duty of the Returning Officer to check whether 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."[62]Be that as it may, in this respect, the observations made by the three-Judge Bench in Para 73 of *People's Union for Civil Liberties*[63] "will not come in the way of the Returning Officer to reject the nomination paper when affidavit, is filed with blank particulars."[64]However, such a "power of 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."[65]

vii. 'Right to vote means right to exercise the right not only in favour of or against the motion or resolution, but also the right to remain neutral, implying the concept of negative vote, a right which has been effectuated by providing NOTA button in the EVMs.[66]

59 *Supra* note 45 at 1926 (para 13), citing *Mohinder Singh Gill* v. *Chief Election Commissioner* (1978) 1 SCC 405, *Kanhiya Lal Omar* v. *R.K. Trivedi* (1985) 4 SCC 628 and *Common Cause* v. *Union of India* (1996) 2 SCC 752.

60 *Id*. at 1929 (para 17), citing M.B. Shah J in *People's Union for Civil Liberties (PUCL)* v. *Union of India* (2003) 4 SCC 399.

61 *Id.* at 1930 (para 19) citing Dharmadhikari, J. in *People's Union for Civil Liberties (PUCL)* v. *Union of India* (2003) 4 SCC 399.

62 *Id.* at 1931 [para 23(iv)] citing the three-judge bench decision in *Resurgence India* v. *Election Commission of India*, AIR 2014 SC 344

63 The confusion re para 73 of *People's Union for Civil Liberties* arose mainly due to equating the case of a candidate who had filed an affidavit with false information with the case in which a candidate had filed an affidavit with particulars left blank; both should not be treated at par, see, *id*. at 1931 (para 21).

64 *Id.* at 1931(para 23(v)).

65 *Ibid*.

66 *Id*. at 1933 (paras 26-29).

Bearing these various legal and constitutional propositions in mind, the division bench led by Misra J in the instant case has examined the impact of non-disclosure of criminal cases pending against a candidate and whether it would come within the concept and ambit of 'undue influence' and thereby corrupt practice, as per section 123(2) of the Act of 1951. Under sub-section 2 of section 123 of the Act of 1951, 'undue influence' connotes "any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person [with the consent of the candidate or his election agent], with the free exercise of any electoral right." This connotation is statutorily expounded by added proviso that "(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who - (i) threatens any candidate or any elector, or any person in whom a candidate or an elector interest, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or(ii) induces or attempt to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause."[67]

In the light of this statutory stipulation, the bench in the instant case surveyed several precedents for deciphering how the expression "undue influence" has hitherto been viewed by the apex court. The emanating propositions may be summed up as follows:

(i) In the exercise of 'undue influence', "What is material under the Indian law, is not the actual effect produced, but the doing of such acts as are calculated to interfere with the free exercise of any electoral right."[68]

(ii) Issuing a whip on the day of election, say, on the basis of some public policy measure and requesting the members to cast their preference in a particular order, is a legitimate exercise of influence by a political party or an association and should not be confused with 'undue influence' in the arena of election law.[69]

(iii) In a democratic set-up, legal and legitimate means of canvassing support does not amount to unduly influencing the judgment of a person in selecting the

67 There is an appended exception to this proviso, which stipulates: "a declaration of public policy, or a promise of publication, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause."

68 *Supra* note 45 at 1939 (para 44), citing *Ram Dial* v. *Sant Lal*, AIR 1959 SC 855, in which a religious leader not only issued the *hukam* or *farman*, but also delivered speeches to the effect the followers must vote for the Appellant, implying that disobedience of his mandate would carry divine displeasure or spiritual censure, and, thus, the case clearly fell within the purview of the second paragraph of the *proviso* to s. 123(2) of the Act.

69 *Id*. at 1940 (para 46), citing *R.B. Surendra Narayan Sinha* v. *Amulyadhone Roy*, 1940 IC 30; *Linge Gowda* v. *Shivananjappa* (1953) 6 Ele LR 288; *Mast Ram* v. *S. Iqbal Singh* (1955) 12 Ele LR 34.

candidate he/she believes to be best fitted to represent the constituency, unless such a canvassing/appeal/persuasion turns out to be, what is termed as, 'tyranny over the mind' interfering with the liberty of the candidate or the elector.[70]

(iv) The prefix "undue", which indicates that there must be some abuse of influence, when "construed in the light of the proviso, Clause (2) of Section 123, does not bar or penalise legitimate canvassing or appeals to reason and judgment of the voters or other lawful means of persuading voters to vote or not to vote for a candidate," that "such proper and peaceful persuasion is the motive force of our democratic process."[71]

(v) In determining whether or not there was 'undue influence' exercised by a candidate, what is relevant is what is what is professed or put forward by a candidate as a ground for preferring him over another and not the motive or reality behind that profession which may or may not be very secular or mundane.[72]

(vi) An essential ingredient of the corrupt practice of "undue influence" under Sub-section (2) of Section 123 of the Act is that there should be any "direct or indirect interference or attempt to interfere" on the part of the candidate or his agent, or of any other person with the consent of the candidate or his agent, "with the free exercise of any electoral right."[73]

(vii) The provisos to Section 123(2) are without prejudice to the generality of the said clause imply that "where a specific power is conferred without prejudice to the generality of the general powers already specified, the particular power is only illustrative and does not in any way restrict the general power," conveying clearly that "the first part of Section 123(2) is not restricted or controlled by the provisos."[74]

70 *Id.* at 1941-43 (para 47), citing *S.K. Singh* v. *V.V. Girl* (1970) 2 SCC 567; Privy Council in *King-Emperor* v. *Sibnath Banerj*, AIR 1945 PC 156. The connotation of "undue influence" in s. 171-C of the Indian Penal Code, 1860 is almost the same as given under s. 123(2) of the Act 1951 except that in the latter Act the words "direct or indirect" have been added to indicate the nature of interference.

71 *Id*. at 1943 (para 48), citing *Bachan Singh* v. *Prithvi Singh* (1975) 1 SCC 368. In this case, in the publication of posters bearing the caption "Pillars of Victory" with photographs of the Prime Minister, Defense Minister and Foreign Minister, the Supreme Court found nothing that amounted to a threat of injury or undue inducement of the kind inhibited by s. 123(2).

72 *Id*. at 1943-44 (para 49), citing *Ziyauddin Burhanuddin Bukhari* v. *Brijmohan Ramdass Mehra* (1976) 2 SCC 17 - a three-judge bench case. In this case, Beg, J., speaking for the bench, has held that if the professed ground is religion, which is put on the same footing as race, caste, or language as an objectionable ground for seeking votes, it is not permissible. On the other hand, if support is sought on a ground distinguishable from those falling in the prohibited categories, it will not be struck by s.123 of the Act whatever else it may not offend. It is then left to the electorate to decide whether a permissible view is right or wrong.

73 *Id.* at 1944 (para 50), citing *Aad Lal* v. *Kanshi Ram* (1980) 2 SCC 350.

74 *Id.*, at 1944-45 (paras 51 and 52) citing *Om Prakash* v. *Union of India* (1970) 3 SCC 942; *V.T. Khanzode* v. *Reserve Bank of India* (1982) 2 SCC 7; *D.K. Trivedi and Sons* v. *State of Gujarat* (1986) Supp. SCC 20; *State of J and K* v. *Lakhwinder Kumar* (2013) 6 SCC 333 and *BSNL* v. *Telecom Regulatory Authority of India* (2014) 3 SCC 222.

From these broad propositions, the bench itself has culled out the following principles:[75]

i. The words "undue influence" are not to be understood or conferred a meaning in the context of English statute.
ii. The Indian election law pays regard to the use of such influence having the tendency to bring about the result that has contemplated in the clause.
iii. In any act, which is calculated to interfere with the free exercise of electoral right, the true and effective test is, whether or not a candidate is guilty of undue influence.
iv. The words "direct or indirect" used in the provision have their significance and they are to be applied bearing in mind the factual context.
v. Canvassing by a Minister or issuing a whip in the form of a request is permissible unless there is compulsion on the electorate to vote in the manner indicated.
vi. The structure of the provisions contained in section 171-C of Indian Penal Code are to be kept in view while appreciating the expression of 'undue influence' used in Section 123(2) of the 1951 Act.
vii. The two provisos added to section 123(2) do not take away the effect of the principal or main provision.
viii. Freedom in the exercise of judgment which engulfs a voter's right, a free choice, in selecting the candidate whom he believes to be best fitted to represent the constituency, has to be given due weightage.
ix. There should never be tyranny over the mind which would put fetters and scuttle the free exercise of an electorate.
x. The concept of undue influence applies at both the stages, namely, pre-voting and at the time of casting of vote.
xi. "Undue influence" is not to be equated with "proper influence" and, therefore, legitimate canvassing is permissible in a democratic set up.
xii. Free exercise of electoral right has a nexus with direct or indirect interference or attempt to interfere.

