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ELECTION LAW

*Virendra Kumar**

I INTRODUCTION

IN OUR survey for the year 2023, we have critically examined as many as six propositions, arising out of our analysis of six judgments of the Supreme Court delivered during the calendar year.The first proposition relates to, whether the nomination of the returned candidate was improperly accepted by the returning officer, resulting into materially affecting the result of the election.[1]This proposition is premised on a case which represents an interesting study,inasmuch as the so-called 'improper acceptance' has turned out to be 'proper acceptance' on close scrutiny of the fact matrix by the Supreme Court, resulting into reversal of the judgment of the high court.[2]

The second proposition deals with, whether contesting election for the "same office" from more than one constituency simultaneously under Section 33(7) of RPA 1951 is constitutionally consistent and sustainable.[3] This proposition, in turn, raises a question whether the issue of public policy as laid down by the Parliament under the provisions of the Act of 1951 can be questioned by a citizen in the name of violation of his fundamental right merely on the ground that permitting a person to contest election simultaneously from more than one constituency at a time "involves a drain on the public exchequer."[4]

The third proposition is devoted to examine the ambit and scope an application made by the returned candidate that seeks to reject an election petition on grounds of non-disclosure of any cause of action.[5] If *prima facie* a case is made out of non-disclosureor non-observance of some mandatory provisions by the returned candidate, is it necessary for the challenger, the election petitioner, to provide"full and up to date information" in summary proceedings?[6]

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1 See generally, *infra*, Part II.

2 See, *ibid.*

3 See generally, *infra*, Part III.

4 See, *infra*, notes 64, 65and the accompanying text [in Part III]

5 See generally, *infra*, Part IV.

6 See*, ibid.*

The fourth proposition is directed to identify some clear-cut test that could lead us to determine with a reasonable certainty, whether an election petition deserves to be dismissed *in limine* owing to the absence of material facts betraying a clear cause of action?[7] Search in this direction has led the Supreme Court to examine a catena of cases and come up with some semblance of a reasonable test.[8]

The fifth proposition is focussed on the issue, whether the application filed by the returned candidate for rejection of the election petitionfiled by the election petitioner on grounds of 'improper acceptance' of nominations and commission of corrupt practices is maintainable?[9] Through this proposition it is attempted to show that there is wide gap that needs to be abridged in the understanding of the judges of the high court, who are empowered to try election petitions, *vis-à-vis* the underlying objective of Clause (a) of Rule 16 of Order VI of Code of Civil Procedure, which specifically empowers the Judge "to strike out a pleading which is unnecessary,"[10] and also full import of Section 123 of the RP Act 1951, dealing with "particulars" of any of the corrupt practices.[11]

Sixth proposition examines whether an Application under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure, 1908, seeking dismissal of Election Petition for non-compliance of the provisions to Section 83(1)(c) is maintainable?[12] The Supreme Court judgment that has yielded this proposition provides an interesting study, inasmuch as while agreeing with the conclusion arrived by the high court through their impugned judgment, the same has been disapproved or deprecated by the apex court in appeal for applying the judicial precedents mechanically without showing any correlation between the fact matrix of the given case and the applicable judicial precedents.[13]

II NOMINATION OF THE RETURNED CANDIDATE: WHETHER IT WAS IMPROPERLY ACCEPTED BY THE RETURNING OFFICER, RESULTING INTO MATERIALLY AFFECTING THE RESULT OF THE ELECTION**?**

Dasanglu Pul* v. *Lupalum Kri.[14]

In this case, the election of the appellant, the returned candidate from the state legislative assembly, was challenged by the respondent, the election petitioner

7 See generally, *infra*, Part V.

8 See, *ibid.*

9 See generally, *infra*, Part VI.

10 See, *infra,* note 159 and the accompanying text (in Part VI).

11 See, *infra,* notes 160 and 161, and the accompanying text (in Part VI).

12 See, *infra*, Part VII.

13 See, *infra*, note 193, and the accompanying text (in Part VII).

14 MANU/SC/1163/2023: AIR 2023 SC 5265 (Decided On: 19.10.2023), *per* A.S. Bopanna, J.(for himself and andPamidighantam Sri Narasimha, J.) Herein after, simply *Dasanglu Pul*.

(the candidate wholost in the election to the appellant),[15]on the ground that she (the Appellant) had not presented her nomination paper in accordance with Section 33 of the Representation of the People Act, 1951,[16] and, as such, it amounted to improper acceptance of the nomination paper by the returning officer. Consequently, itwas liable to be rejected under Section 36(2)(b) and eventually declaredvoid under Section 100(1)(d)(iv) of the of R.P. Act, 1951. Accepting the plea of the election petitioner, the High Court of Gauhati voided her election. Aggrieved by the judgment of the high court, she has come up in appeal to the Supreme Court.

Theground on which such challenge was raised by the respondent is that the appellant, who has an interest and claim over the properties of her spouse has not mentioned the same in her affidavit, which she was required to file in pursuance of her nomination filed on March 22, 2019, enclosing all the relevant papers.[17]The affidavit is required tobe filed under Form 26 of Rule 4A of the Conduct of Election Rules, 1961.The violation of this obligation implies the non-disclosure of the properties belonging to her spouse, amounting to defects of substantial character and as such the nomination was liable to be rejected, which was not done by the returning officer right in the first instance despite the objection raised by the respondent.[18]

In appeal against the judgment of the high court, the Supreme Court in the first instance crystalized the basic premiseof the holding of the high court:[19]

> On analysing the evidence available before it, the High Court has arrived at the conclusion that the details of the property owned by the late husband of the Appellant was not indicated in the relevant column of Form26 which provided for mentioning the details of the properties owned by the spouse. In the said column the Appellant had indicated as 'not applicable.' It is in that light, the High Court has arrived at the conclusion that in a circumstance when the legal

15 The respondent challenged the election of the appellant by filing the Election Petition No. 3/2019 on July 3, 2019 before the Gauhati High Court, Itanagar Bench on the ground that the nomination of the Appellant was improperly accepted which has materially affected the result of the election. The Appellant in response had filed a Recrimination Case No. 1(AP)/2020 on January 20, 2020 contending that the Respondent held an office of profit on the day of filing his nomination and therefore his nomination is in fact liable to be rejected. In the election petition, the Appellant filed her written statement and defended the acceptance of her nomination as valid. See, *Dasanglu Pul,* para 5.

16 S. 33 of the Act of 1951 (as substituted by Act, 27 of 1956, S. 16) provides for thepresentation of nomination paper and requirements for a valid nomination.

17 See, *Dasanglu Pul*, para 4.

18 Initially this was the plea raised by the respondent by way of an objection before the Returning Officer, and the same was rejected through his order dated March 26, 2019 and had accepted the nomination of the appellant. In that background, the elections were held on April 11, 2019 and the results were declared on May 23, 2019 wherein the appellant had secured 5663 votes as against the 4591 votes secured by the respondent. The appellant was therefore declared elected by a margin of 1072 votes as a Member of the Legislative Assembly from the 45-Hayuliang(ST) Assembly Constituency.

19 See, *Dasanglu Pul*, para 6.

> heir certificate dated 04.05.2017 issued in favour of the first wife of Late Khaliko Pul hadbeen set asideas on the date when the nomination paper was filed by the Appellant on 26.03.2019, the properties relating to which the legal heir certificate had been issued being that of the spouse ought to have been mentioned in the Form26 of the affidavit."

However, in order to understand and appreciate the reference to the "circumstance" in which "the legal heir certificate dated 04.05.2017 issued in favour of the first wife of Late Khaliko Pul had been set asideas on the date when the nomination paper was filed by the Appellant on 26.03.2019," it is imperative to bring inthe requisite background of the Appellant that led her to mention in the relevant column of Form 26"not applicable" in respect of her interest in the properties owned by her spouse, Late Khaliko Pul. The relevant backgroundmay be abstracted as under:[20]

The appellant and her late husband Khaliko Pul belong to the Mishmi tribe in Arunachal Pradesh.[21] As permitted under theirtribal custom, Khaliko Pul married the Appellant during May, 2015 as his third wife. Her husband Khaliko Pul died intestate on August 9, 2016, leaving behind three wives, including the appellant, and seven sons. This implies that immediately after his death on August 9, 2016, the right to succession had opened and the property would cease to be the property of the late husband.

> As per the custom followed by the Mishmi tribe, it is only the first wife who would succeed to the properties of the husband if the deceased at the time of death had more than one wife. Accordingly, the legal heir certificate dated 04.05.2017 was issued in favour of the first wife of Late Khaliko Pul,and as such the Appellant had no claim whatsoever over the propertiesleft behind her deceased husband Khaliko Pul.
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> However, there was one little twist in this narrative: Appellant's husband, who married her as his third wife in 2015, and died in 2016, had given her one piece of property[Plot No. 230 situated at Tezu township] and the requisite documents were prepared by him[Late Khaliko Pul] in favour of his third wife, which were in possession of the first wife after his death. Seemingly, in order to pressurise the first wife to handover the relevant papers of the property that was given to her as his third wife, the Appellant challenged the validity of legal heir certificate dated 04.05.2017 issued in favour of the first

20 See, *id*., paras 3, 9,

21 The husband of the appellant was the sitting member of the Legislative Assembly from 45- Hyuliang (ST) Assembly Constituency. On the death of the husband, the appellant, for the first time contested from the said constituency in the bye-election that ensued on November 19, 2016 and was successful. After the completion of the term of the assembly for the earlier period, when the elections were notified on March 18, 2019, the appellant filed her nomination on March 22, 2019. She enclosed the relevant papers which included the affidavit under Form 26 of Rule 4A of the Conduct of Election Rules, 1961.

> wife of Late Khaliko Pul, and the said certificate was set asideon grounds of jurisdiction. The strategy paid off: the Appellant got the documents of the property, and thereafter she did to pursue the issue of heir certificate. And the Appellant had duly listed this property [Plot No. 230 situated at Tezu township] in her affidavit.

It is in this backdrop, as abstracted above, the Supreme Court has specifically examined: "whether the Appellant had any claim to the said property either to be her property on the death of the husband or has a claim to be entitled to succeed."[22] In their own assessment, the Supreme Court is inclined to examine, that "[i]t would be appropriate only to notice as to whether in the facts and circumstances of the case where the Appellant herself has no claim to the properties after the succession has opened, the non-mentioning of the properties as belonging to that of the spouse was a substantial defect."[23]

However, the high court, without examining the full import of the setting aside of the 'legal heir certificate' issued in favour of the first wife, rendered its decision of voiding the election of the Appellant by relying upon the judgement of the Supreme Court in *Kisan Shankar Kathore* v. *Arun Dattatray Sawant,*[24] wherein the Supreme Court on finding that there was clear non-disclosure of the bungalow belonging to the appellant's wife in the nomination papers filed by the Appellant in that case had held the same to be a substantial lapse.In the instant case, the Supreme Court has examined this stance of the high court judgment with the following effect:

(a) It is an undisputed fact that much prior to the filing of the nomination on 22.03.2019 a 'legal heir certificate' was issued on 04.05.2017 by the Court of Judicial Magistrate, First Class Tezu, Lohit District, Arunachal Pradesh in favour of the first wife of Late Khaliko Pul.[25]

(b) Para-3 of the said 'legal heir certificate'clearly recognises the customary right of the first wifeas the legal heir, being the first wife of Late Khaliko Pul, of the properties left by him, the details of which are given in the said Certificate.[26]

(c) There are as many as six properties left by Late Khaliko Pul, which were owned and possessed by him during his life time, the details of which are provided in the 'legal heir certificate', which excludes the property[Plot No. 230 situated at Tezu township] given by him to his third wife, the appellant, during his life time.[27]

22 See, *Dasanglu Pul*, para 9.

23 *Ibid.*

24 MANU/SC/0462/2014 : (2014) 14 SCC 162. See*, id*., para 11.

25 See, *Dasanglu Pul*, para 10.

26 *Ibid*.

27 The six properties,listed in para 8 of the judgment, left by the Late Khaliko Pul,do not include the propertygiven to the third wife during his life time, namely, Plot No. 230 situated at Tezu township.

(d) The Supreme Court judgment in *Kisan Shankar Kathore,* on which the High Court relied heavily for their decision in voiding the election of the Appellant in the instant case should not have been applied by considering the decision in that case "as having general application,"[28]for "it is well established that a case cannot be considered in abstract, without having reference to the facts and circumstances evolving in a case,"[29] in as much as this is what is borne out of the fact matrix of *Kisan Shankar Kathore case* itself, in which the Supreme Court "had also taken note with regard to the non-disclosure of the electricity dues regarding which there was a dispute pending and had arrived at the conclusion that the same was not a serious lapse."[30] This stance clearly showing that "the consideration as to whether it is a defect of substantial character would depend on the facts and circumstances of each case as to whether such a non-disclosure would amount to material lapse or not."[31]

(e) Bearing this seminal principle in mind, the Supreme Court in the instant case has drawn the following facts that need to be taken into account for determining whether the non-disclosure of her interest regarding the properties left by her late husband in the affidavit in question amounted to "material lapse" on her part:

(i) It is "undisputed" fact thatthe legal heir certificate issued to the first wife on March 4, 2017 was much prior to the filing the nomination papers for the present election on March 23, 2019.[32]

(ii) It is also true without any ambiguity that the Appellant had challenged the legal heir certificate on October 4, 2017 issued in favour of the first wife before the Session Judge, not by setting up any "title to the property which was owned by her late husband" but, only on the plea that the same was issued by the Judicial Magistrate, First Class "without jurisdiction," and the same was accordingly set aside on December 20, 2018[33] for its re-trial by the appropriate competent authority having jurisdiction over the matter.