The critical issue narrowed down for the determination of the Supreme Court is, whether 'undue influence' that interferes with the free exercise of an electorate is indeed a 'corrupt practice' under section 123(2) of the Act of 1951; whether a 'corrupt practice' is one of the grounds for declaring an election null and void under section 100(1)(b) of the said Act, which provides that election of a returned candidate shall be declared to be void if corrupt practice has been committed by a returned candidate or his election agent or by any other person with his consent or with the consent of the returned candidate or his election agent; and if so, whether non-disclosure of criminal antecedents, as envisaged under section 33A[76] and the Rules framed under the Act of

75 *Supra* note 45 at 1945 (para 53).

76 *Supra* note 6, s. 33-A introduced *w.e.f.* August 24, 2002 requires a candidate to furnish the information as to whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which charge has been framed by the court of competent

1951,[77] would tantamount to corrupt practice.[78] In generic form, the question posed by the Supreme Court is: "The singular question is, if a candidate, while filing his nomination paper does not furnish the *entire information* what would be the resultant effect."[79]

Hitherto it has become established that the election candidate is obliged to reveal his or her antecedents in the prescribed form along with the nomination paper. If he does not do so, the returning officer may reject such a nomination as the acceptance of the same will amount to violation of fundamental right of the electorates. In case, information is supplied but not fully, say, either by leaving certain columns blank or filling them incompletely by suppressing vital information, then the returning officer in summary proceedings may not be in the position to reject the same, because, as the Bench has stated in the instant case, "unless a person is disqualified under law to contest the election, he cannot be disqualified to contest."[80] This, in turn, shifts the case from pre-election to post-election scenario. In the latter case, could the election of such a candidate be challenged through an election petition on the ground of suppression of vital information, which indubitablyamounts to an effort to misguide and keep people in dark to that extent? Is then is the case, which could be termed as, "sustainable on the foundation of undue influence?"[81]

What is that 'criminal antecedent' which is in the knowledge of the election candidate and which needs to be disclosed? In this respect, the bench has illustratively stated" with certitude" that "when an FIR is filed, a person filling a nomination paper may not be aware of lodgment of the FIR but when cognizance is taken or charge is framed, he is definitely aware of the said situation;" that is, such information is "within his special knowledge"[82] and that "If the offences are not disclosed in entirety, the electorate remain in total darkness about such information."[83] This indeed is the fact matrix in the case in hand and, therefore, attempt of the appellant, the returned candidate "has to be perceived as creating an impediment in the mind of a voter, who is expected to vote to make a free, informed and advised choice," and this is "sought to be scuttled at the very commencement;"[84] that is much earlier than the commencement of voting.

jurisdiction. Sub-s. 2 of s. 33-A of the said Act requires the candidate or his proposer, as the case maybe, at the time of delivery to the Returning Officer an affidavit sworn by the candidate in a prescribed form verifying the information specified in Sub-section (1).

77 Conduct of Election Rules, 1961, Rule 4A, which has been inserted in *w.e.f*. September 3, 2002 provides: "The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under Sub-section (1) of Section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26."

78 *Supra* note 45 at 1947-48 (para 61). Emphasis supplied

79 *Id.* at 1952 (para 70).

80 *Id.* at 1954-55 (para 74).

81 *Ibid*.

82 *Ibid*.

83 *Ibid.*

84 *Id*. at 1956 (para 78).

Moreover, the factum of non-disclosure of the requisite information as regards the criminal antecedents is patently "a stage prior to voting."[85] This is abundantly clear by the series of instructions issued by the Election Commission of India from time to time to all the chief electoral officer of all states and union territories directing them to let all the electorates know about the antecedents of the election candidates by adopting all conceivable means of communications.[86] If the correct information relating to criminal antecedents, which is required to be revealed through sworn affidavit while filing nomination form, is not given, patently "there is an attempt to suppress, effort to misguide and keep the people in dark," by committing "fraud."[87] "This attempt undeniably and undisputedly is undue influence and, therefore, amounts to corrupt practice."[88] However, "if a candidate gives all the particulars and despite that he secures the votes that will be an informed, advised and free exercise of right by the electorate."[89] Thus, the issue of non-disclosure of criminal antecedents, as distinct from the issue of disqualification, "has to be determined in an election petition by the Election Tribunal."[90]

In the instant case, the appellant was involved in 8 cases relating to embezzlement, which were all to his special knowledge, and which he was required to reveal in terms of notification issued by the state election commission while filing his nomination, and which he did not do. since the factum of suppression of the cases relating to embezzlement has been established, which itself amounts to 'corrupt practice' *via* 'undue influence', the bench has held that the high court is justified in declaring that the election is null and void on the ground of corrupt practice under section 100(1)(b) of the Act of 1951.[91]

In conclusion, the bench has observed:[92] (i) that disclosure of criminal antecedent at the time of filing of nomination paper as mandated by law is a "categorical imperative;" (ii) that non-disclosure of the same "creates an impediment in the free exercise of electoral right.;" (iii) that non-disclosure of such antecedents "deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate;" and (iv) non-disclosure "would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal Under Section 100(1)(b) of the 1951 Act."

85 *Ibid.*

86 *Id*. at 1956-58 (paras 79-82).

87 *Id*. at 1958 (para 83), citing *S.P. Chengalvaraya Naidu (Dead) By L.Rs.* v. *Jagannath (Dead) By L.Rs.* (1994) 1 SCC 1.

88 *Ibid.*

89 *Ibid.*

90 *Ibid.*

91 *Id.* at 1959 (para 85).

92 *Id*. at 1959 (para 86).

IV ELECTRONIC RECORDS: THEIR EVIDENTIARY VALUE

In this age, new communication systems and digital technology have made drastic changes in the way we live, converse and communicate. It has thereby revolutionized the way in which evidence is produced before the court. This has led to very many significant changes in the traditional modes of adducing evidence as reflected under the Evidence Act of 1872.[93]

To regulate the mode of evidence through electronic record like computer printout, CD, VCD, pen drive, *etc.*, pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence, the Information Technology Act, 2000 has been enacted. This Act has brought in very many distinct and drastic amendments in the law of evidence under the Act of 1872, so as to make it align to meet the modern requirements of the emerging technological society.[94]

Since electronic records being more susceptible to tampering, alteration, transposition, excision, *etc.*, special safeguards are required to be taken to ensure the legitimacy of their source and authenticity, without which the whole trial based on proof of electronic records can lead to travesty of justice.

The issue of admissibility of electronic record as a piece of evidence in the form of printouts of the computerized records of the calls pertaining to the cell phones came up for consideration before the Supreme Court in *Navjot Sandhu alias Afsan Guru*.[95] In this case, a two-judge bench in the light of the provisions of sections 63 and 65 of the Act of 1872, inter alia held:[96]

> According to Section 63, secondary evidence means and includes, among other things, "copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies". Section 65 enables secondary evidence of the contents of a document to be adduced if the original is of such a nature as not to be easily movable. It is not in dispute that the information contained in the call records is stored in huge servers which cannot be easily moved and produced in the court. That is what the High Court has also observed at para 276. Hence, printouts taken from the computers/servers by mechanical process and certified by a responsible official of the service-providing company can be led in evidence through a witness who can identify the signatures of the certifying officer or otherwise speak of the facts based on his personal knowledge. *Irrespective of the compliance with the requirements of Section 65-B, which is a provision dealing with admissibility of*

93 Hereinafter simply, the Act of 1872.

94 Corresponding amendments were also introduced in The Indian Penal Code 1860, The Bankers Books Evidence Act, 1891, *etc.*

95 *Supra* note 3.

96 *Id*., para 150 [Emphasis supplied].

> *electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely, Sections 63 and 65.* It may be that the certificate containing the details in Sub-section (4) of Section 65-B is not filed in the instant case, but that does not mean that secondary evidence cannot be given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions, namely, Sections 63 and 65.