(iii) After the prolonged pending proceedings, "ultimately a fresh legal heir certificate was issued by the Executive Magistrate, Lohit District on March 22, 2022,"[34]and that the said "certificate was in respect of the properties which stood in the name of the late husband regarding

28 See, *Dasanglu Pul*, para 11.

29 *Ibid.*

30 *Ibid*.

31 *Ibid*.

32 *Id.,* para 12.

33 *Ibid.*

34 *Id*., para 13. Earlier the 'legal heir certificate' was wrongly issued by the Judicial Magistrate (First Class).

which an objection had been raised by the Respondent for not being included in Form No. 26."[35]

(iv) Apart from the issue of jurisdiction, there is no material difference between the two 'legal heir certificates' issued to the first wife of Late Khaliko Pul – one issued by the Judicial Magistrate (First Class) on 04.05.2017 prior to the filing of nomination by the Appellant on 22.03.2019, and the other issued by the Executive Magistrate on 22.03.2022 after filing the nomination, both the certificates relate to the same six properties about which, as noted the preceding para, an objection had been raised by the Respondent for not being included in Form No. 26.The latter Certificate issued on 22.03.2022 is different from the earlier one only in respect, which is totally insignificant or alien to the objection raised by the Respondent.[36]

In view of the above, the inevitable conclusion that emerges is that the "fact remains that even the other persons who have signed have indicated that they have no objection and the legal heir certificate has accordingly been issued in favour of the first wife. Therefore, neither as on the date of the death of the spouse nor on the date of filing the nomination for the election at the first instance in the year 2016 or at the point when the nomination was filed on march 22, 2019, the property left behind by the deceased was claimed by the Appellant."[37]

(f) The legal heir certificate issued on May 4, 2017 in favour of the first wife of the Late Khaliko Pul was set aside on December 12, 2018 at the instance of the Appellate, and thereafter a new one was issued on March 22, 2022 again in favour of the first wife, although "the dispute was still at large before the forum to which it was remitted."[38] Be that as it may, the Supreme Court has rightly pointed out that "legal heir certificate by itself cannot be construed as a document of title to the property,"[39] and that it is only" a mode to determine the heirship based on which the consequential actions would follow."[40] In other words, by getting the 'legal heir certificate' issued in favour of first wife set aside, the appellant has not benefitted

35 *Ibid*.

36 On behalf of Responded it was contended "that the 'no objection certificate' filed by the remaining family members which ultimately resulted in the issue of the legal heir certificate dated 22.03.2022 in favour of the first wife itself is contrary to law inasmuch as the minor children also have signed the said document." See, ibid.We say, this difference is not material, in as much as, "the validity of the same is not an issue for consideration herein." Said the Supreme Court, see, ibid. The fact remains that even the other persons who have signed have indicated that they have no objection and the legal heir certificate has accordingly been issued in favour of the first wife. Therefore, neither as on the date of the death of the spouse nor on the date of filing the nomination for the election at the first instance in the year 2016 or at the point when the nomination was filed on 22.03.2019, the property left behind by the deceased was claimed by the Appellant.

37 *Ibid*.

38 See*, id.*, para 14.

39 *Ibid*.

40 *Ibid*.

in any way, inasmuch as such a Certificate couldn't be construed'as a document of title to the property' standing in the name of her deceased husband. The Appellant's gain was, however, indirect and tactical; she admirably succeeded in getting what she keenly desired to achieve by challenging the 'legal heircertificate'issued in favour of SmtiDangwimsai Pul, the first wife of the Late Khaliko Pul.In her evidence, the Appellant disclosed thereason "for which she had challenged the legal heir certificate."[41] For the due appreciation ofits candour and lucidity, the statement of reason needs to be reproduced in full:[42]

> That my challenge to legal heir certificate dated 04.05.2017 was primarily for the purpose of pressurizing SmtiDangwimsai Pul to handover the papers of land bearing Plot No. 230 situated at Tezu township before his death had made it clear that this plot of land is meant for me. The papers of this plot of land were in the possession of SmtiDangwimsai Pul and after the death of Shri Kaikho Pul, she showed reluctance in handling over the papers of this plot of land to me. I needed the papers of this plot of land badly to get an allotment order in my favour. Since SmtiDangwimsai Pul had obtained the legal heir certificate in respect of other properties in her favour, I feared that she may also apply for another legal heir certificate in respect of this plot of land also. In order to force SmtiDangwimsai Pul to part with the papers of this plot of land, I challenged the legal heir certificate dated 04.05.2017 on the advice of Shri BilusoTulang, who is my first cousin and has been helping me in managing my various social, legal and political matters. *During the pendency of the criminal revision petition filed by me challenging the said legal heir certificate, the papers of the said plot of land were given to me after which I stopped taking interest in my criminal revision petition. Subsequently, the said plot of land was allotted in my favour*.

(g) In the light of the perusal of the Appellant's deposition as extracted in the preceding paragraph, the Supreme Court conclusively states as under:

i) The claim of the Appellant all along was restricted toPlot No. 230 situate at Tezu township, which was given to her by her husband during his life time, and not to any other property left by him, who died intestate, and this property was duly mentioned in Form No. 26.

ii) The Appellant's challenge to the 'legal heir certificate' issued in favour of the first wife Smti Dangwimsai Pul of was not to set up any claim in respect of properties left by Late Khaliko Pul, but simply to pressurise her (the first wife) to handover the relevant papers relating to Plot No.230 situate at Tezu township in her possession, and nothing more.

41 *Ibid.*

42 *Ibid,* Emphasis is added.

iii) The explanation of the Appellant for not mentioning any interest in the property left by her deceased husband in Form N0. 26"will have to be accepted as plausible,"[43] because the same is "based on preponderance of probability" when the whole fact matrix of the case is weighted in its entirety.[44]

iv) The entire issue has been clinched by the Supreme Court when it is concludingly stated: "Therefore, in the facts and circumstances of the instant case if all these aspects are taken into consideration the disclosure of the said properties in the column in Form- 26 to indicate the properties belonging to the spouse would not arise,"[45]simply because her"spouse was not alive and on his death the succession had opened,[and] even otherwise she had not claimed any interest in the properties which are the subject matter and belonged to the deceased spouse."[46] Hence, if it was not a case of non-disclosure as envisaged under the *Association of Democratic Reforms case*,[47]"it cannot be construed that there was a defect of substantial character in the present facts and circumstances of the case,"[48]nor it could be considered a case of "improper acceptance of the nomination filed by the Appellant."[49]If so, then it cannot be held that it has materially affected the result of the election as contemplated in Section 100(1)(d)(i) (iv) of the RP Act, 1951.[50]

Accordingly, the appeal was allowed by setting aside the judgment and order dated April 25, 2023 passed by the High Court of Gauhati, Itanagar Bench in Election Petition No. 3 of 2019.[51]

III CONTESTING ELECTION FOR THE "SAME OFFICE" FROM MORE THAN ONE CONSTITUENCY SIMULTANEOUSLY UNDER SECTION 33(7) OF RPA 1951: WHETHER IT IS CONSTITUTIONALLY CONSISTENT AND SUSTAINABLE?

This issue has come before the three-Judge Bench of the Supreme Court in *Ashwini Kumar Upadhyay* v. *Union of India (UOI)*[52]

43 See, *id*., para 15

44 *Ibid.*

45 *Id.*, para 16

46 *Ibid*,

47 *Union of India v. Association for Democratic Reforms*, MANU/SC/0394/2002 : (2002) 5 SCC 294, cited in *Dasanglu Pul*, para 17.

48 *Ibid*.

49 *Ibid*.This observation was strengthened by observing: "As such the principle enunciated in *Mairembam Prithviraj @ Prithviraj Singh* v. *Pukhrem Sharatchandra Singh* MANU/SC/1361/2016 : (2017) 2 SCC 487 was not applicable herein," and"The High Court was therefore not justified in applying the same to the facts arising herein."

50 See*, Dasanglu Pul*, para 17.

51 See*, id*., para 18.

52 MANU/SC/0094/2023: 2023 INSC 94, *per* D.Y. Chandrachud, C.J.I. (for himself and Pamidighantam Sri Narasimha and J.B. Pardiwala, JJ.) Hereinafter, *Ashwini Kumar Upadhyay*

In order to examine the legitimacy of this proposition, the petitioner has invoked the jurisdiction of this court under Article 32 of the Constitution, which empowers every citizen the fundamental right to move the highest court of the land, namely the Supreme Court, for the protection of his fundamental rights enunciated in Pat III of the Constitution.[53] And, the Supreme Court, in turn, for the protection of his guaranteed fundamental rights, have power "to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement" of any of those rights.[54]

In this case, the petitioner has challenged the constitutional validity of Sub-section (7) of Section 33 of the Representation of the People Act, 1951, which deals with the presentation of nomination paper and requirements for a valid nomination.[55] The provisions of sub-section provide:

(7) Notwithstanding anything contained in sub-section (6) or in any other provisions of this Act, a person shall not be nominated as a candidate for election-

(a) in the case of a general election to the House of the People (whether or not held simultaneously from all Parliamentary constituencies), from more than two Parliamentary constituencies;

(b) in the case of a general election to the Legislative Assembly of a State (whether or not held simultaneously from all Assembly constituencies), from more than two Assembly constituencies in that State;

(c) in the case of a biennial election to the Legislative Council of a State having such Council, from more than two Council constituencies in the State;

(d) in the case of a biennial election to the Council of States for filling two or more seats allotted to a State, for filling more than two such seats;

(e) in the case of bye-elections to the House of the People from two or more Parliamentary constituencies which are held simultaneously, from more than two such Parliamentary constituencies;

(f) in the case of bye-elections to the Legislative Assembly of a State from two or more Assembly constituencies which are held simultaneously, from more than two such Assembly constituencies;

53 See Cl (1) of Art. 32 of the Constitution.

54 See Cl (2) of Art. 32 of the Constitution.This power of Supreme Court to protect the guaranteed fundamental rights as envisaged under Clause (1) and Clause (2), may be further widened by the Parliament under Clause (3) of Art. 32, which specifically stipulates: "Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)." Moreover, the scope of protection of fundamental rights is further strengthened when it is commanded by the Supreme Court in Clause (4) of Art. 32: "The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution."

55 Substituted by the Act 21 of 1996, S. 6 (w.e.f. Aug. 1, 1996).

(g) in the case of bye-elections to the Council of States for filling two or more seats allotted to a State, which are held simultaneously, for filling more than two such seats;

(h) in the case of bye-elections to the Legislative Council of a State having such Council from two or more Council constituencies which are held simultaneously, from more than two such Council constituencies.

Explanation: For the purposes of this sub-section, two or more bye-elections shall be deemed to be held simultaneously where the notification calling such bye-elections are issued by the Election Commission under Sections 147, 149, 150 or, as the case may be, 151 on the same date.

The provisions of this sub-section (7) of Section 33 opens with non-obstante clause to uphold their enforceability over the provision of sub-section (6) of section 33, which is apparently contradictory to the provisions of sub-section (7), in as much as it [sub-section (6)] provides categorically that "Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper: Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the returning officer for election in the same constituency."[56]

As a sequel to challenge the constitutional validity of Section 33(7) of the Act of 1951, the petitioner also "seeks a direction to the Central government and the Election Commission of India to take appropriate steps to restrict any person from contesting an election for the 'same office' from more than one constituency simultaneously."[57]

The prompting basis of the present composite election petition istwo-fold. The first stimulus came from the initiative taken by thethen Chief Election Commissioner of India urging the "then Prime Minister to amend Section 33(7) of the Act of 1951 insofar as it permits a person to contest from more than one constituency for the same office simultaneously."[58] The second stimulus appeared from the Law Commission 255th Reportof 2015 titled as *Electoral Reforms*, which specifically recommended that Clause (7) of Section 33 of the Representation of the People Act, 1951 "should be amended to provide that a person should not be permitted to contest from more than one seat at a time."[59] In fact, the Law Commission prepared a full blue print, proposing how the provisions of Clause (7)

56 Substituted by the Act 21 of 1996, S. 6 (w.e.f. August 1, 1996).

57 See, *Ashwini Kumar Upadhyay,* para 2.On similar lines, the petitioner had also sought "a direction to the Union government and the Election Commission 'to take appropriate steps to discourage independent candidates from contesting the Parliamentary and Assembly elections" was rejected by an order of this Court dated 11 December 2017'." See, *id*., para 3.

58 See, *id.*, para 4.

59 *Ibid*.

needs to be legislatively re-drafted.[60] The provisions of Section 33(7), as indicated above,permitting a candidate to contest anyelection (parliamentary, assembly, biennial council, or bye-elections) from upto two constituencies were incorporated into the Representation of the People Act, 1951, through a 1996 amendment. Prior to this incorporation, there was no bar on the number of constituencies from which a candidate could contest.[61]This was, "presumably to accord greater flexibility to candidatesand increase their chances of winning a seat,"[62] However, now under the amended provision of sub-clause (7) the number of constituencies has been reducedonly to not more than two. Though the underlying rationale for doing so has not been clearly revealed, nevertheless it may be located to at least to two, although over lapping,factors. One, under Section 70 of the Act of 1951, there is a clear stipulation that a candidate can hold only one seatat a time, regardless of whether they have been elected to more than oneseat.[63] This implies, as the Law Commission Report points out, "if a candidate wins from two seats, section 70 necessitates an unnecessary bye-election at the cost of the exchequer, effort of the ECI, and harassment of the electorate that has to vote again (which might reduced turnout due to election fatigue)."[64] The second,

60 See, The Law Commission 255th Report, Chapter XV:RESTRICTION ON THE NUMBER OF SEATS FROM WHICH A CANDIDATE MAY CONTEST [Hereinafter simply, *Law Commission 255th Report*], para 15.4,recommending the re-drafting of sub-section 7 ofsection 33, as under:

In sub-clause (a), delete the words "two Parliamentary constituencies"after the words "from more than" and insert the words "one Parliamentary constituency" instead. In sub-clause (b), delete the words "two Assembly constituencies" after"from more than" and insert the words "one Assembly constituency"instead.

In sub-clause (c), delete the words "two Council constituencies" after the words "from more than" and insert the words "one Councilconstituency" instead.

At the end of sub-clause (d), delete the words "two such seats" and insert the words "one such seat" instead.

In sub-clause (e), delete the words "two such Parliamentaryconstituencies" appearing after "from more than" and insert the words"one such Parliament constituency" in its place.

In sub-clause (f), delete the words "two such Assembly constituencies"after "from more than", and insert "one such Assembly constituency" inits place.

In sub-clause (g), delete the words "two such seats" appearing after"filling more than" and insert the words "one such seat" in its place.

In sub-clause (h), delete the words "two such Council constituencies"after "from more than" and add the word "one such Council constituency" in its place.

61 See, *Law Commission 255th Report,*para 15.1 [Chapter XV.]

62 *Ibid.*

63 Section 70 of the Act of 1951 provides: Election to more than one seat in either House of Parliament or in the House or either House of the Legislature of a State.—If a person is elected to more than one seat in either House of Parliament or in the House or either House of the Legislature of a State, then, unless within the prescribed time he resigns all but one of the seats 180 [by writing under his hand addressed to the Speaker or Chairman, as the case may be, or to such other authority or officer as may be prescribed], all the seats shall become vacant.[As amended by *the* Act 27 of 1956, S. 40.]

64 See, *Law Commission 255th Report,* para 15.1.

although over lapping, factor relates to "the cost of conducting a bye-election," which, as emphasized by the Law Commission, "should not be underestimated."[65]

The Law Commission drew support for their recommendation by observing:[66]

> Given that a candidate cannot hold two seats at the same time, the Law Commission agrees with the ECI's 2004 proposal that the RPA should be amended to provide that a person cannot contest from more than one seat at a time. This proposal has also been endorsed by the Goswami Committee in 1990, the 170th Law Commission Report in 1999, and the Background Paper on Electoral Reforms prepared by the Legislative Department of the Law Ministry in 2010.[67]

The petitioner in the instant case is attempting to do by invoking the Supreme Court intervention under Article 32 of the Constitution, what the Law Commission has hitherto failed to accomplishduring the last decade through its 255th Report. The centrality of the petitioner's challenge has been crystalized and summed up by the Supreme Court as under:[68]

> During the course of the hearing, [on behalf of the Petitioner it was] urged that the petition implicates an issue Under Article 19 of the Constitution. It has been submitted that citizens exercise their right to vote after knowing about a candidate's character, qualifications and criminal antecedents among other details. When a candidate who contests from two seats, is elected from both, one of the two seats has to be vacated. Apart from the financial burden which is imposed on the public exchequer for holding a bye-election, it has been urged that the electorate which has cast its vote in favour of a candidate on the basis of the representations which were held out during the course of campaigning would be deprived of being represented by that candidate for the Parliamentary or, as the case

65 *Ibid.*According to the Election Commission of India,in the 2014 Lok Sabha elections, the cost of conducting an election was estimated approximately to the tune of Rs. 10-crore on each constituency, and bye-elections will probably cost more given the absence of anyeconomies of scale, see, *ibid*.

66 *Id*., para 15.2.

67 Reference to footnotes have been omitted. See also, *id.*, 15.3: " However, the Commission does not endorse the ECI's alternateproposal to require winning candidates to deposit an appropriate amount ofmoney (to the tune of Rs. 5 lakhs for Assembly and Rs. 10 lakhs forParliamentary elections) being the expenditure for conducting the elections.Such a proposal does not correct the peculiarity in the law – the exercise of conducting bye-elections will still consume the ECI's time and effort; Lok Sabha poll cost jumps 80 times from Rs 10 crore to Rs 846 crore since 1952,ECONOMIC TIMES, April 8, 2014, <http://articles.economictimes.indiatimes.com/2014-0408/news/48971103_1_crore-expenditure-sikkim>.

ECI 2004 Reforms, supra note 203, at Goswami Committee Report, supra note 113, at 21; LCI 170th Report, supra note 108, atpara 6.1.1; Background paper, supra note 230, at para 6.5." [Reference to footnotes have been omitted].

68 See, *Ashwini Kumar Upadhyay,* para 7.

> may be, the State Legislative Assembly constituency. Consequently, it has been urged that the electorate which has opted for a candidate in pursuance of its right to know Under Article 19(1)(a) would be deprived of its right when the candidate vacates the seat.

A perusal of the petitioner's claim that his fundamental right under Article 19 of the Constitution is violated by the provisions of Section 33(7) of the RPA Act, 1951, which permits a candidate to contest from more than one constituency seat at a time, is not very clear. The issue of huge expenditure that bye-election entails by itself does not admit violation of his fundamental right, inasmuch as it also involves the equal right of the contesting candidate to enhance the chances of his own success in electoral battle. The singular issue that how the electorates' right to know the antecedent of the contesting candidate's vacating one seat in favour of another seat isvague and unclear. Be that as it may, the Supreme Court has clinched the whole issue by clearly holding:[69]

> The issue which has been raised by the Petitioner pertains to the legislative domain. Undoubtedly, where a candidate contests more than one seat simultaneously in the course of the same general election, one seat has to be vacated if the candidate succeeds in both the electoral contests. That necessitates a bye-election. The Petitioner has highlighted the fact that this involves a drain on the public exchequer. *The issue, however, is whether this by itself would result in the invalidation of a statutory provision*.

In the due course of constitutional governance, invariably the issue of invalidation of astatutory provision before the court is considered "either on the ground that it has been made by a legislature which lacks legislative competence to enact a law or on the ground that there is a violation of a Fundamental Right in Part III of the Constitution."[70] In the present case, neither the issue of legislative competency is in question, nor the violation of fundamental right under Article 19 is made out. The subject of allowing a candidate to contest from more than one seat in a Parliamentary election or at an election to the State Legislative Assembly is indeed "a matter of legislative policy,"[71] and eventually it is the Parliament which "determines whether political democracy in the country is furthered by granting a choice such as is made available by Section 33(7) of the Act of 1951."[72] It is slowly the prerogative of the Parliament to consider whether forbidding a candidate to contest more than one legislative constituency would "restrict the course of electoral democracy in the country."[73] Law Commission's recommendations to the Government and the Parliament in that respect are purely persuasive in nature. Hitherto, the Parliament has restricted the unlimited choice of a candidate for electoral contest to two seats in one the same election vide Act 21 of 1996. But this

69 *Id.*, para 10. Emphasis added.
70 *Id.*, para 11.
71 *Id,* para 12.
72 *Ibid.*
73 *Ibid*.

would not restrain Parliament from taking an appropriate view of restricting it further only to one seat, "if it decides to do so at any point of time in pursuance of its legislative authority."[74]However, the role of the Supreme Court in this matter is extremely limited: "Absent any manifest arbitrariness of the provision so as to implicate the provisions of Article 14 or a violation of Article 19, it would not be possible for this Court to strike down the provision as unconstitutional."[75]

> In view of the expository reasons, the Supreme Court Bench of three Judges dismissed the writ petition by declining to grant any reliefin the proceedings before it.[76]

IV WHAT IS THE TRUE AMBIT AND SCOPE OF AN APPLICATIONMADE BY THE RETURNED CANDIDATE, SEEKING REJECTIONOF THE ELECTION PETITION ON GROUNDS OF NON-DISCLOSURE OF ANY CAUSE OF ACTION?[77]

***Bhim Rao Baswanth Rao Patil* v. *K. Madan Mohan Rao*.**[78]

In this case, the appellant won the election conducted for a Parliamentary Constituency by defeating the Respondent, the election petitioner,by a narrow

74 *Ashwini Kumar Upadhyay*, para 13.

75 *Ashwini Kumar Upadhyay*, para 12.

76 See, *id*., paras 14 and 15.

77 See also, Virendra Kumar, "Non-disclosure of assets: whether constitutes corrupt practice in the absence of any statutory provision requiring disclosure of assets?" *ASIL* Vol. LVIII (2022); Virendra Kumar, "Election Petition: Whether it can be dismissed at the very threshold on account of non-filing of an affidavit in Form 25 (prescribed under Rule 94A of Conduct of Election Rules, 1961) as provided under Section 83(1) of the Representation of People Act 1951?" *ASIL* Vol. LVII (2021); Virendra Kumar, "Dismissal of Election petition in limine: How to determine the non-disclosure of cause of action, one of the pivotal grounds of dismissal?" *ASIL* Vol. LIV at 253-268 (2018), Virendra Kumar, "Whether election petition discloses any 'cause of action': ambit of court's enquiry," *ASIL* Vol. LIII at 349-353 (2017); Virendra Kumar, "corrupt practices under the representation of the people act, 1951: when does an election petition is held to disclose triable issues?" *ASIL* Vol. LII at 482-488 (2016); Virendra Kumar, "Nob-disclosure of criminal antecedents: Whether tantamount to 'undue influence' as a facet of corrupt practice under Section 123(2) of the 1951 Act", *ASIL* Vol. LI at 509-518 (2015); Virendra Kumar, "Election Petition: When could it be said to disclose 'no cause of action'" *ASIL* Vol. LI at524-530 (2015); Virendra Kumar, "Nomination paper: when does it amount to its proper or improper rejection by the returning officer?" *ASIL*. Vol. L at 545-550 (2014); Virendra Kumar, "Cause of action: when it is said to be disclosed in an election petition," *ASIL*. Vol. XLVIII at 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," *ASIL*. Vol. XLVI at 358-363 (2010); Virendra Kumar, "Material facts and particulars," *ASIL*. Vol. XXXVI at 245-248 (2001); Virendra Kumar, "Dismissal of election petition *in limine*," *ASIL*. Vol. XXXV at 282-284 (1999); Virendra Kumar, "Modus operandi for determining cause of action," *ASIL* Vol. XXIII (1987) at 412-415; and Virendra Kumar, "Rejection of nomination paper," *ASIL* Vol. XXI (1985) at 409-418.

78 MANU/SC/0791/2023: 2023 INSC 641, Civil Appeal No. 4632 of 2023 (Arising out of SLP (C) No. 6614 of 2023), *per* S. Ravindra Bhat, J. (for himself and Aravind Kumar, J. Hereinafter, simply *Bhim Rao*.

margin of 6229 votes. The respondent preferred an election petition under Sections 81 and 84 read with Sections 100(1)(d)(i)(ii)(iii) and (iv) of the Representation of People Act, 1951. The appellant made an application in the high court seeking rejection of the respondent's election petition by contending that the election petition did not disclose any cause of action and was, thus, barred in law and was liable to be rejected. The high court rejected the application.[79] This prompted the aggrieved Appellant to come to the Supreme Court by way of special leave to appeal, urging several groundswith respect to its explanation for the alleged non-compliance of what were termed by the election petitioner as mandatory requirements, it was also alleged that section 81(3) had not been complied with.