It is this perspective that has come be reconsidered by a three-judge bench of the Supreme Court in *Anvar P.V.* v. *P.K. Basheer*,[97] "Irrespective of the compliance with the requirements of Section 65-B, which is a provision dealing with admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the Evidence Act, namely, Sections 63 and 65," appears to lay down clearly that insertion of provisions under Section 65-B as a consequence of the special enactment, namely, the Information Technology Act, 2000 are of no effect in view of the existing general provisions regulating secondary evidence under section 63 and 65 of the Act of 1872.

On facts matrix, in this case the general election to the Kerala Legislative Assembly was held in 2011. The appellant and the respondent, along with three other persons, were the election candidates. The respondent having secured the highest number of votes was declared elected. The appellant, who was second in terms of votes,[98] sought to set aside the election by filing an election petition in the high court under section 100(1)(b) read with section 123(2)(ii) and (4) of the Act of 1951 and also a declaration in his favour. He mainly tried to build up his case against the appellant by adducing electronic records that are termed as 'documentary evidence' under section 3 of the Act, 1872.

The high court dismissed the election petition holding that corrupt practices pleaded in the petition are not proved and, hence, the election cannot be set aside under section 100(1) (b) of the Act of 1951; and thus the appellant has come to the Supreme Court in appeal.

Although the three-judge bench has considered the appeal on various facets of corrupt practices as alleged by the appellant, yet admissibility of electronic records has been taken up as one of the "principal issues" arising for consideration" in this appeal.[99] In fact, in order to deal with this perspective, Kurian Joseph J speaking for the bench has enunciated right in the first instance the first principles of evidence by observing laconically:[100]

97 AIR 2015 SC 180, see observations of Kurian Joseph J (for himself, R.M. Lodha , C.J.I., and Rohinton Fali Nariman , J.) Hereinafter simply *Anvar P.V.*

98 The other three election candidates secured only marginal votes.

99 *Supra* note 97 at 181.

100 *Ibid*.

> Construction by Plaintiff, destruction by Defendant. Construction by pleadings, proof by evidence; proof only by relevant and admissible evidence. Genuineness, veracity or reliability of the evidence is seen by the court only after the stage of relevancy and admissibility.

With this prefatory statement, since the major thrust in the arguments advanced in this case is on 'electronic records',[101] the bench, in order to be "[p]roperly guided" in the appreciation of evidence that makes "the systems function faster and more effective,"[102] has perused the various provisions of the Act of 1872, as amended by the Information Technology Act, 2000.[103] The result of their analysis that essentially centres around the provisions of section 65-B may be abstracted as follows:[104]

i. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59[105] and 65A,[106] can be proved only in accordance with the procedure prescribed under Section 65B, which specifically deals with the admissibility of the electronic record.
ii. The purpose of the provisions of Section 65-B is to sanctify secondary evidence in electronic form, generated by a computer.
iii. Since Section 65-Bopens with a *non obstante* clause, "Notwithstanding anything contained in this Act," any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under Sub-section (2) of Section 65-B are satisfied, without further proof or production of the original.
iv. The very admissibility of such a document, i.e., electronic record, which is called as computer output, depends on the satisfaction of the undernoted four conditions spelled out in Section 65-B(2).[107]

101 *Id*. at 183 (para 5). 'Electronic records' is one of the three parts of the evidence emanating from the fact matrix of the case, the other two are 'evidence other than electronic records', and 'oral evidence.' See, *ibid.*

102 *Id*. at 185 (para 12).

103 The three-judge bench perused the following ss. of the Act of 1872 (as amended by the Act of 2000), s. 22A (When oral admission as to contents of electronic records are relevant); S. 45A (Opinion of Examiner of Electronic Evidence); s.. 59 (Proof of facts by oral evidence); s.. 65A (Special provisions as to evidence relating to electronic record); and S. 65B (Admissibility of electronic records). *Supra* note 97 at 183-84 (paras 7-11).

104 *Supra* note 97 at 185-86 (paras 13-17).

105 Indian Evidence Act of 1872, s. 59 of the deals with "Proof of facts by oral evidence".

106 *Id.*, 65A deals with "Special provisions as to evidence relating to electronic record".

107 (i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

v. If it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible under Section 65-B (4) of the Act of 1872 (as amended), provided the conditions stipulated therein are satisfied.[108]

vi. The said statement, which certifies that it is to the best of his knowledge and belief, must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence.

vii. Only if the electronic record is duly produced in terms of Section 65B of the Evidence Act, the question would arise as to the genuineness thereof and in that situation resort can be made to Section 45A that deals with opinion of examiner of electronic evidence.

viii. If requirements under Section 65-B are not complied with, the Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence as the law now stands in India.

In the light of these abstracted propositions, the three-Judge Bench has held that the special procedure prescribed under Section 65B of the Evidence Act relating to the evidence of electronic records "is a complete code in itself," and, "[b]inga special law, the general law under Sections 63 and 65 has to yield."[109]'*Generalia special bus non derogant*' (special law will always prevail over the general law) is the well-established principle of statutory interpretation, which the two-judge bench of the Supreme Court in *Navjot Sandhu* "omitted to take note of" while "dealing with the admissibility of electronic record" under Sections 59 and 65A of the Act of 1872.[110] Expounding on this count, the three-judge bench of the Supreme Court states:[111]

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

108 Indian Contract Act of 1872, s. 65-B (4) of the (as amended) lays down the following conditions:
(a) There must be a certificate which identifies the electronic record containing the statement;
(b) The certificate must describe the manner in which the electronic record was produced;
(c) The certificate must furnish the particulars of the device involved in the production of that record;
(d) The certificate must deal with the applicable conditions mentioned under Section 65-B (2) of the Evidence Act; and
(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

109 *Supra* note 97 at 186 (para 19).

110 *Id.* at 187 (para 22).

111 *Ibid.*

> Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this court in *Navjot Sandhu* case (supra), does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements Under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, *etc*., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible.

In the instant case, since the appellant has not produced any certificate in terms of section 65B in respect of the CDs, the bench declined to admit the same in evidence.[112] Accordingly, the whole case set up regarding the corrupt practice using songs, announcements and speeches has fallen to the ground.[113] Thus having regard to the admissible evidence available on record, the bench has found it difficult to hold that the appellant has founded and proved corrupt practice under section 100(1)(b) read with section 123(4) of the Act of 1951 against the respondent, and, accordingly it dismissed the appeal.[114]

However, while doing so, Kurian Joseph J speaking for the bench, has usefully distinguished when the electronic document in the form of CDs could be used without the certification in terms of section 65B by envisaging a hypothetical situation in the instant case:[115]

> Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true. That is not the situation in this case. The speeches, songs and announcements were recorded using other instruments and by feeding them into a computer, CDs were made therefrom which were produced in court, without due certification. Those CDs cannot be admitted in evidence since the mandatory requirements of Section 65B of the Evidence Act are not satisfied.

112 *Id*. at 187 (para 23).

113 *Ibid.*

114 *Id.* at 193 (para 40). The other grounds invoked by the appellant included printing, publication and distribution of objectionable leaflets with the knowledge and consent of the respondent, which could not be proved as per the requirements under the provisions of s.123(4) of the Act of 1951 as expounded in the light of well-established judicial precedents. This has led the three-Judge Bench to accept the appeal. See also, *id*. at 187-93 (paras 25-39).

115 *Id*. at 187 (para 24).

This exposition shows when electronic records could be used as primary evidence envisaged under section 62 without resorting to the requirements stipulated in section 65, and when the same would amount to secondary evidence and thereby requiring the mandatory compliance of certification under section 65-B read with sections 59, 65A of the Act of 1872.[116]

V ELECTION PETITION: WHEN COULD IT BE SAID TO DISCLOSE 'NO CAUSE OF ACTION'[117]

Under order VII rule 11(a) of the Code of Civil Procedure, 1908 (CPC), it is one of the fundamental rules of procedure that an election petition shall be rejected *in limine* (at the very outset) where "it does not disclose a cause of action." The critical question to determine in every petition, therefore, is: when could be said that a petition or plaint does not disclose 'a cause of action'? This question has come for determination before the Supreme Court in *Ashraf Kokkur*[118] in appeals under section 116A of the Act of 1951 against the judgment of the High Court of Kerala at Ernakulam.[119]

On fact matrix in the instant case, the respondent K.V. Abdul Khader was the chairperson of the Kerala State Wakf Board when he contested the election to the Kerala Legislative Assembly. The petitioner in fact had objected to his nomination, by clearly and categorically stating that the respondent, being the Chairman of Kerala State Wakf Board, is holding an office of profit under Government of Kerala and hence disqualified to be a candidate for the legislative assembly elections. However, the objection was overruled by the Returning Officer by holding that the petitioner failed to prove beyond doubt as to whether the elected office bearers of the wakf board would come under the purview of the office of profit as stated under article 191 of the Constitution of India. By way of election petition, the Appellant-petitioner came to the high court which disposed of the petition by observing: "Election petition is dismissed *in limine* as it does not disclose a *complete* cause of action or a triable issue."[120]

In appeal, the Supreme Court has examined the issue whether or not the facts on record in the instant case disclose the triable cause of action in terms of statutory requirements and the settled principles making those requirements operational. The 'triable cause of action' in the matters of election law is construed in terms of the

116 *Ibid.*

117 See also, Virendra Kumar, "Cause of action: when it is said to be disclosed in an election petition" XLVIII *ASIL* 414-418 (2012); Virendra Kumar, "An election petition lacking material facts as required to be stated in terms of Section 83(1): whether could be dismissed summarily without trial," in XLVI *ASIL* at 358-363 (2010) and Virendra Kumar, "Material facts and particulars," in XXXVI *ASIL* at 245-248(2001).

118 *Supra* note 5, see observations of Madan B. Lokur and Kurian Joseph JJ.

119 I.A. No. 4 of 2011 in Election Petition no. 2 of 2011.

120 *Supra* note 5 at 148 (para 1). Emphasis supplied

essential requisites of an election petition as spelled out in section 83 of the Act, 1951. Section 83 deals with the contents of an election petition in two parts, sub-section (1) and sub-section (2).

Sub-section (1) of section 83 of the said Act mandates that an election petition (a) shall contain a concise statement of the material facts on which the petitioner relies;(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and (c) shall be signed by the petitioner and verified in the manner laid down in the CPC for the verification of pleadings, Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. Sub-section (2) further stipulates that if there is any schedule or annexure to the petition, the same "shall also be signed by the Petitioner and verified in the same manner as the petition. *Firstly,* disclosing of the cause of action is dependent upon the "concise statement of the material facts on which the Petitioner relies" and the "full particulars of any corrupt practice that the Petitioner alleges;" *secondly*, the value of the appended and duly signed "schedule or annexure" in comprehending the stated "material facts."

In *Ashraf Kokkur*, the cause of action most seemingly relates to respondent's holding an office of profit under the Government of India or government of any state, which is the disqualification under article 191(1)(a) of the Constitution of India,[121]and that he was undisputedly holding the post of Chairperson of the Kerala State Wakf Board. In this backdrop, the simple exercise to be undertaken by the high court as an election tribunal, when called upon to do so under order VII rule 11(a) of CPC should be "whether that ground is discernible if the election petition is read as a whole."[122] Bearing this prescription in mind, the Bench of the Supreme Court has perused the whole gamut of ground facts/averments/contentions made by the appellant-petitioner in the instant case. The result of considerations of the same by the bench may be abstracted as under:[123]

i. The respondent, the returned candidate, was holding an office of profit, *viz.*, the Chairperson of the Kerala State Wakf Board.
ii. The Chairperson of the State Wakf Board receives such remuneration as are provided for and prescribed by the Government of Kerala.

121 Art. 191(1) dealing with 'Disqualifications for membership' inter alia provides that a "person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder…."

122 *Supra* note 5 at 151 (para 15).

123 *Id.* at 151-52 (para 15).

iii. In view of the stipulation under article 191 of the Constitution, any person who holds an office of profit under the state government, is debarred from contesting the elections to the legislative assembly.
iv. Since the State of Kerala having not made any legislation on removal of disqualification of the Chairperson of the Wakf Board, the Chairperson of the Kerala State Wakf Board is disqualified under article 191 of the Constitution.
v. Owing to the holding an office of profit, he is granted honorarium, allowances and enjoying the facility of a chauffeur driven car at State expenses and drawing other pecuniary advantages.
vi. Salary and allowances of the chauffeur are paid from the funds of the Government of Kerala.
vii. Since admittedly on the date of the election, the Respondent was holding an office of profit as Chairperson of the Kerala State Wakf Board, he was disqualified to contest the election.
viii. In the grounds taken in the election petition, it is reiterated, rather elaborately, that the Respondent suffered from the disqualification under Article 191 of the Constitution of India since he was holding an office of profit as Chairperson of the Wakf Board and that he was entitled and drawing financial perquisites and allowances and pecuniary benefits from the State of Kerala as Chairperson of the Kerala State Wakf Board and, hence, he was holding an office of profit which was a disqualification under Article 191 of the Constitution of India and, thus, he was disqualified to contest the election to the Kerala State Legislative Assembly.

In view of the above, the bench has held: "These averments, to us, clearly disclose a cause of action, *viz.*, the respondent was holding the position as Chairperson of the Kerala State Wakf Board and deriving financial benefits from the Kerala Government is disqualified Under Article 191(1)(a) of the Constitution of India, as holding of an office of profit under the State Government of Kerala," and that is "the triable issue in the election petition."[124]

124 *Id*. at 152 (para 15). See, Virendra Kumar, "Whether the Chairperson of the State Haj Committee Post is an 'Office of Profit'" L *ASIL* 528- 532 (2014) at 528-532. See also, Virendra Kumar, "Elected director of state corporation: whether holding an office of profit within the ambit of section 10 of the act of 1951 read with article 102(1)(a) of the constitution" XLVIII *ASIL* 403, 445-446 (2012); Virendra Kumar, "Village Lambardar: whether he holds an 'office of profit'" in XLVII *ASIL* 411-417 (2011); Virendra Kumar, "Contract for execution of works between returned candidate and Government," in XXXVIII *ASIL* 271, 280-286 (2002); Virendra Kumar, "Holding an office of profit under the government," in XXXVII *ASIL*251 at 253-258 (2001); Virendra Kumar, "Contract for sale of liquor with State Government – whether disqualification," in XXXV *ASIL* 261, 266-268 (1999); and Virendra Kumar, "Holding an office of profit under the government," in XXXIII *ASIL* 303 at 303-308 (1997-98).

Since in the present case the appellant-petitioner has also appended annexure to the election petition duly signed and verified by him as per the requirement under section 83(2) of the Act of 1951, seemingly the question for the consideration of the bench is whether or not for reading the election petition "as a whole"[125] the attached annexure are to be seen as "an integral part of the election petition."[126] In view of the judicial precedents the Bench has found that since the attached schedule or annexure was duly signed and verified by the election petitioner, it forms part of the election petition,[127]and it is for this reason it is placed in section 83 which deals with contents of an election petition.[128]

The emerging conclusion on the basis of "pleadings, if taken as a whole," the bench has observed, "would clearly show that they constitute the material facts so as to pose a triable issue as to whether the first respondent is disqualified to contest election to the Kerala State Legislative Assembly while holding an office of profit under the State government as Chairperson of the Kerala State Wakf Board."[129] This conclusion is meaningfully amplified when the apex court distinguishes the 'triable issue' from the 'substantive issue' by succinctly stating that the question is not "whether the Chairperson of the Kerala State Wakf Board is an office of profit or not," because

125 *Supra* note 5 at 151 (para 15).

126 *Id.* at 153 (para 19).Annexure-D, referred at para-5 of the election petition, *inter alia*, reads: "Even so, the first Respondent submitted his nomination before the Returning Officer in the said Constituency. Objection was taken that the first Respondent was disqualified to be chosen to fill the seat under the Constitution of India. But the same was rejected by the Returning Officer without any application of Mind. A copy of the order is produced herewith and marked as Annexure C …. and the objection submitted by the Petitioner with the forwarding letter is produced and marked as Annexure D. " *id.* at 153 (para 20).

127 The need and, therefore, rational for including details or particulars in appended schedule or annexures arises where the averments are too compendious for being included in an election petition. "In such an event, these schedules or annexures would be an integral part of the election petition and must, therefore, be served on the Respondents.""This is quite distinct from documents which may be annexed to the election petition by way of evidence and so do not form an integral part of the averments of the election petition and may not, therefore, be served on the Respondents." See *id*. at 154 (para 21) citing a three-Judge Bench of the Supreme Court in *G.M. Siddeshwar* v. *Prasanna Kumar* (2013) 4 SCC 776.