The Supreme Court examined the contentious issue *de novo*. On a "plain look at the election petition"[80], it is observed by the Court that the petitioner's allegations fall broadlyinto two categories: one pertains to "non-disclosure of criminal cases pending against the Appellant, or cases where he was convicted;"[81] the other pertains to "averments and allegations" that have been made "regarding non-compliance with stipulations regarding information dissemination and the manner of dissemination through publication in newspapers, the font size, the concerned newspapers' reach amongst the populace, etc."[82] In both the categories,the full import of the allegations, enabling the Court to reach a judgment cannot be examined in "what are essentially summary proceedings Under Order VII Rule 11, Code of Civil Procedure, or even Under Order XII Rule 6, Code of Civil Procedure."[83] In the case of alleged non-compliance with statutory and Election Commission mandated regulations, it is not merely a question of factual determination of observance, but what is more critical to find out is the "legal effect" of their observance or non-observance, which, of course, cannot be determined in summary proceedings. Likewise, in respect of non-disclosure of cases where the appellant has been arrayed as an accused, even if they are ultimately turned out to be true, "the effect of such allegations (in the context of provisions of law and the non-disclosure of all other particulars mandated by the Election Symbols orders) has to be considered after a full trial."[84]

The underlying objective of both the issues – issue of 'non-disclosure' of informationregarding assets and liabilities, including criminal cases, *etc.*, and issue

79 The high court noticed the contentions of the parties as well as the pleadings and was of the opinion that having regard to the terms of Order VII Rule 11 Code of Civil Procedure, only the averments in the petition and the accompanying documents could be considered and not any other materials brought on record during the course of the proceedings. The court was of the opinion that taking in the overall conspectus of the facts available on the record did not lead to a compelling reason for rejecting the election petition. Accordingly, the Appellant's application was dismissed, and the contentions were kept open to be agitated during the trial. See, *Bhim Rao,* para 6.

80 See, *Bhim Rao,* para 26.

81 *Ibid*.

82 *Ibid.*

83 *Ibid*.

84 *Ibid.*

of 'non-compliance' with the filling of various forms and furnishing information as directed by the Election Commission –is to strengthen the democratic process envisaged under the Constitution. This is done essentially by enabling the electorate to exercise their right to vote on the singular basis of 'informed choice'. But, how to strengthen this 'informed choice' has been the issue of most critical concern. That is, how and in what manner to bind the election candidates to revel their all the relevant antecedents so that the electors' choice could genuinely be termed as 'informed choice'.

In terms of fructification or realization of this objective, a fundamental question had come to the fore about the very nature of the right to vote, In the instant case, the Supreme Court has recapitulated the constitutional historyof the right to vote,which is a "crucial component of the essence of democracy"[85]: "This right is precious and was the result of a long and arduous fight for freedom, for Swaraj, where the citizen has an inalienable right to exercise her or his right to franchise."[86] The genesis of this right is traced to the existent provisions of Articles 325 and 326 of the Constitution.[87] Article 326 enacts that "every person who is a citizen of India and who is not less than twenty one years of age on such date as may be fixed and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election." This right stands strengthened by the "non-discriminatory principle" embedded in Article 325, which expressly provides that "There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them."

Notwithstanding the 'right to vote' being a constitutional right, "paradoxically" it "has not been recognized as a Fundamental Right yet."[88]To explore the intrinsic nature and value of the right to vote, the Supreme Courtcited the enlightened judgment of O. Chinnappa Reddy (for himself and R.S. Pathak,J.) in *Jyoti Basu* v. *Debi Ghosal:*[89]

> A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple a statutory right. With great reverence to the eminent Judges, I would like to clarify that the right to vote, if not a fundamental right, is certainly a constitutional right. The right originates from the Constitution and in accordance with the

85 See, *id.,* para 27.

86 *Ibid*.

87 See*, ibid.*

88 *Ibid.*

89 MANU/SC/0144/1982: 1982 [3] SCR 318, see, ibid.

> constitutional mandate contained in Article 326, the right has been shaped by the statute, namely, R.P. act. That, in my understanding, is the correct legal position as regards the nature of the right to vote in elections to the House of the People and Legislative Assemblies. It is not very accurate to describe it as a statutory right, pure and simple. Even with this clarification, the argument of the learned Solicitor General that the right to vote not being a fundamental right, the information which at best facilitates meaningful exercise of that right cannot be read as an integral part of any fundamental right, remains to be squarely met....

Again:[90]

> (2) The right to vote at the elections to the House of the People or Legislative Assembly is a constitutional right but not merely a statutory right; freedom of voting as distinct from right to vote is a facet of the fundamental right enshrined in Article 19(1)(a). The casting of vote in favour of one or the other candidate marks the accomplishment of freedom of expression of the voter.

If the freedom of voting; that is, the exercise of the right to vote, is a facet of the fundamental right to freedom of speech and expression under Article 19(1)(a) of the Constitution, then to treat the right to vote not invested with the spirit of Fundamental right, seems to be an invidious distinction! Be that as it may,the voter's right to know about "the full background of a candidate" has been reinforced "through court decisions"[91]–a development which has been described as "an added dimension to the rich tapestry of our constitutional jurisprudence."[92]

The impact of judicial intervention in reinforcing the constitutional right to vote is most evident in the introduction of new Section 33A of the Representation of the People Act, 1951,in 2002,[93] which requires disclosure of past criminal

90 See, *ibid.*

91 *Id.,* para 28.

92 *Ibid*.

93 Ins. by Act 72 of 2002, S. 2 (w.e.f. 24-8-2002).

antecedents of every candidate.[94] The need for a "detailed declaration by candidates" was underlined by the Constitution Bench of the Supreme Court in*Public Interest Foundation* v. *Union of India (UOI).,*[95] while issuing the following directions,consistently with the earlier decisions of the apex court, which required the Election Symbols (Reservation and Allotment) Order, 1968 to be suitably amended:[96]

(i) Each contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the particulars as required therein.

(ii) It shall state, in bold letters, with regard to the criminal cases pending against the candidate.

(iii) If a candidate is contesting an election on the ticket of a particular party, he/she is required to inform the party about the criminal cases pending against him/her.

(iv) The concerned political party shall be obligated to put up on its website the aforesaid information pertaining to candidates having criminal antecedents.

(v) The candidate as well as the concerned political party shall issue a declaration in the widely circulated newspapers in the locality about the antecedents of the candidate and also give wide publicity in the electronic media. When we say wide publicity, we mean that the same shall be done at least thrice after filing of the nomination papers.

94 33A of the Act of 1951, dealing with the 'Right to information,' provides:

(1) 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) of 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.

(2) 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).

(3) The returning 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."

95 MANU/SC/1048/2018: 2018 [10] SCR 141, *per* Dipak Misra, C.J.I., Rohinton Fali Nariman, A.M. Khanwilkar, D.Y. Chandrachud and Indu Malhotra, JJ., cited in *Bhim Rao,* para 12.

96 Public Interest Foundation, para 116, cited in *Bhim Rao,* para 12.

However, in this wise, Section 33-B inserted by the Representation of the People (Third Amendment) Act, 2002,[97]was declared invalid and unconstitutional by the Supreme Court in *People's Union for Civil Liberties* v. *Union of India*,[98] inasmuch as it imposed a "blanket ban on dissemination of information other than that spelt out in the enactment irrespective of the need of the hour and the future exigencies and expedients and secondly for the reason that the ban operates despite the fact that the disclosure of information now provided for is deficient and inadequate." This decisively means that thenceforth "providing information is vital for a vibrant and functioning democracy."

In pursuance of the decision and directions of the Constitution Bench of the Supreme Court in *Public Interest Foundation case* (2018), "the Election Commission issued guidelines and also framed forms that were part of guidelines requiring declarations inter alia with respect to disclosure of pending criminal cases and those in which candidate(s) had been convicted."[99] The relevant extract of those guidelines were first issued by the Election Commission on October 10, 2018, which are meant "to be complied with by candidates at elections to the Houses of Parliament and Houses of State Legislatures, who have criminal cases against them, either pending cases or cases of conviction in the past, and to the political parties that set up such candidates."[100]

These guidelines,*inter alia,*may be extracted as under:[101]

(i) Candidates at elections to the House of the People, Council of States, Legislative Assembly or Legislative Council who have criminal cases against them, shall publish a declaration about their criminal cases, for wide publicity in newspapers with wide circulation in the constituency area.

(ii) This declaration is to be published in Format C-1, attached hereto, at least on three different dates from the day following the last date for withdrawal of candidatures and up to two days before the date of poll.

(iii) The Political parties-recognized parties and registered un-recognized parties, which set up candidates with criminal cases, either pending cases or cases of past conviction, are required to publish declaration giving details in this regard, for wide publicity, on their website as well as in TV channels and newspapers having wide circulation in the State concerned. Declaration in this regard shall be published in Format C-2, annexed hereto, and should be provided State wise with separate statements for each State/Union Territory.

97 *Ins*. by Act 72 of 2002, S. 3 (w.e.f. May 2, 2002), providing inter alia, that "...no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the Rules made thereunder".

98 MANU/SC/0234/2003: (2003) 4 SCC 399, cited in *Bhim Rao,* para 13.

99 *Bhim Rao,* para 14.

100 *Ibid.*

(iv) Publishing of the declaration in newspapers and TV channels is required to be done at least on three different dates during the period mentioned in Para-2(a) above. As specified above, the declaration in newspapers should appear in at least 12 font size, and should be placed suitable so that the directions for wide publicity are complied with in letter and spirit. In the case of publishing of declaration in TV channels, the same should be completed before the period of 48 hours ending with the hour fixed for conclusion of poll.

(v) All such political parties shall submit as report to the Chief Electoral Officer of the State/UT concerned confirming that they have fulfilled the requirements of these directions and enclosing therewith the paper cuttings containing the declarations published by the party in respect of the candidates in the State/UT concerned. This shall be done within 30 days of completion of election.

(vi) It may be noted that failure to abide by these directions would be treated as failure/refusal to carry out a lawful direction of the Commission for the purposes of paragraph-16A of the Election Symbols (Reservation and Allotment) Order, 1968.

(vii) It may also be noted that the provisions for the additional affidavit in respect of dues against Govt. accommodation, if any, that may have been allotted to the candidates, have now been incorporated in Form-26 itself under Item (8) relating to liabilities to Public Financial Institutions and Govt. Therefore, the candidates shall give the requisite declaration/ particulars in this regard in Item (8) of Form-26. Accordingly, the candidates are now not required to file the additional affidavit prescribed under the Commissioner's Order No. 509/11/2004-JS-1, dated February 3, 2016, as the provisions are not part of Form-26 itself.

(viii) These directions may be circulated to all formations of your party and also brought to the notice of candidates of the Party in future elections for guidance and for strict compliance of these directions.

(ix) The other requirements include submission of copies of newspapers in which declarations about criminal cases were furnished to the District Election Officer, publication of declaration on TV Channels at least on three different dates but which was to be completed before 48 hours, ending with the year fixed for completion of poll.

(x) In the case of candidates with criminal cases set up by political parties, whether recognized parties or registered unrecognized parties, such candidates are required to declare before the Returning Officer concerned that they have informed their political party about the criminal cases against them. Provision for such declaration has been made in Form-26 in the newly inserted item (6A) and other stipulations were framed. The relevant form with respect to publication in newspapers was Form C-1; the report by the candidate "about publication of declaration regarding criminal

cases" was in Form C-4 and Form 26 in terms of Rule 4A dealt with the election affidavit disclosing the description and details of income returns of the candidate.

(xi) Clause 5 of Form 26 contains the column for disclosure of pending criminal cases and those in which the candidate was convicted for any offence.

In the instant case, the Appellant had filed the relevant form along with the declaration (Clause 6A) of Form 26 stating that "I have given full and up to date information to my political party about all pending criminal cases against me and about all cases of conviction as given in paragraphs (5) and (6): Yes."[102] However, the election Petitioner/Respondent has vehemently contended that the disclosure in this case was false because the Appellant was earlier convicted in cases concerning violation of the Minimum Wages Act, 1948 and the Payment of Wages Act, 1936.[103] The Appellant countered this and, in his application, contended that no such disclosure was essential by reason of the fact that under section 33A, a candidate who 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 has to furnish such information [Section 33A(1)(i)].[104] It is also contended that in cases of conviction, the requirement of disclosure is by reason of Section 33A(1)(ii) only where she or he is convicted of an offence and sentenced to imprisonment for one year or more, other than offences expressly mentioned in Section 8(1) or (2) or (3).[105] It is further argued by the appellant that "since the provisions of the Act, in fact, mandate disclosure only in respect of those classes of offences expressly stated, the non-disclosure of information with respect to criminal cases pending where the Accused candidate can face punishment for less than two years or has not been convicted of an offence and sentenced to imprisonment for one year or more is not required."[106]

From the contention of the appellant about his "full and up to date information," and counteraction of the same by the respondent with due documentation in his election petition, one thing is clear that to reach the conclusion with finality is not possible in summary proceedings. Accordingly, the Supreme Court has dismissed the appeal "with costs"[107] by observing:[108]

> Keeping this in mind, this court is of the opinion that if the Appellant's contentions were to be accepted, there would be a denial of a full-fledged trial, based on the acknowledgement that material facts were not suppressed. Whether the existence of a criminal case, where a charge has not been framed, in relation to an offence which does

101 See, *Bhim Rao,* paras 14 and 15.
102 Form 26 under Rule 4A, duly filled in by the Appellant is placed in*Bhim Rao,* paras 15.
103 *Id.*, para 16.
104 *Ibid*.
105 *Ibid.*
106 *Ibid.*
107 *Id.*, para 29.