128 *Supra* note 5 at 153 (para 18), citing *M. Kamalam* v. *Dr. V.A. Syed Mohammed* (1978) 2 SCC 659 (para 5). *Sahodrabai Rai* v. *Ram Singh* Aharwar, AIR 1968 SC 1079, holding that a schedule or an annexure which is merely an evidence in the case and included only for the sake of adding strength to the petitioner, does not form an integral part of the election petition., nor in that the same is required to be verified by the election petitioner as stipulated under s. 83(2) of the Act of 1951. This observation was made in response to the question, whether the election petition is liable to be dismissed for contravention of s. 81(3) of the Act of 1951 as a copy of the appended annexure to the petition was not given along with the petition for being served on the respondents. [S. 81(3), dealing with presentation of petitions provides: "Every election petition shall be accompanied by as many copies thereof as there are Respondents mentioned in the petition and every such copy shall be attested by the Petitioner under his own signature to be a true copy of the petition."]

129 *Id*. at 154 (para 23). Emphasis added.

that is "the issue to be tried."[130] "Question is whether the petitioner has raised such a question in the election petition."[131] Since the disqualification under the Constitution of India being holding an office of profit under the state government, and "the petitioner has furnished all the material particulars in that regard," the petition, therefore, "discloses a cause of action."[132]

Having reached thus far, the bench in the present case has critically examined the provision of order VII rule 11(a) of CPC, which, literally read, empowers the court to reject an election petition at the very outset where there is no disclosure of "a cause of action." Court's critiquing of this provision of CPC, which is one of the rules of pleading, is on the count of its role in the administration of justice. In this respect, the Bench has recalled the 'caution' hitherto administered by the Supreme Court in *Raj Narain* v. *Indira Nehru Gandhi* by observing:[133]

> Rules of pleadings are intended as aids for a fair trial and for reaching a just decision. An action at law should not be equated to a game of chess. Provisions of law are not mere formulae to be observed as rituals. Beneath the words of a provision of law, generally speaking, there lies a juristic principle. It is the duty of the court to ascertain that principle and implement it. (Emphasis in original)

Looked from this perspective, the 'juristic principle' underlying the CPC provision is that the court is desired to dismiss the election *in limine* where the facts as pleaded do not disclose 'a cause of action' and not "a complete cause of action"[134] as construed by the high court in the instant case. To read the expression 'a cause of action' as 'complete cause of action' is to misconstrue the underlying objective of the said CPC provision. In case of the former, the objective of inquiry is a limited one, namely to determine whether the case in hand reveals the facts relating to the ground that makes it 'triable', that is worth further probing judicially.[135] In election matters, that objective is fulfilled if the election petition contains a concise statement of 'material facts' pertaining to the subject matter and which are relied on by the election Petitioner. "If the party does not prove those facts, he fails at the trial."[136] On the other hand 'complete cause of action' requiring the disclosure of 'full particulars' would imply

130 *Id*. at 154 (para 24).

131 *Ibid*.

132 *Ibid*.

133 (2008) 11 SCC 740.

134 Supra note 5 at 154 (para 25).

135 *Id*. at 155 (para 29), citing *Hari Shanker Jain* v. *Sonia Gandhi*, (2001) 8 SCC 233 (para 23), a three-Judge Bench of the Supreme Court holding: "… The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the Plaintiff to prove, if traversed, in order to support his right to the judgment of court…."

136 *Ashraf Kokkur* at 154 (para 25), citing *Philipps* v. *Philipps* ,(1878) 4 QBD 127 , 133;*Mohan Rawale* v. *DamodarTatyaba alias Dadasaheb* (1994) 2 SCC 392, 399).

culmination of the result of the case in a preliminary inquiry; that is the result of the petition even before its judicial trial.

Although in an election petition, whether a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case,[137] nevertheless in present case the charge clearly levelled is that the Respondent holds an office of profit as the Chairperson of the Kerala State Wakf Board and in that capacity he enjoys the profits attached to that office from the Government of Kerala.[138] This makes the case clearly triable, and not to be thrown out at the threshold merely on such ground as it does not reveal 'complete cause of action', or "the case is weak and not likely to succeed," or "full particulars" (which is distinct from 'reasonable cause of action') have not been supplied.[139]

In the context of exercising powers under order 7 rule 11 of the Code, the Supreme Court has put across signally a sagacious suggestion: "The implications of the liability of the pleadings to be struck out on the ground that it discloses no reasonable cause of action are generally more known than clearly understood…."[140] The message is that the courts should entertain requests for dismissal of petitions at the threshold with utmost caution, restraint and circumspection on the ground that no cause of action is disclosed in the petition.[141]The courts should bear in mind the prescription:[142]

> .... An election which is vitiated by reason of corrupt practices, illegalities and irregularities enumerated in Sections 100 and 123 of the Act cannot obviously be recognised and respected as the decision of the majority of the electorate. The courts are, therefore, duty-bound to examine the allegations whenever the same are raised within the framework of the statute without being unduly hyper-technical in their approach and without being oblivious of the ground realities.

The emerging principal rule of construing a plea in any pleading is that "courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief."[143]"Such an expression may be pointed, precise, sometimes vague but still it could be gathered what he wants

137 *Id*. at 155 (para 26), citing *Azhar Hussain* v. *Rajiv Gandhi*,1986 Supp SCC 315 (para 11).

138 *Ibid*.

139 *Id*. at 155 (paras 27 and 28), citing *V.S. Achuthanandan* v. *P.J. Francis* (1999) 3 SCC 737 (paras 15 and 16), a three-judge bench of the Supreme Court, holding that an election petition "was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out…"

140 *Id*. at 155 (para 28).

141 *Id*. at 156 (para 32), citing *Ponnala Lakshmaiah* v. *KommuriPratap Reddy* (2012) 7 SCC 788 (para 17).

142 *Id*. at 156 (para 32), citing *Ponnala Lakshmaiah* at (para 29).

143 *Id*. at 156 (para 30), citing *Syed Dastagir* v. *T.R. Gopalakrishna Setty* (1999) 6 SCC 337 (para 9).

to convey through only by reading the whole pleading, depending on the person drafting a plea...."[144] "... So to insist for a mechanical production of the exact words of a statute is to insist for the form rather than the essence. So the absence of form cannot dissolve an essence if already pleaded."[145] "So long as the plaint discloses some cause of action which requires determination by the court, the mere fact that in the opinion of the judge the plaintiff may succeed cannot be a ground for rejection of the plaint."[146] Following this precept, the bench in the instant case has allowed the appeals, and the election petition is remitted to the high court for trial in accordance with law.[147]

VI ELECTION PETITION: WHEN ALLOWED OR NOT ALLOWED TO BE AMENDED TO MAKE IT REASONABLY TRIABLE

The structure of the Act of 1951 is unique. It is self-contained code. It lays down clearly and categorically as far as possible about how the elections are to be held;[148] how and in what particular manner the elections could be challenged through an election petition;[149] how an election petition could be tried by the election tribunal/ high court;[150] on what specific grounds an election could be challenged;[151] when it could or could not be dismissed at the threshold;[152] and so on so forth. However, a specific issue has come before the Supreme Court to decide in *C.P. John*[153] when could an election petition be allowed to be amended to make it reasonably triable, or be dismissed at the very threshold without giving an opportunity to amend the same?

In *C.P. John*, the appellant-petitioner, who lost the election with a thin margin,[154] filed an election petition challenging the election of the respondent, the returned

144 *Ibid.*

145 *Ibid.*

146 *Id.* at 156 (para 31) citing *Mayar (H.K.) Ltd.* v. *Owners and Parties, Vessel M.V. Fortune Express* (2006) 3 SCC 100 (para 12).

147 *Id.* at 157 (para 34).

148 See generally, parts II-V of the Act of 1951.

149 See generally, ss. 80 (Election petitions); S. 80A (High Court to try election petitions); S. 81(Presentation of petitions); S. 82 (Parties to the petition); and S. 83 (Contents of petition) of the Act of 1951. .

150 See particularly, s. 86 of the Act of 1951 dealing with the trial of election petitions.

151 See particularly, s. 123 of the Act of 1951 dealing with corrupt practices.

152 See generally, Rule 94A of the Conduct of Election Rules, which prescribes form of affidavit to be filed with election petition after having been sworn before a magistrate of the first class/ /notary/commissioner of oaths.

153 *Supra* note7, see observations of F.M. Ibrahim Kalifulla and Shiva Kirti Singh JJ.

154 He lost the election by a margin of 408 votes; the second respondent who had the same name as that of the appellant secured 860 votes. According to the appellant, but for the candidature of the second respondent, there was every scope for the appellant to win the election. It was the contention of the appellant that the first respondent, with a view to mislead the voters, indulged in the corrupt practices of bribery, as well as, issuance of pamphlet with misleading and distorted version about the candidature which was covered by s. 123(1)(a) and 123(4) of the Act and that the appellant otherwise had a very good chance of success in the election.

candidate, held in 2011. The High Court of Kerala dismissed the same *in limine* under section 83(1)(b) of Act, 1951 as it did not disclose any cause of action.[155] In appeal before the Supreme Court, mainly the following critical questions have arisen for consideration: whether the defects pointed out in the affidavit by the respondent are of mere formal character and not of substance; whether the mandate of section 83(1)(b) of the Act of 1951 in terms of specific pleading relating to alleged bribe paid by the respondent are not duly complied making the entire pleadings non-consequential; whether the averments relating to corrupt practice are based on mere information and not on personal knowledge; whether the appellant was given sufficient opportunity to amend either the election petition or the affidavit filed in support of the election petition, when some defects in election petition were pointed out by the respondent.

In order to answer these various issues, in the first instance the Supreme Court has unfolded the "lofty ideas" underlying the relevant provisions of the Representation of the People Act, 1951.[156] One of the principal idea that why any challenge to the electionof the returned candidate, which is presumed to have been held by observing the requisite statutory provisions, is viewed seriously, is: "since the successful candidate in an election has got the support of the majority of the voters who cast their votes in his favour, the success gained by a candidate in a public election cannot be allowed to be called in question by any unsuccessful candidate by making frivolous or baseless allegations and thereby unnecessarily drag the successful candidate to the Court proceedings and make waste of his precious time, which would have otherwise been devoted for the welfare of the members of his constituency."[157] For avoiding the prospect of such litigation a cumulative reading of section 83(1)(a) [with its proviso] read along with section 86 of the Act, as well as, rule 94a and form no. 25 of the Conduct of Election Rules is imperative.[158] Such a reading instantly reveals "that in the filing of an Election Petition challenging the successful election of a candidate, the election Petitioner should take extra care and leave no room for doubt while making any allegation of corrupt practice indulged in by the successful candidate and that he cannot be later on heard to state that the allegations were generally spoken to or as discussed sporadically and on that basis the petition came to be filed."[159] "In other words, unless and until the election Petitioner comes forward with a definite plea of his case that the allegation of corrupt practice is supported by legally acceptable material evidence without an iota of doubt as to such allegation, the Election Petition cannot

155 *Supra* note 6, s. 83(1)(b) mandates that an election petition shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice.

156 *C.P. John*, at 23 (para 20)

157 *Ibid*.

158 *Ibid.*

159 *Ibid.*

be entertained and will have to be rejected at the threshold."[160] With this clear perspective in view, the Supreme Court has addressed to the following specific issues arising for its consideration in appeal in *C.P. John.*

Whether the high court was bound to give an opportunity to the election petitioner to apply for leave, to amend or amplify the corrupt practice alleged in this case on the basis of undernoted principle enunciated by the constitution bench in *Balwan Singh* v. *Lakshmi Narain*

Response of the Supreme Court in *C.P. John* is that *Balwan Singh* principle need not be applied indiscriminately or literally in every case. For reaching this conclusion, the apex court distinguished *C.P. John* on fact matrix from *Balwan Singh*. In *C.P. John*, in response to the election petition filed by the appellant-petitioner, the respondent in his written statement pointed out that the election petition suffered from the lack of particulars and that there was "failure to support the allegations made in the Election Petition by necessary affidavit as required to be filed under the proviso to Section 83(1)."[161] Soon thereafter, the appellant filed a counter-affidavit without seeking to make any prayer to amend or add any plea to the Election Petition or the affidavit filed in support of the election petition.[162] On the other hand, in his counter affidavit, the appellant continued to maintain his stand that whatever particulars required, have been sufficiently set out in the petition and affidavit and it was not lacking in any statutory requirement.[163] It is in this context, the high court set out to examine the contention raised at the preliminary stage as to the maintainability of the election petition for want of compliance of statutory requirement as prescribed under section 83(1) of the Act read along with rule 94A of the rules and as prescribed in form 25 of the relevant election rules, and eventually passed the impugned order.[164] In the light of this fact scenario, the Supreme Court has upheld the order of the high court by observing:[165]

> Therefore, when the Appellant was not inclined to seek for any amendment to the Election Petition or to the affidavit filed in support of the Election Petition, we fail to understand as to how the Appellant can now raise any grievance to the effect that the High Court ought to have granted an opportunity to the Appellant to amend the pleadings.

"In any event," the apex court adds, "the ratio of the decision set out in the Constitution Bench decision can have no application to the case on hand, as it materially

160 *Ibid.*

161 *Id.* at 27 (para 30). The respondent filed the written statement on Sep. 24, 2011. The I.A. No. 3 of 2011 was also filed on the same date.

162 *Ibid*. The counter affidavit to the said I.A. was filed by the appellant on Nov. 11, 2011.

163 *Ibid*.

164 The impugned order came to be passed on Dec. 2, 2011; that is, after the filing of the counter-affidavit by the appellant on 06.10.2011.

165 *Supra* note 7 at 27 (para 30).

differed in very many facts and the conduct of the party," and therefore, there is no scope "to apply the decision in *Balwan Singh (supra)* to the case of the Appellant."[166]

However, one small comment may be offered by stating that even in the instant case, the principle enunciated in *Balwan Singh* is stood applied if we simply bear in mind the sequence of events that led the high court to dismiss the petition *in limine*: the high court order was posterior to the filing of counter-affidavit by the appellant-petitioner, affirming his stand he took earlier, and not willing to amend the original pleadings in any manner whatsoever, and this was clearly to the knowledge of the high court when it passed the impugned order. For the same reason, the Supreme Court has declined to apply the ratio of *Raj Narain* v. *Smt. Indira Nehru Gandhi* [167]

This sequence of events, in our view, had not left any room for the high court to formally ask the appellant to amend the pleadings so as to overcome the limitations pointed out concretely by the respondent. Whether the high court was justified in throwing out the election petition at the very threshold where the averments were not duly supported in the affidavit in Form 25 without giving an opportunity to the election petitioner to rectify those defects on the basis of the principle enunciated by the apex court in *Umesh Challiyil* v. *K.P. Rajendran*.[168]

In *Umesh Challiyil* , the principle laid down by the apex court is that where the preliminary objection raised was to the effect that the affidavit in form 25 was not affirmed and as such affirmation was not duly certified and verification of the election petition was defective, such defects are inherently "innocuous and cosmetic in nature," and as such the election tribunal should have given an opportunity to rectify those minor cosmetic defects instead of dismissing the election petition at the very threshold.[169] The question for consideration is whether or not in the light of the fact-matrix of the present case, an opportunity was required to be extended by the high court before dismissing the petition *in limine*.

In *C.P. John*, the appellant made allegation of bribery falling under section 123(1)(A) of the Act of 1951 against the respondent.[170] However, while levelling such "a

166 *Ibid*.

167 (1972) 3 SCC 850: AIR 1972 SC 1302 (para 23), cited in *C.P. John*, at 29-30 (para 36), holding that when some defects in the election petition were pointed out, the election petitioner in that case took steps for amending the pleadings which could not be declined by the election tribunal, and that the respondent will also be afforded an opportunity to file any additional written statement, if she so desired.

168 (2008) 11 SCC 740 (paras 12 and 13), cited in *C.P. John*, at 27-28 (para 31).

169 *C.P. John*, at 28 (para 32).