> not possibly carry a prison sentence, or a sentence for a short spell in prison, and whether conviction in a case, where penalty was imposed, are material facts, are contested. This court would be pre-judging that issue because arguendo if the effect of withholding some such information is seen as insignificant, by itself, that would not negate the possibility of a conclusion based on the cumulative impact of withholding of facts and non-compliance with statutory stipulations (which is to be established in a trial). For these reasons, this court is of the opinion that the impugned judgment cannot be faulted."

Dismissal of an appeal 'with costs' is invariably unusual. It would perhaps happenonly in those cases wherein the court is reasonably sure that the appellant is trying to abuse court processes by circumventing due processes in law. The appellant – the returned candidate –had even succeeded earlier in influencing the high court by extracting a favourable order against the election petitioner (now the Respondent), and thereby scuttling the whole process of challenging his (Appellant's) election. which was later he (the election petitioner) could get it set aside with the intervention of the Supreme Court. This fact has been brought out by the Supreme Court by observing:[109]

> The High Court had earlier heard the application3 and reserved orders on 23.12.2021. The judgment was delivered on 15.06.2022, whereby the Respondent's election petition was rejected, and the Appellant's application was allowed. This court, however, set aside that order on 12.09.20224. This court observed in its order that even on the date it disposed of the special leave petition, i.e., 26.09.2022, the reasons for allowing the application for rejection had not been given by the learned Judge.

It needs to be noticed that the high court heard the application of then respondent for the dismissal of the election and reserved orders on December 13, 2021. It took the high court more than six months to reject the election petition by accepting the then respondent's application, but without adducing any 'reasons'. However, the high court took U-turn with the intervention of the Supreme Court, as noticed by the apex court as under:[110]

> In the present case, the High Court noticed the contentions of the parties as well as the pleadings and was of the opinion that having regard to the terms of Order VII Rule 11 Code of Civil Procedure, only the averments in the petition and the accompanying documents could be considered and not any other materials brought on record during the course of the proceedings. The court was of the opinion that taking in *the overall conspectus of the facts* available on the record did not lead to a compelling reason for rejecting the election

108 *Id*., para 28.
109 *Id.,* para 5.

> petition. Accordingly, the Appellant's application was dismissed, and the contentions were kept open to be agitated during the trial.

It seems, the appellant did not care to see the unreasonableness of his averments and, thus, approached the apex court once again, meriting the dismissal order "with costs"!

V ELECTION PETITION: WHETHER IT DESERVED TO BE DISMISSED *IN LIMINE* OWING TO THE ABSENCE OF MATERIAL FACTS BETRAYING A CLEAR CAUSE OF ACTION?[111]

Kanimozhi Karunanidhi* v. *A. Santhana Kumar.[112]

In this case, the Election Petitioner/Respondent No. 1 claiming to be a voter, has filed the Election Petition before the High Court under Section 80, 80A, 100(1)(d)(iv) of the Representation of the People's Act, 1951, seeking declaration that the election of the returned candidate, *i.e.*, the appellant herein, from a Lok Sabha Constituency, in the Lok Sabha election was void and liable to be set aside, on the ground that the information sought by the Election Commission of India in regard to the payment of income tax of her spouse was not provided by her in the affidavit - Form No. 26 submitted along with the nomination papers, and thus had intentionally suppressed and not disclosed the same to the electors. In the said Election petition, the appellant/returned candidate had filed OA praying to strike off paragraphs 5 to 17 of the Election petition and had filed OA praying to reject the election petition in limine on the ground that the averments and allegations contained in the Election petition were wholly vague and bereft of material facts, and therefore did not meet with the requirements of section 81, 83, 86 and 100 of the said Act. It was also averred that the paragraph nos. 5 to 17 of the election petition were bereft of material facts and did not disclose any cause of action. The high court *vide* the impugned common order dismissed both the original applications

110 *Id*., para 6.

111 See also, Virendra Kumar, "Dismissal of Election petition in limine: How to determine the non-disclosure of cause of action, one of the pivotal grounds of dismissal?" *ASIL* Vol. LIV at 351-401 (2018); Virendra Kumar, "Whether election petition discloses any 'cause of action': ambit of court's enquiry," *ASIL* Vol. LIII at 349-353 (2017); Virendra Kumar, "corrupt practices under the representation of the people act, 1951: when does an election petition is held to disclose triable issues?" *ASIL* Vol. LII at 482-488 (2016); Virendra Kumar, "Election Petition: When could it be said to disclose 'no cause of action'" *ASIL* Vol. LI at 524-530 (2015); Virendra Kumar, "Nomination paper: when does it amount to its proper or improper rejection by the returning officer?" ASIL. Vol. L at 545-550 (2014); Virendra Kumar, "Cause of action: when it is said to be disclosed in an election petition," *ASIL*. Vol. XLVIII at 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," *ASIL*. Vol. XLVI at 358-363 (2010); Virendra Kumar, "Material facts and particulars," *ASIL*. Vol. XXXVI at 245-248 (2001); Virendra Kumar, "Dismissal of election petition in limine," *ASIL*. Vol. XXXV at 282-284 (1999); Virendra Kumar, "Modus operandi for determining cause of action," *ASIL* Vol. XXIII (1987) at 412-415; and Virendra Kumar, "Rejection of nomination paper," *ASIL* Vol. XXI (1985) at 409-418.

filed by the appellant/returned candidate. In special leave to appeal, the Supreme Court allowed the appeal by reversing the judgment of the High Court of Madras.

In retrospect, we may critically examine the strategic approach which the Supreme Court adopted, resulting into upturning the judgment of the High Court? In this respect, the Supreme Court in the first instance identified the critical issue to be considered, and then proceeded to examine, how and in what manner that issue to be considered and decided. In other words, what is the true 'legal position' which is required to be followed in deciding the issue in hand?

The Supreme Court has culled out the "Leal position" that would help the court in determining the issues relating to election, The position that has hitherto emerged in the light of interpretation by the Constitutional Benches of the Supreme Court of the various constitutional and statutory provisions relating election since 1952[113] has be summed up by stating:[114]

> [A] right to elect, though fundamental it is to democracy, is neither a fundamental right nor a common law right. It is purely a statutory right. Similarly, right to be elected and the right to dispute an election are also statutory rights. Since they are statutory creations, they are subject to statutory limitations. An Election petition is not an action at common law, nor in equity. It is a special jurisdiction to be exercised in accordance with the statute creating it. The concept familiar to common law and equity must remain strangers to election law unless statutorily embodied. Thus, the entire election process commencing from the issuance from the notification calling upon a constituency to elect a member or members right upto the final resolution of the dispute, concerning the election is regulated by the Representation of People Act 1951. The said R.P. Act therefore has been held to be a complete and self-contained code within which must be found any rights claimed in relation to an election dispute.

However, the idea of self-contained Code' is not a static concept. It keeps on evolving in the common law tradition to strengthen the democratic processes. To this end, the Supreme Court recalled "a very interesting and important decision in case of *Union of India* v. *Association for Democratic Reforms*"[115] In which a three- judge bench of the Supreme Court raised and responded a seminal question: "[I]n a nation wedded to republican and democratic form of government, whether before casting votes, the voters have a right to know relevant particulars of their candidates contesting election to the Parliament or to the legislature of States,"[116]

112 MANU/SC/0533/2023: 2023 INSC 499, *per* Bela M. Trivedi, J. (for herself and Ajay Rastogi, J.). Hereinafter, *Kanimozhi Karunanidhi.*

113 A few leading cases that have been enumerated, include: *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency* MANU/SC/0049/1952 : 1952 (1) SCC 94,*Jagan Nath* v. *Jaswant Singh* MANU/SC/0094/1954 : AIR 1954 SC 210, *Bhikji Keshao Joshi* v. *Brijlal Nandlal Biyani* MANU/SC/0046/1955 : AIR 1955 SC 610, *Murarka Radhey Shyam Ram Kumar* v. *Roop Singh Rathore* MANU/SC/0122/1963 : AIR 1964 SC 1545 etc. See, *Kanimozhi Karunanidhi,* para 18.

and then "deliberated on the powers of the Election Commission Under Article 324 of the Constitution."[117]That deliberation led the three-Judge Bench to sum up the "constitutional position" as under:[118]

> (i) The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word "elections" is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps.
>
> (ii) The limitation on plenary character of power is when Parliament or State Legislature has made a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. In case where law is silent, Article 324 is a reservoir of power to act for the avowed purpose of having free and fair election. The Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the enacted laws or the rules. By issuing necessary directions, the Commission can fill the vacuum till there is legislation on the subject. In *Kanhiya Lal Omar case*[119] the Court construed the expression "superintendence, direction and control" in Article 324(1) and held that a direction may mean an order issued to a particular individual or a precept which many may have to follow and it may be a specific or a general order and such phrase should be construed liberally empowering the Election Commission to issue such orders.
>
> (iii) ....
>
> (iv) To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.

As a sequel to the observations of the three-Judge Bench of the Supreme Court, Rule-4A and Form-26 appended to the said Rules came to be inserted,

114 See, *Kanimozhi Karunanidhi,* para 19.
115 MANU/SC/0394/2002: (2002) 5 SCC 294, cited in *Kanimozhi Karunanidhi,* para 20.
116 *Ibid.*
117 Ibid.

"which require the candidate to disclose the information and particulars in the form of affidavit to be submitted along with the nomination paper."[120]

It is in this back-ground, the Supreme Court has considered the stance of the respondent-election petitioner and the response of the appellant to the same stance. The former has challenged the election of the latter under Section 100(1)(d)(iv) on the ground of non-compliance of the said Rule-4A and the Form-26; whereas the latter responded by filing applications, seeking dismissal of the Election petition *in limine*, for the non-compliance of the provisions of Section 83(1)(a) of the said Act, read with Order VII, Rule 11 of Code of Civil Procedure.[121]

However, what does this non-compliance of the requirement of Section 83(1)(a) of the Act of 1951, which stipulates that "an Election petition must contain a concise statement of material facts on which the Petitioner relies,"in real functional sense,meanswhich warrants instant dismissal of the election petition? According to the hitherto "developed and settled law" that involves interpretation of Section 83(1)(a) read with Order VII, Rule 11, Code of Civil Procedure, in which non-compliance "entails dismissal of the Election Petition at the threshold"provides the following test:[122]

> The test required to be answered is whether the court could have given a direct verdict in favour of the election Petitioner in case the returned candidate had not appeared to oppose the Election petition on the basis of the facts pleaded in the petition. They must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure 1908. Material facts would include positive statement of facts as also positive statement of a negative fact.

For this proposition, the Supreme Court has perused the catena of cases in which the election petitions were dismissed at the very threshold by clearly holding that the bald and vague averments made in the election petitions do not satisfy the requirements of pleading "material facts" within the meaning of Section 83(1)(a) of the RP Act read with the requirements of Order VII Rule 11 Code of Civil Procedure. The result of the perusal may be abstracted as under:

(a) The election petition is a serious matter and it cannot be treated lightly or in a fanciful manner nor is it given to a person who uses this as a handle for vexatious purpose.[123]

(b) The material facts required to be stated in the Election Petition under Section 83(1)(a) of the RP Act are those facts which can be considered as materials supporting the allegations made; that is, they must be such facts as would afford a basis for the allegations made in the petition and

118 See, *Association for Democratic Reforms.* Para 46, cited in *ibid.*

119 MANU/SC/0170/1985: (1985) 4 SCC 628.

120 See, *Kanimozhi Karunanidhi,* para 21.

121 See*, id.*, para 22.

122 *Id*., para 23. *1*

would constitute the cause of action as understood in the Code of Civil Procedure, 1908.[124]

(c) 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, and thatomission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad.[125]

(d) The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet.[126]

(e) "Merely quoting the words of the Section like chanting of a mantra does not amount to stating material facts:" that is, "material facts""would include positive statement of facts as also positive averment of a negative fact, if necessary."[127]

(f) "Material facts"are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action," and that"(f)ailure to plead 'material facts' is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition."[128]

(g) It is the duty of the court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action.[129]

(h) "To enable a court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else," and that"Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence,"[130] and further more "No amount of evidence can cure basic defect in the pleadings."[131]

123 See, *Kanimozhi Karunanidhi,* para 26, citing *Sudarsha Avasthi* v. *Shiv Pal Singh,* MANU/SC/7746/2008: (2008) 7 SCC 604, para 20.

124 See, *Kanimozhi Karunanidhi,* para 24, citing the three-Judge bench judgment in *Hari Shanker Jain* v. *Sonia Gandhi,* MANU/SC/0551/200 (paras 23).