170 Act of 1951, s. 123(1)(A) of the, the following shall be deemed to be corrupt practices for the purposes of this Act: "Bribery", that is to say, "any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing - (a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or (b) an elector to vote or refrain from voting at an election, or as a reward to— (i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or (ii) an elector for having voted or refrained from voting."

serious allegation," as pointed out by the respondent in his written statement as well as in the affidavit filed in support of his assertion, the appellant-petitioner furnished no details and, thus, chose to stick to his original stand, prompting the high court not to entertain the petition. On the basis of this factual position, the Supreme Court has held:[171]

> ... the Appellant having taken a rigid stand that he wanted to go by whatever averments contained in the Election Petition and affidavit filed in support of the Election Petition, he cannot subsequently turn around and state that inspite of such a categorical stand taken by him, the High Court should have gone out of the way and called upon him to rectify the defects, which were very serious defects concerning material particulars relating to corrupt practice, for which there was no necessity for the High Court to show any such extraordinary indulgence to the Appellant.

Accordingly, the Supreme Court has not found "any scope to apply the decision in *Umesh Challiyill* to support the stand of the Appellant" in the instant case.[172] Moreover, since the defects pointed out in the election petition, as well as in the affidavit were not of mere format but of substance, and, therefore, the principles emerging from such decisions as *G.M. Siddeshwar* v. *Prasanna Kumar*,[173] and *Ponnala Lakshmaiah* v. *Kommuri Pratap Reddyy*[174] are also found to be inapplicable.[175]

Whether an election petition is liable to be dismissed *in limine* under section 86 of the Act, for alleged non-compliance with provisions of section 83(1) or (2) of the Act of 1951 or of its proviso in the light of the propounding in *G. Mallikarjunappa* v. *Shamanur Shivashankarappa*,[176] *Sardar Harcharan Singh Brar* v. *Sukh Darshan Singh*;[177] and *Harkirat Singh* v. *Amrinder Singh*.[178]

171 *Id*. at 28-29 (para 33).

172 *Ibid*.

173 (2013) 4 SCC 776 cited in *C.P. John* at 29 (para 34), holding that if there is substantial compliance with the prescribed format of the affidavit, an Election Petition cannot be thrown out on a hyper technical ground particularly when there were some defects in the format which were curable. The defect in verification is a curable, and, therefore, the same cannot be held fatal to the maintainability of the election petition.

174 AIR 2012 SC 2638, cited in *C.P. John* at 29 (para 34), holding that the absence of an affidavit or an affidavit in a form other than the one stipulated by the Rules does not by itself cause any prejudice to the successful candidate so long as the deficiency is cured by the election Petitioner by filing a proper affidavit when directed to do so.

175 *Supra* note 7 at 29 (para 35).

176 (2001) 4 SCC 428: AIR 2001 SC 1829 (para 7), cited in *C.P. John* at 30 (para 38). Hereinafter simply *G. Mallikarjunappa.*

177 (2004) 11 SCC 196: AIR 2005 SC 22, cited in *C.P. John* at 31 (para 40).Hereinafter simply cited as *Sardar Harcharan Singh Brar.*

178 (2005) 13 SCC 511: AIR 2006 SC 713, cited in *C.P. John* at 31 (para 42).

Section 86(1) of the Act of 1951, which deals with trials of election petition, stipulates that the high court "shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117." A bare perusal of section 86(1), thus, shows that section 83 of the said Act does not fall within the purview of section 86(1). This implies that on account of any non-compliance with the provisions of section 83, an election petition cannot be dismissed. This is what was held in *G. Mallikarjunappa* by observing that non-compliance with the provisions of section 83 of the Act, specifically dealing with the requirement of filing an affidavit along with an election petition, in the prescribed form, in support of allegations of corrupt practice is contained in section 83(1) of the Act, "does not attract the consequences envisaged by Section 86(1) of the Act," [179] and, therefore, "an election petition is not liable to be dismissed *in limine* under section 86 of the Act, for alleged non-compliance with provisions of section 83(1) or (2) of the Act or of its proviso," because the "defect in the verification and the affidavit is a curable defect."[180] Having thus observed, the court added a sort of lingering poser: "What other consequences, if any, may follow from an allegedly "defective" affidavit, is required to be judged at the trial of an election petition but Section 86(1) of the Act in terms cannot be attracted to such a case."[181] Almost a similar statement was made by the Supreme Court in *Sardar Harcharan Singh Brar*.[182]

Notwithstanding the categorical holdings of the apex court as abstracted above, in the case in hand the Supreme Court has taken the opposite view, which is reproduced *in extenso*:[183]

> There can be no two opinions that consequences envisaged by Section 86(1) of the Act will have no application to the non-compliance of Section 83(1) or (2) or its proviso. But the question before us is when the mandatory requirement of the pleadings as stipulated Under Section 83(1) and its proviso was brought to the notice of the Appellant, as well as, to the Court, and when a specific application was filed for rejecting the Election Petition for want of particulars and consequent lack of cause of action for maintaining the Election Petition and the election Petitioner, namely, the Appellant herein chose not to cure the defects but insisted that his Election Petition can be proceeded with keeping *the material defects on record*, he cannot later on be heard to state that at any later point of time he must be given an opportunity to set right the defects. We are unable to appreciate such an extreme stand

179 *Mallikarjunappa* (para 7), cited in *C.P. John*, at 30 (para 38).

180 *Ibid.*

181 *Ibid.*

182 See *Sardar Harcharan Singh Brar* (para 14) in *C.P. John* at 31 (para 40).

183 *Supra* note 7 at 30-31 (para 39).

> made on behalf of the Appellant. Therefore, even while applying the above proposition of law stated by this Court in paragraph 7 [of *G. Mallikarjunappa*] we do not find any scope to interfere with the order impugned in these appeals. [Emphasis added]

The rational for this 'seemingly opposite view' is that non-compliance with the provisions of section 81(1) of the Act of 1951 in the present case is not just a matter of "form", but of "substance."[184]

In *Harkirat Singh*, the Supreme Court, after emphasising the need for pleading material facts and particulars as required under section 83 of the Act, pointed out that the high court without any plea from any party went into the allegations made in the election petition and rejected the same holding that the election petition did not state material facts and, therefore, did not disclose a cause of action.[185] In the case in hand, on the other hand, "there was a written statement filed pointing out the serious defects as regards *the material facts and the particulars* as set out in the Election Petition and also the non-compliance of the proviso to Section 83(1) in the affidavit filed in support of the Election Petition."[186] "That apart," the Supreme Court added, "an I.A. was taken out in I.A. No. 3 of 2011 at the instance of the First Respondent to reject the Election Petition for want of cause of action in which specific grounds were raised which were contested by the Appellant by filing a counter affidavit but yet, even at that stage, the Appellant did not take the stand that he was inclined to rectify whatever defects were pointed in the Election Petition as well as in the affidavit," and that when "such a categorical stand was taken on behalf of the appellant and he was fully prepared to accept the ultimate decision of the high court in the application as well as in the Election Petition, we see no reason why the Appellant should now be given any further opportunity to cure the defects which were substantial in nature."[187] Accordingly,

184 *Id.* at 31 (para 41).

185 *Id*. at 31-32 (paras 42 and 43).

186 *Id*. at 32 (para 44). Emphasis added. A clear distinction between "material facts" and "particulars", have been brought out by citing the observations from paragraph 51-51 of *Harkirat Singh* (supra):" 'Material facts' are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. 'Particulars', on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. 'Particulars' thus ensure conduct of fair trial and would not take the opposite party by surprise." "All 'material facts' must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial." *Id*. at 31 (para 42).

187 *Ibid.*

it is held that the said decision also does not in any way support the case of the appellant.[188]

Whether an election petition is liable to be dismissed *in limine* on ground of omission to plead any one of the ingredients of section 123(4) of the Act in order to constitute a complete cause of action to challenge the election on the ground of corrupt practice.

In *C.P. John*, the alleged corrupt practice committed by the respondent under Section 123(4) of the Act of 1951based upon Annexure-IV was the pamphlet that he got distributed in the name of petitioner's name sake person, the second respondent, to mislead the voters, and thereby to put the candidature of the appellant to serious prejudice. For determining the legitimacy of the commission of corrupt practice, the high court analysed the undernoted provisions of section 123(4) in the first instance.[189] In order to attract sub-section (4) of section 123, the following ingredients need to be pleaded:[190]

i. There should be a publication by a candidate or his agent or by any other person with the consent of the candidate or his election agent.
ii. The statement of fact in the publication must be false.
iii. The candidate should either believe it to be false or does not believe it to be true.
iv. The statement must be in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate.
v. The statement must be reasonably calculated to prejudice the prospects of that candidate's election.
vi. Even if the statement is false and the candidate did not believe the statement to be true or believe it to be false, unless the statement is in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate, it is not a corrupt practice.
vii. Even if the statement is in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate, unless it was reasonably calculated to prejudice the prospects of that candidate's election, it will not amount to a corrupt practice.

Each of the ingredients in the section is of critical importance in determining the charge of corrupt practice, inasmuch as "the omission to plead any one of the

188 *Ibid.*

189 *Supra* note 6, s. 123(4) of the Act of 1951 provides: The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

190 See, *C.P. John*, at 33 (para 45), citing paragraph 19 of the high court judgment.

ingredients is fatal."[191]"In the absence of any of the ingredients, it will not constitute a complete cause of action to challenge the election on the ground of corrupt practice under section 123(4) of the Act," concluded the high court.[192] And the Supreme Court bench has "fully" concurred with this view by observing that they "do not find any scope to take a different view," and that the "said conclusion of the High Court in the context of Section 123(4) is the only way to understand the implication of the Annexure IV-pamphlet alleged to have been distributed by the Second Respondent at the instance of the First Respondent."[193]Accordingly the impugned judgment of the high court has been upheld on this ground, as well.[194]

Whether an election petition is liable to be dismissed on ground of violation of section 33-A of the Act of 1951 which obliges the election candidates to reveal information regarding their conviction in certain type of criminal cases.[195]

In the present case, one of the allegations raised in the election petition related to violation of section 33-A of the act of 1951wherein, the respondent stated to have suppressed his conviction in two criminal cases. The question to be considered is whether the election candidates are required to disclose information in respect of all types of criminal cases or only in respect of certain categories of cases. Sub-section (1) of section 33-Areveals that "a candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) or section 33, also furnish the information as to whether – (i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;(ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more." In order to ensure authenticity of the information supplied, sub-section (2) further mandates that the candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).[196] In turn, under sub-section (3) the returning

191 *Ibid*.

192 *Ibid.*

193 *Id.* at 33 (para 46).

194 *Ibid*.

195 See also, Virendra Kumar, "Improper acceptance of nomination paper of the returned candidate: whether voiding of election can be avoided on the plea of substantial compliance in lieu of non-disclosure of the material information warranting rejection," L *ASIL* 550-555 (2014).

196 See also, Virendra Kumar, "Election petition lacking in proper verification: whether liable to be dismissed *in limine,"* XLVIII *ASIL* 404-408 (2012); Virendra Kumar, "Defect in verification of affidavit," in XXXVII *ASIL* 261-263 (2001);Virendra Kumar, "Non-compliance of rules requiring verification while filing disqualification petition: its consequences," in XLVI *ASIL* 338-345(2010); Virendra Kumar, "Dismissal of election petition in limine," in XXXV *ASIL* 282-284(1999).

officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.

A bare perusal of this provision reveals that the election candidate is required to furnish information in respect of only two types of criminal cases: one in which in a pending cases if charge has been framed by the court in an offence punishable for two years or more; two, in a case in which he has been convicted of an offence and sentenced to imprisonment for one year or more. In *C.P. John*, respondent, the returned candidate did not disclose about the two criminal cases. However, that non-disclosure did not constitute the violation of section 33-A of the Act of 1951, inasmuch as in one case though it is true that the respondent was convicted for offence in sessions case no. 4 of 1975 but the said conviction was set aside in criminal appeal no. 248 of 2000 and about which was no dispute.[197] Likewise, in another case, in which the respondent was convicted and the sentence was imposed, but the sentence of imprisonment was less than a year, and accordingly there was no compulsion for him to disclose the said conviction in his nomination.[198] On this count, the high court declined to interfere with the election of the respondent, and in the opinion of the Supreme Court, "no fault can be found with the said conclusion."[199]

In view of the analysis as presented above, the Supreme Court Bench has concluded by stating that "there is no merit in these appeals and the same are dismissed," albeit with no costs.[200]

VII CONCLUSION

In our analytical survey of the Supreme Court judgments, one can find revelation of some significant nuances in the exploration of hitherto well-established principles in the arena of election law. The emerging nuances may be abstracted in the form of following conclusions.

An election petition needs to be decided with promptitude, else it makes the whole election process suspect and sullied, and the handling of the election petition by the high court in *Pukherem Sharatchandra Singh* shows that the judge manning the election court needs to be sensitized about the singular objective of the use of section 86 of the Act of 1951 and how does it operate to bring about purity in the election process.[201] Moreover the ruling of the Supreme Court in *Krishnamoorthy*

197 *Id*. at 33 (para 47).

198 *Ibid*. The respondent was convicted in CC No. 167 of 1995, and in respect to this conviction the high court had noted that the certified copy of the judgment in the said case was produced which disclosed that the sentence imposed in the said case was less than a year.

199 *Ibid*.

200 *Id*. at 34 (para 48).

201 See generally, part II *supra*.

shows that non-disclosure of 'criminal antecedents' is not only constitutes violation of citizen-voters' fundamental right to the freedom of speech and expression, but adds effectively a new perspective: non-disclosure by the election candidate could amount to 'undue influence' as a facet of corrupt practice under section 123(2) of the Act of 1951, which would lead to declare his or election null and void under section 100(1)(b) of the Act of 1951.[202]

Hence in this age of digital technology, the production of electronic records has revolutionized the whole mode of adducing evidence in the court, but not without new hazards: such records are instantly and increasingly more susceptible to tampering, alteration, transposition, excision, *etc.*, than the traditional ones. *Navjot Sandhu alias Afsan Guru*s shows how and when electronic records could be used as primary evidence envisaged under Section 62 without resorting to the requirements stipulated in section 65, and when the same would amount to secondary evidence and thereby requiring the mandatory compliance of certification under section 65-B read with sections 59, 65A of the Act of 1872.[203]

Also the court, trying an election petition, should always bear in mind the subtle distinction between the 'triable issue' and the 'substantive issue'; the former represents in a way the pre-judicial stage, and the latter post-judicial. In the first instance, therefore, the primary concern of the Court is to find out whether the plaint, read as a whole, discloses some cause of action which requires judicial determination, and the fact that in the opinion of the Judge the Plaintiff may not succeed cannot be a ground for rejection of the plaint. The singular message of the Supreme Court in *Ashraf Kokkur* is that the courts should entertain requests for dismissal of petitions at the threshold with utmost caution, restraint and circumspection on the singular ground that 'no cause of action is disclosed in the petition.'[204]

In addition, the issue, when could an election petition be allowed to be amended to make it reasonably triable, or dismissed it at the very threshold without giving an opportunity to amend the same, has been examined by the Supreme Court in the light of several other attendant ancillary issues in *C.P. John*.[205] In this respect the prime principle enunciated by the court is that "unless and until the election Petitioner comes forward with a definite plea of his case that the allegation of corrupt practice is supported by legally acceptable material evidence, without an iota of doubt as to such allegation, the election petition cannot be entertained and will have to be rejected at the threshold."[206] In order to make his allegation clear and articulate, it is mandatory for the petitioner to fulfil at least two conditions: one, to make "a concise statement

202 See generally, part III *supra.*

203 See generally, part IV *supra*.

204 See generally Part V, *supra.*

205 See generally, Part VI, *supra*.

206 See *supra* note 161.

of the material facts on which the petitioner relies;"[207] two, to supply "full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice."[208] The first condition relating to "material facts" is something absolute in character which cannot be wished away at any cost as the petitioner is bound to plead those facts; whereas the "particulars" are the numerous details to amplify, refine and embellish very those "material facts." In operational terms, the courts invariably allow the petitioner to amend the petition for the supply ancillary 'particulars' (details) if those had not been supplied. In the instant case, the singular message of the Supreme Court, in our view, is that this obligation of the election court to provide an opportunity to the petitioner before rejecting his or her petition is not just an empty formality to be observed as such. If there is evidence on record to show that the petitioner has already been provided enough opportunity to amend and supplicate his or her petition, as is the position in the present case, there is no room left for the court to give another opportunity to set right the defects.[209] These conclusions, which sum up the developments that have taken place during the survey year, in our view, tend to augment the functional value of the hitherto well-established corresponding principles.

207 *Supra* note 6, s. 83(1)(a)

208 Act of 1951, 83(1) (b). The other two conditions stipulated in s.83(1) are: one, to sign and verify the petition "in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings;" and two, in case "where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof."

209 See particularly part VI, sub-part (C) see *supra* note 177-179 and the accompanying text.