125 *Ibid*.

126 *Ibid*., citing *Samant N. Balkrishna* v. *George Fernandez*, MANU/SC/0270/1969: (1969) 3 SCC 238: (1969) 3 SCR 603], *Jitendra Bahadur Singh* v. *Krishna Behari*, MANU/SC/0274/1969: (1969) 2 SCC 433.

127 *Ibid*.

128 *Ibid*., citing *V.S. Achuthanandan* v. *P.J. Francis*, MANU/SC/0197/1999: (1999) 3 SCC 737], basing their observations on a conspectus of a series of decisions of the Supreme Court. See also, *L.R. Shivaramagowda* v. *T.M. Chandrashekar,* MANU/SC/0756/1998: (1999) 1 SCC 666 (para 11): "While the failure to plead material facts is fatal to the election petition and no amendment of the pleading could be allowed to introduce such material facts after the time-limit prescribed for filing the election petition, the absence of material particulars can be cured at a later stage by an appropriate amendment."

129 *Id.,* citing *Hari Shanker Jain (supra*), para 24

(i) "The expression "material facts" has neither been defined in the Act nor in the Code," and, therefore, "What particulars could be said to be material facts would depend upon the facts of each case and no Rule of universal application can be laid down,"but, nevertheless, it is, however, "absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish existence of cause of action or defence are material facts and must be stated in the pleading of the party."[132]

(j) There is well settled distinction between "material facts" and "particulars":

"Material facts are primary or basic facts which must be pleaded by the Petitioner 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 finishing touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Particulars ensure conduct of fair trial and would not take the opposite party by surprise."[133]

(k) The other way or nomenclature to distinguish between "material facts" and "particulars":"The material facts on which the party relies for his claim are called *fact aprobanda* (the facts required to be proved i.e. material facts) and they must be stated in the pleadings," and"the facts or facts by means of which *factaprobanda* (material facts) are proved are termed *fact aprobantia* which are in the nature of 'particulars' or 'evidence', which need not be set out in the pleadings; they are "not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue."[134]

(l) An election petition can be "summarily dismissed" if it does not furnish the cause of action as enjoined by Section 83 of the Act of 1951 in exercise of the power under the Code of Civil Procedure.[135]

130 *Ibid*.

131 *Ibid*.

132 *Id*., para 25, citing three-Judge Bench of the Supreme Court In *Mahadeorao Sukaji Shivankar* v. *Ramaratan Bapu* MANU/SC/0627/2004 : 2004 (7) SCC 181 (para 6).

133 *Id,*citing *Mahadeorao Sukaji Shivankar (supra), (*para7).See also, *Udhav Singh case*, MANU/SC/0302/1975: (1977) 1 SCC 511, para 41: "In the case of a petition suffering from a deficiency of material particulars, the court has a discretion to allow the Petitioner to supply the required particulars even after the expiry of limitation," cited in id., para 26. To the same effect are the observations of the Supreme Court in *Harkirat Singh* v. *Amrinder Singh*, MANU/SC/2461/2005: (2005) 13 SCC 511, paras, 48, 51-52, cited in *id*., para 26.

134 *Id.*, para 27, citing *Virender Nath Gautam* v. *Satpal Singh,* MANU/SC/5401/2006 : (2007) 3 SCC 617 (para 50).

135 *Id*., para 26, citing *Anil Vasudev Salgaonkar* v. *Naresh Kushali Shigaonkar*. MANU/SC/1483/2009: 2009 (9) SCC 310 (para 50). See also, *V. Narayanaswamy* v. *C.P. Thirunavukkarasu*, MANU/SC/0030/2000: (2000) 2 SCC 294; *H.D. Revanna case*, MANU/

(m) An "omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all."[136] However, "whether in an election petition 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]

(n) It is "necessary for the election Petitioner to aver specifically in what manner the result of the election in so far as it concerned the returned candidate was materially affected due to omission on the part of the Returning Officer."[138]

In the light of the"legal position" as abstracted above,[139]the Supreme Court has examined threadbare "whether the Respondent/election Petitioner had complied with the requirements of Section 83(1)(a) of the RP Act, by stating "material facts" in the Election petition, constituting cause of action and the ground as contemplated in Section 100(1)(d)(iv) of the RP Act, for declaring the election of the appellant-returned candidate to be void."[140]

The main plank of petitioner's pleading is that the Appellant-returned candidate, as required under Form 26, "had failed to disclose the status of filing income tax return of her spouse in the foreign country,"[141] and that the petitioner has substantiated his allegation in his petitioner by providing all the requisite "material facts."[142] In order to examine, whether the petitioner's claim to have provided the requisite "material facts" is sustainable or not, the Supreme Court has adopted, what we may term as 'comparative or corresponding' approach:[143]

> If the averments made in the Election petition are read in juxtaposition to the information furnished by the Appellant-returned candidate in Form No. 26, it clearly emerges that against the information sought about the PAN number of the spouse of the Appellant, it has been stated that "No PAN No. ", "Spouse K. Aravindhan Foreign Citizenship". Against the information sought with regard to "The financial year for which the last income tax return has been filed", the information supplied by the Appellant about her spouse is "Not

SC/0877/1999: (1999) 2 SCC 217; *Harmohinder Singh Pradhan* v. *Ranjeet Singh Talwandi,* MANU/SC/0330/2005: (2005) 5 SCC 46 (para 14).

136 *Id.*, para 26, citing *Anil Vasudev Salgaonkar(supra),* para 51, referring to *Samant N. Balkrishna* v. George Fernandez, MANU/SC/0270/1969 : (1969) 3 SCC 238,[in para 52 of *Anil Vasudev Salgaonkar (supra)]*

137 *Ibid.*

138 *Id.*, para 27, citing *Ram Sukh* v. *Dinesh Aggarwal,* MANU/SC/1667/2009 (paras 14-21):The Court having found that such averments being missing in the Election petition, upheld the judgment of the High Court/Election Tribunal rejecting the Election petition at the threshold.

139 It has been re-stated and summed up in *id*., para 28.

140 *Id.,* para 29.

141 *Ibid*.

> applicable." The Appellant has filled in all the columns of Form No. 26 by furnishing the information with regard to her Permanent Account Number and status of filing of income tax return etc. and of her husband wherever applicable. If according to the Respondent-election Petitioner, the Appellant-returned candidate had suppressed the Permanent Account Number of her spouse and also about the non-payment of income tax of her spouse in the foreign country, it was obligatory on the part of the Election Petitioner to state in the Election petition as to what was the Permanent Account Number of the spouse of the returned candidate in India which was suppressed by her and how the other details furnished about her husband in the said Form No. 26 were incomplete or false.

From this comparative – corresponding approach, "it clearly transpires that the election Petitioner *i.e.*, the respondent has made very bald and vague allegations without stating the material facts as to how there was non-compliance of any of the provisions of the Constitution of India or of the RP Act or of the Rules made thereunder."[144] "Mere bald and vague allegations without any basis would not be sufficient compliance of the requirement of stating material facts in the Election Petition."[145]

In fact, in the instant case, there was not even a remote possibility of non-compliance with the statutory rules and provisions by the appellant, as is shown by the Supreme Court by raising all the hypothetical situations. In one of the concluding paras of the judgment (which deserves to be quoted in full without annotation), the Supreme Court has observed:[146]

> It is also significant to note that an affidavit in Form 26 along with the nomination paper, is required to be furnished by the candidate as per Rule 4A of the said Rules read with Section 33 of the said Act. The Returning Officer is empowered either on the objections made to any nomination or on his own motion, to reject any nomination on the grounds mentioned in Section 36(2), including on the ground that there has been a failure to comply with any of the provisions of Section 33 of the Act. However, at the time of scrutiny of the nomination paper and the affidavit in the Form 26 furnished by the Appellant-returned candidate, neither any objection was raised, nor the Returning Officer had found any lapse or non-compliance of Section 33 or Rule 4A of the Rules. *Assuming that the election Petitioner did not have the opportunity to see the Form No. 26 filled in by the Appellant-returned candidate, when she submitted the same to the Returning Officer, and assuming that the Returning*

142 *Ibid*.
143 *Id.*, para 30.
144 *Ibid*.

> *Officer had not properly scrutinized the nomination paper of the Appellant, and assuming that the election Petitioner had a right to question the same by filing the Election petition Under Section 100(1)(d)(iv) of the said Act, then also there are no material facts stated in the petition constituting cause of action Under Section 100(1)(d)(iv) of the RP Act.* In absence of material facts constituting cause of action for filing Election petition Under Section 100(1)(d)(iv) of the said Act, the Election petition is required to be dismissed Under Order VII Rule 11(a) Code of Civil Procedure read with Section 13(1)(a) of the RP Act.

In view of the above, the Supreme Cout has concluded that in the present case "there is no averment made as to how there was non-compliance with provisions of the Constitution or of RP Act or of the Rules or Order made thereunder and as to how such non-compliance had materially affected the result of the election, so as to attract the ground Under Section 100(1)(d)(iv) of the RP Act, for declaring the election to be void."[147] And "[t]he omission to state such vital and basic facts has rendered the petition liable to be dismissed Under Order VII, Rule 11(a) Code of Civil Procedure read with Section 83(i)(a) of the RP Act, 1951."[148] Accordingly, the Supreme Court has held that the election petition deserved to be dismissed, and was, thus, dismissed by setting aside the judgment of the High Court.[149]

VI ELECTION PETITION ON GROUNDS OF 'IMPROPER ACCEPTANCE' OF NOMINATIONS AND CORRUPT PRACTICES: WHETHER THE APPLICATIONS FILED BY THE APPELLANT (RETURNED CANDIDATE) FOR ITS REJECTION ARE LIABLE TO BE ALLOWED?[150]

Senthilbalaji V.* v. *A.P. Geetha.[151]

Abstracted fact matrix:

The respondent filed an election petition under Section 81 of the RP Act, 1951 against the Appellant in the High Court of Madras, challenging the validity of her election to the State Legislative Constituent Assembly. Challenge was two-fold: one, on ground of improper acceptance of nomination papers of the Appellant; two, on ground of corrupt practices indulged in by the appellant. In response, two applications were made by the appellant contending the rejection of the election

145 *Id*., para 31.

146 *Id.*, para 32.

147 *Id.,* para 33.

148 *Ibid*.

149 See*, id*., paras 34 and 35.

150 See also, Virendra Kumar, "Election of the returned candidate: How it was declared null and void by the High Court on ground of improper acceptance of the Nomination and duly affirmed by the Supreme Court?"*ASIL* Vol. LVIII at ….. (2022); Virenndra Kumar, "Whether furnishing of the information by the election candidate of his criminal antecedents under Section 33-A(1) of the Representation of the People Act, 1951 also includes within its ambit the disclosure of criminal cases where cognizance had been taken by the court?" *ASIL* Vol. LV at 272-278 (2019).

petition inasmuch as it revealed no-cause of action by placing on record the 'material facts' neither in respect of improper acceptance of her nomination papers, nor in support of alleged corrupt practices. By the impugned judgment, the Judge of High Court of Madras trying the election petition rejected the applications. While doing so, he observed that the election petitioner had forwarded copies of a compact disc, photographs, *etc.,* to the Returning Officer (5th Respondent). The learned Judge directed the first Respondent(the election petitioner) to file all relevant documents such as emails, photographs, video footage, etc. which were submitted to the Returning Officer within a period of 15 days from the order. The Appellant has challenged the said judgment and order by way of Appeal to the Supreme Court.

In the light of the abstracted fact matrix, the Supreme Court examined the election petition on both the counts.

Re improper acceptance of the nominations of the appellant by the returning officer:

In this respect, the Supreme Court examined the first 5 paragraphs of the election petition of the Respondent-election petitioner, which revealed, according to the petitioner, the cause of voiding the election of the Appellant-returned candidate, and which were disputed by the Appellant as irrelevant. Contrary to the findings of the high court, the Supreme Court observed are as under:

(a) Paragraphs 1 and 2 of the Election Petition are purely formal in nature,"which contain the first Respondent's address and description of the Respondents."[152]

(b) Paragraph 3 of the Election Petition "only records that by a notification dated October 16, 2016, the Election Commission announced the election for the said Constituency."[153]

(c) Paragraph 4 of the Election Petition quotes "the order of the Election Commission by which the election earlier scheduled was postponed due to reasons incorporated in the said order."[154]

(d) Paragraph 5 of the Election Petition makes a reference to the representation made by the Appellant"on 3rd November 2016 to the Returning Officer by pointing out that the Appellant and 6th Respondent have committed misconduct by suppressing the findings of the Election Commission recorded in the order dated 27th May 2016."[155] On the basis of this fact, the first Respondent, the Election Petitioner, "called upon the Returning Officer to disqualify the Appellant and the 6th Respondent,"[156] and since his representation was rejected by communication dated 5th November 2011, the Election Petitioner "filed a writ petition in the High

151 MANU/SC/0616/2023: 2023 INSC 571(Decided On: May 19,2023), per Abhay Shreeniwas Oka, J. (for himself and Rajesh Bindal, J.). Hereinafter, *Senthilbalaji V*.

152 See, *Senthilbalaji V*., para 10.

153 *Ibid.*

154 *Ibid*.

155 *Id*., para 11.

Court which was dismissed by the order dated 18th November 2016 with costs of Rs. 3,000/- on the first Respondent (Election Petitioner)."[157]

What do these paragraphs of the election petition reveal and meant about the allegation of improper acceptance of appellant's nomination papers by the returning officer? The Supreme Court's finding on this count is to the following effects. So far as the Paragraphs 3 and 4 are concerned, these are "completely irrelevant to adjudicate upon the grounds pleaded in the Election Petition."[158] Turning to Paragraph 5, the Supreme Court has surmised as under:[159]

> Presumably, paragraph 5 of the petition is in support of the ground of improper acceptance of the nomination papers of the Appellant. However, the first Respondent has not pleaded that under a particular statutory provision, the Appellant and 6th Respondent were under an obligation to disclose the order dated 27th May 2016 passed by the Election Commission while filing nomination papers. It is not pleaded how on the ground of the failure to disclose the said order, the Appellant and 6th Respondent were disqualified from contesting the election. The disqualification must be based on a statutory provision. The first Respondent has not pleaded that in law it was the obligation of the Appellant to disclose in the nomination paper, the earlier order of the Election Commission by which the election was postponed. The existence of no such obligation is pleaded. Therefore, in our view, averments made in paragraphs Nos. 4 and 5 of the Election Petition are unnecessary, thereby, attracting Clause (a) of Rule 16 of Order VI of Code of Civil Procedure. Under Clause (a) of Rule 16 of Order VI of Code of Civil Procedure, the Court has the power to strike out a pleading which is unnecessary.

Re. Averments regarding corrupt practice in the light of Section 83 of R.P. Act of 1951

The Supreme Court's examination of the election petitioner'saverments in paragraphs 6 and 7 in respect of corrupt practices indulged by the Appellant the

156 *Ibid*.

157 *Ibid*

158 *Senthilbalaji V*., para 10.See also, *id.*, para 17: Paragraphs 2 to 4 (and also 8) are "formal in nature and not at all relevant."

(Returned Candidate),[160] reveals that the petitioner has not pleaded "even bare particulars of any of the corrupt practices covered by Section 123" of the RP Act 1951.[161] The further elaboration of the Supreme Court on this count is as under:[162]

> What is the nature of corrupt practice is also not described except for making a bald allegation that in the representations mentioned in paragraph 6, the first Respondent has set out electoral misconduct, corrupt practice, and bribery on the part of the Appellant. Clause (a) of Sub-section (1) of Section 83 mandates that an election petition must contain a concise statement of material facts. When the allegation is of corrupt practice, the basic facts constituting corrupt practice must be pleaded in order to make compliance with Clause (a) of Sub-section (1) of Section 83. In this case, such concise facts are not at all pleaded. Basic facts cannot be pleaded only by stating that the same find place in the documents relied upon. *The first Respondent has merely stated that the contents of representations may be read as a part of the petition. This does not satisfy the requirement of incorporating a concise statement of material facts.* Moreover, when the allegation is of corrupt practice, the proceedings virtually become quasi-criminal. Therefore, the elected candidate must get adequate notice of what is alleged against him. That is why material facts concerning the ground of corrupt practice must be pleaded. The outcome of such a petition is very serious. It can oust a popularly elected representative of the people. Therefore, non-

159 *Id.,* para 11.

160 The two paragraphs 6 and 7 read as follow:

> 6. The petitioner filed representations to 4th Respondents on Nov. 17, 2016 two representations, Nov. 19, 2016, 20.11.2016, 22.11.2016 explaining that the 5th respondent committed electoral misconduct, corrupt practice and bribery to the electorate. The 4th respondent did not consider the representations. She submitted that the 5th Respondent used Government vehicles for election campaign. The petitioner filed audio and video clippings to prove the allegations made in the representation by electronic mail to the 4th respondent. She craves leave of the Court to treat the averments in the above representations has part and parcel of this petition.
>
> 7. The Petitioner submits that the returned candidate was disqualified to be chosen to fill the said seat that he has committed corrupt practice and the result of the election so far as it concerned to the 5th respondent has been materially affected by improper acceptance of his nomination, by corrupt practice and non-compliance of by not disclosing the earlier order of the election commission for same constituency.

161 See, *id*., para 13.

> compliance with the requirement of stating material facts must result in the rejection of the petition at the threshold.[163][Emphasis added]

Thus, it is the "consensus of judicial opinion" that "the failure to plead material facts concerning alleged corrupt practice is fatal to the election petition,"[164]and "[t]he material facts are the primary facts which must be proved on trial by a party to establish the existence of a cause of action."[165] In view of this established consensus, it is held"[166]

> In the present case, taking the averments made in the petition as it is, not a single material fact is pleaded making out an allegation of corrupt practice covered by Section 123 of the RP Act of 1951. All that the first Respondent has pleaded is that he made representations to the Returning Officer and other authorities complaining about the corrupt practice on the part of the Appellant. What is the nature of the corrupt practice is not mentioned even in brief. Therefore, material facts, *which according to the first Respondent constitute corrupt practice were not pleaded in the Election Petition*. [Emphasis added]

It is indeed interesting to note that though the election petitioner admittedly affirms that it is the 'material facts' that "constitute corrupt practice," nevertheless, when it comes to apply that principle in the instant fact matrix of the present case, he becomes completely oblivious of the same principle. This prompts the Supreme Court to observe again: ""In this case, requisite facts are completely missing,"[167] and that the allegations are "very vague and general in nature and, therefore, there is no cause of action to proceed on the ground of corrupt practice."[168] Accordingly, it is affirmed by the Supreme Court by observing: "Therefore, in our view, the

162 *Ibid*.

163 In support of this conclusion, the Supreme Court cited the three-Judge Bench judgment in *V.S. Achuthanandan,* MANU/SC/0197/1999: (1999) 3 SCC 737 para 15, holding clearly that all those facts which are essential to clothe the Petitioner with a complete cause of action, are 'material facts' which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of s. 83(1)(a). This conclusive statement itself is premised on the catena of cases, which include: *Balwan Singh v. Lakshmi Narain*, MANU/SC/0192/1960: AIR 1960 SC 770: (1960) 3 SCR 91], *Samant N. Balkrishna* v. *George Fernandez*, MANU/SC/0270/1969: (1969) 3 SCC 238], *Virendra Kumar Saklecha* v. *Jagjiwan*. MANU/SC/0370/1972: (1972) 1 SCC 826, *Udhav Singh* v. *Madhav Rao Scindia*, MANU/SC/0302/1975: (1977) 1 SCC 511, *F.A. Sapa* v. *Singora*, MANU/SC/0362/1991 : (1991) 3 SCC 375, *Gajanan Krishnaji Bapat* v. *Dattaji Raghobaji Meghe, M*ANU/SC/0455/1995: (1995) 5 SCC 347, *L.R. Shivaramagowda* v. *T.M. Chandrashekar,* MANU/SC/0756/1998: (1999) 1 SCC 666: (1998) 6 Scale 361 and *Udhav Singh* case, MANU/SC/0302/1975 : (1977) 1 SCC 511, paras 42-43. See, *Senthilbalaji V*., para 14.

164 *Id*., para15.

165 *Ibid.*

166 *Ibid*.

167 *Senthibalaji,* para 17.

averments made in paragraphs 6 and 7 do not constitute a cause of action available to proceed on the ground of corrupt practices contemplated by Section 123."[169]

Likewise, paragraph 8 of the Election Petition "contains the details of the result of the election,"[170]and as such it is "formal in nature and not at all relevant."[171]

Paragraph 9 of the Election Petition, *inter alia,* states "that the Appellant and 6th Respondent committed electoral misconduct and corrupt practice."[172] It is as such "bereft of material facts," and therefore, "vague" and in the nature of "general allegations."[173] The added paragraph 9(a), "which contains only one sentence that acceptance of nomination of the Appellant and 6th Respondent is illegal"[174] and this again in itself is 'vague' in as much as "[n]ot a single material fact is pleaded in support of the plea that the acceptance of the nomination paper is improper."[175]

Finally, the Supreme Court has responded to paragraphs 19 and 20 in which the High Court of Madras, while rejecting the application of the appellant, had issued directions to the petitioner qua the high court (the election tribunal), and the appellant.For their due appreciation, both the paragraphs need to be reproduced as under:[176]

> In this case, as already held that the election petition discloses material facts and particulars and copy of the CD, photographs etc sent to the Respondent/returning officer has not been given to the applicants herein/Respondents 5 & 6. The 1st Respondent/election Petitioner has not stated anything new in the election petition, these documents have already been sent to the 5th Respondent/returning officer during election. The Returned candidate/5th Respondent has not denied and the same can be decided at the time of trial. Therefore, it is necessity on the part of the first Respondent/election Petitioner to produce the copies of emails, photographs, CD and video footages etc., before this Court and serve the same to the applicants herein/contesting Respondents 5 and 6." [Paragraph 19]
>
> "With the above observation, all the three applications are dismissed. This Court directs the first Respondent/ election Petitioner to file all the relevant documents before this Court within 15 days from the date of this order viz., emails, photographs and video footages etc., if any filed before the 5th Respondent/returning officer during the

168 *Ibid.*

169 *Ibid.*

170 I*bid*. It contains a chart showing the respective votes polled by various candidates.See, id., para 5.

171 *Id*., para 17.

172 *Id.,* para 18.

173 *Ibid.*

174 *Ibid*.

175 *Ibid*.

> Election and also to serve those materials to applicants herein/ contesting Respondents 5 and 6. [Paragraph 20]

The cryptic comments of the Supreme Court on the above directive of the high court may be crystalized as follows:[177]

(a) It needs to be noticed here "that the emails, photographs, and video footage have not been relied upon in the list of documents filed along with the Election Petition."

(b) "At the highest, these documents will constitute particulars and not material facts."

(c) The High Court "had no reason to direct the election Petitioner to file the said documents on record while dismissing applications filed by the Appellant and the 6th Respondent."[178]

(d) "Even if the documents are produced, the same will be without any foundation in the pleadings,"and, therefore, "it is very difficult to sustain the said direction as well."

In view of the above, the Supreme Court has set aside the impugned judgment of the high court and allow the applications filed by the appellant for rejection of the petition and/or for deletion of irrelevant paragraphs, and thereby dismissed the Election Petition pending before the High Court of Madras with the following summation:[179]

i) Paragraphs 3 and 4 are unnecessary, which do not deal with something which happened after the election was declared. Therefore, the said paragraphs being irrelevant will have to be ordered to be deleted Under Rule 16 of Order VI of Code of Civil Procedure.

ii) Paragraph 5 is not material for the alleged cause of action.

iii) Paragraphs 6, 7 and 9 do not disclose any material facts in relation to the allegations of corrupt practices.

iv) As material facts regarding allegations of corrupt practice have not been pleaded, the election petition does not disclose any cause of action as far as the ground of corrupt practice is concerned. Therefore, even these paragraphs deserve to be deleted.

v) The ground of improper acceptance of the nomination paper is not supported by material facts. In any case, the ground of improper acceptance of the nomination paper is no longer relevant as the term of the Appellant has already expired.

In view of above, the Supreme Court Bench has held that "no purpose will be served by keeping the election petition pending,"[180] and, thus, "set aside the

176 See, *id*., para 19.

177 See, *id*., para 20.

178 It was for the first respondent to seek permission to produce the documents, and that the first respondent never sought such permission. See, *ibid*.

179 See, *id*., para 21.

impugned judgment of the High Court"[181] by allowing the applications filed by the Appellant "for rejection of the petition and/or for deletion of irrelevant paragraphs."[182]

VII ELECTION PETITION: WHETHER APPLICATIONSUNDER ORDER 7 RULE 11 READ WITH SECTION 151 OF THE CODE OF CIVIL PROCEDURE, 1908, SEEKING DISMISSAL FOR NON-COMPLIANCE OF THE PROVISIONS TO SECTION 83(1)(C) IS MAINTAINABLE?[183]

***Thangjam Arunkumar* v. *Yumkham Erabot Singh*.[184]**

Abstracted fact matrix: The appellant, the returned candidate in a Legislative Assembly elections, madetwo applications before the High Court of Manipur under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure, 1908. He sought dismissal of the election petition on grounds:[185] "(i) non-disclosure of cause of action/triable issue *vis-à-vis* the alleged corrupt practice committed by the appellant; (ii) the absence of a concise statement of facts as mandated Under Section 83 of the Act; and (iii) for not serving a true self attested copy of the election petition on the returned candidate as provided under section 81 of the Act," and (iv) that "the Form-25 affidavit as prescribed under Section 83 of the Act read with Rule 94A of the Conduct of Election Rules, 1961 has not been filed along-with the election petition,"[186] which wasallegedly"mandatory, as the election petition raises allegations of corrupt practice."[187]

The High Court of Manipur rejected the applications of the appellant, and that had led him to come to the Supreme Court in appeal. On close and critical examination of the high court judgment, the bench of the apex court has observed that they are "in agreement with the conclusion of the High Court that there is substantial compliance of the requirements Under Section 83(1)(c) of the Act,"[188] and that"this finding satisfies the test" laid down by the Supreme Court in *G.M. Siddeshwar vs. Prasanna Kuma,"*[189] The Supreme Court has further added: "Even the subsequent decision of this Court in *Revanna*[190] supports the final conclusion arrived at by the High Court."[191]

180 See, *id*., para 21.

181 *Ibid.*

182 *Ibid.*

183 See also, Virendra Kumar, "Election Petition: Whether it can be dismissed at the very threshold on account of non-filing of an affidavit in Form 25 (prescribed under Rule 94A of Conduct of Election Rules, 1961) as provided under Section 83(1) of the Representation of People Act 1951?" *ASIL* Vol. LIVIII (2021).

184 MANU/SC/0926/2023: 2023 INSC 762 (Decided On: 23.08.2023), *per* Dr. D.Y. Chandrachud, C.J.I. and Pamidighantam Sri Narasimha, J. Hereinafter, *Thangjam Arunkumar.*

185 See, *Thangjam Arunkumar,* para 8.

186 *Ibid*.

187 *Ibid*.

188 See,*id.,* para 16.

189 MANU/SC/0220/201316, cited in *Thangjam Arunkumar,* para 16.

190 *A. Manju* v. *Prajwal Revanna,* MANU/SC/1243/2021: (2022) 3 SCC 269, where it was held that non-filing of a Form-25 affidavit is a curable defect.

However, notwithstanding the "agreement" with the high court in terms of the"conclusion" drawn by it in response to the issues raised particularly with respect to non-observance of the provisions of Section 83(1)(c) read with its proviso of the Representation of the People Act, 1951,[192]the Supreme Court, on the basis of their own analysis, have'lamentingly' observed:[193]

> We may at the outset state that there is absolutely no consideration of this issue by the High Court. Neither the implications of Section 83(1)(c) of the Act, nor the interpretation of its proviso were taken up for consideration by the High Court. Further, surprisingly, the High Court simply referred to the decision of this Court in *Lok Prahari* (*supra)*[194] and rejected the submission. *Lok Prahari (supra)* has no bearing on the issue.

With this sharp preparatory qualifying statement, the Supreme Court has critically shown how, in the light of the relevant "statutory provisions and the judgments on the point for answering the question of law raised by the Appellant,"[195]the conclusions reached by it are substantiated.

In this respect, the first judgment that the Supreme Court has taken note of is the decision by a Constitution Bench in *T.M. Jacob* v. *C. Poulose*,[196] in the returned candidate was defending an election petition filed against him on the ground of non-compliance with the requirements Under Section 81(3) of the Act.[197] After differentiating the legislative intent of Sections 81 and 83 of the Act of 1851, the Constitution Bench observed that "non-compliance with the requirements of the former provides for an automatic dismissal of an election petition Under Section 86 of the Act, and non-compliance with the latter is a curable defect and would not merit dismissal at the threshold."[198]

191 *Thangjam Arunkumar*, para 16.

192 S. 83(1)(c)of the RP Act 1951, dealing with the contents of petition, provides that an election petition "shall be signed by the Petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) 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."

193 See*, id.,*para 9.

194 *Lok Prahari* v. *Union of India (UOI)*, MANU/SC/0134/2018.

195 See, *Thangjam Arunkumar*, para 10.

196 MANU/SC/0271/1999: (1999) 4 SCC 274, cited in

197 See, *Thangjam Arunkumar*, para 11.

198 *Ibid.*, citing para 38 of in *T.M. Jacob:* ". ... to our mind, the legislative intent appears to be quite clear, since it divides violations into two classes - those violations which would entail dismissal of the election petition Under Section 86(1) of the Act like non-compliance with Section 81(3) and those violations which attract Section 83(1) of the Act, i.e., non-compliance with the provisions of Section 83. It is only the violation of Section 81 of the Act which can attract the application of the doctrine of substantial compliance as expounded in *Murarka Radhey Shyam,*MANU/SC/0122/1963 : (1964) 3 SCR 573 and Ch. Subbarao, MANU/SC/0176/1964 : (1964) 6 SCR 213 cases. The defect of the type provided in Section 83 of the Act, on the other hand, can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure."

The second judgment, which the Supreme Court has taken as a background consideration for deciding the issues in the instant case is the three-Judge Bench judgment in *Siddeshwar* case.[199] The three-Judge Bench was called upon to decidea conflict of opinion by way of a reference. The conflict came to the fore as under:[200]

> When the matter was placed before a two-judge bench, it was contended, relying upon P.A. Mohammed Riyas v. M.K. Raghavan[201] that an election Petitioner has to file the Form-25 affidavit in support of the corrupt practice allegation, in addition to the usual verifying affidavit which forms an integral part of the election petition. On the other hand, the two-judge bench was also appraised of judgments to the contrary which held that not filing of the affidavit is a curable defect.

In order to give quietus to the issue, three judges, after relying on various precedents, decided as under in the *Siddeshwar* case*:*

A. In order to maintain an election petition, it is not imperative for an election Petitioner to file an affidavit in terms of Order 6 Rule 15(4) of the Code of Civil Procedure, 1908 in support of the averments made in the election petition in addition to an affidavit (in a case where resort to corrupt practices have been alleged against the returned candidate) as required by the proviso to Section 83(1) of the Representation of the People Act, 1951, as "there is no such mandate in the Representation of the People Act, 1951," and, therefore,"a reading of *P.A. Mohammed Riyas* v. *M.K. Raghavan*, MANU/SC/0347/2012 : (2012) 5 SCC 511, which suggests to the contrary, does not lay down correct law to this limited extent."[202]

B. If an affidavit filed in support of the allegations of corrupt practices of a returned candidate is not in the statutory Form 25 prescribed by the Conduct of Elections Rules, 1961,"as long as there is substantial compliance with the statutory form, there is no reason to summarily dismiss an election petition on this ground,"[203]"merely because the affidavit may be defective, it cannot be said that the petition filed is not an election petition as understood by the Representation of the People Act, 1951."[204]"However, an opportunity must be given to the election Petitioner to cure the defect."[205]

199 *G.M. Siddeshwar* v. *Prasanna Kuma*,MANU/SC/0220/201316, cited in *Thangjam Arunkumar*, para 12. See also, *supra* note169]

200 *Ibid.*

201 MANU/SC/0347/2012: (2012) 5 SCC 511.

202 See, *Thangjam Arunkumar*, para 12, citing *G.M. Siddeshwar (supra),* para 1.

203 See, *id*., citing *G.M. Siddeshwar (supra),* para 2.

204 *Ibid*.

205 *Ibid*.

C. "A plain reading of Rule 15 suggests that a verification of the plaint is necessary,"[206] and that in "addition to the verification, the person verifying the plaint is 'also' required to file an affidavit in support of the pleadings,"[207]which"does not mean that the verification of a plaint is incomplete if an affidavit is not filed,"[208] because the "affidavit, in this context, is a stand-alone document."[209]This is so, because "the plain language of Section 83(1)(c) of the Act does not require an affidavit in support of the pleadings in an election petition;"[210]to do so would mean "to read a requirement that does not exist in Section 83(1)(c) of the Act."[211]

D. If the affidavit ex facie indicates that it was not in absolute compliance with the format affidavit, but on perusal it is revealed that there was substantial compliance with the prescribed format, then the plea of non-compliance is likely to fail.[212]This view was reinforced by citing the observations from the judgment of the Supreme Court in *Ponnala Lakshmaiah v. Kommuri Pratap Reddy*:[213]

"... The format of the affidavit is at any rate not a matter of substance. What is important and at the heart of the requirement is whether the election Petitioner has made averments which are testified by him on oath, no matter in a form other than the one that is stipulated in the Rules. 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."

The same would hold with respect to verification of the plaint; that is, even if "the verification was also defective, but the defect is curable and cannot be held fatal to the maintainability of the election petition."[214]

The third judgment that has been taken into account to resolve the issue in hand is that of *A. Manju vs. Prajwal Revanna and Ors.,*[215] which specifically dealt with the question as to whether an election petition containing an allegation of corrupt practice but not supported by an affidavit

206 See*, id*., citing *G.M. Siddeshwar (supra),* para 22.

207 *Ibid.*

208 *Id*., citing *G.M. Siddeshwar (supra),* para 23.

209 *Ibid*.

210 *Id*., citing *G.M. Siddeshwar (supra),* para 25.

211 *Ibid*.

212 *Id*., citing *G.M. Siddeshwar (supra),* para 37: "A perusal of the affidavit furnished by Prasanna Kumar ex facie indicates that it was not in absolute compliance with the format affidavit. However, we endorse the view of the High Court that on a perusal of the affidavit, undoubtedly there was substantial compliance with the prescribed format."

213 MANU/SC/0529/2012: (2012) 7 SCC 788, para 28, cited in *Thangjam Arunkumar*, para 12.

214 *Ibid*.

215 MANU/SC/1243/2021, para 26, cited in *Thangjam Arunkumar*, para 13.

in Form 25, is liable to be dismissed at the threshold. Reversing the judgment of the High Court, it wasobserved by the Supreme Court in *A. Manju case*, rather searchingly:[216]

> "However, we are not persuaded to agree with the conclusion arrived at by the High Court that the non-submission of Form 25 would lead to the dismissal of the election petition. We say so because, in our view, the observations made in *Ponnala Lakshmaiah v. Kommuri Pratap Reddy,* MANU/SC/0529/2012 : (2012) 7 SCC 788 which have received the imprimatur of the three-Judge Bench in G.M. Siddeshwar v. Prasanna Kumar, MANU/SC/0220/2013 : (2013) 4 SCC 776, appear not to have been appreciated in the correct perspective. In fact, G.M. Siddeshwar v. Prasanna Kumar, MANU/SC/0220/2013 : (2013) 4 SCC 776, has been cited by the learned Judge to dismiss the petition. If we look at the election petition, the prayer Clause is followed by a verification. There is also a verifying affidavit in support of the election petition. Thus, factually it would not be appropriate to say that there is no affidavit in support of the petition, albeit not in Form 25. This was a curable defect and the learned Judge trying the election petition ought to have granted an opportunity to the Appellant to file an affidavit in support of the petition in Form 25 in addition to the already existing affidavit filed with the election petition. In fact, a consideration of both the judgments of the Supreme Court referred to by the learned Judge i.e. Ponnala Lakshmaiah v. Kommuri Pratap Reddy, MANU/SC/0529/2012 : (2012) 7 SCC 788 as well as G.M. Siddeshwar v. Prasanna Kumar, MANU/SC/0220/2013 : (2013) 4 SCC 776, ought to have resulted in a conclusion that the correct ratio in view of these facts was to permit the Appellant to cure this defect by filing an affidavit in the prescribed form."

In view of the analysis, including particularly of the three judgments, as detailed above, the Supreme Court has conclusively stated:[217]

> The position of law that emerges for the above referred cases is clear. The requirement to file an affidavit under the proviso to Section 83(1)(c) is not mandatory. It is sufficient if there is substantial compliance. As the defect is curable, an opportunity may be granted to file the necessary affidavit.

In the light of the principle as abstracted above, the Supreme Court has proceeded to examine the fact matrix in the case in hand. Itsclear finding is to the following effect:[218]

> In the instant case, the election petition contained on affidavit and also a verification. In this very affidavit, the election Petitioner has sworn on oath that the paragraphs where he has raised allegations

216 *Ibid*.
217 *Thangjam Arunkumar*, para 14.
218 *Id.*, para 15.

> of corrupt practice are true to the best of his knowledge. Though there is no separate and an independent affidavit with respect to the allegations of corrupt practice, there is substantial compliance of the requirements Under Section 83(1)(c) of the Act.

On the basis of this conclusion,the Supreme Court has stated that they are "in agreement with the conclusion of the High Court that there is substantial compliance of the requirements Under Section 83(1)(c) of the Act and this finding satisfies the test laid down by this Court in *Siddeshwar (supra*)."[219]Moreover, "the final conclusion arrived at by the High Court" is also in consonance even with the subsequent Supreme Court judgmentin*Revanna case (supra)*.[220]Thus, the Supreme has eventually held that "the Appellant has not made out a case for interfering with the judgment of the High Court," resulting into the dismissal of the appeal.[221]

VIII CONCLUSIONS

Our critical analysis of the six judgments of the Supreme Court has yielded the following conclusions.

First judgment: *Re. Dasanglu Pul v. Lupalum Kri*[222]

> The allegation of 'improper acceptance' of the nomination papers was accepted by the High Court on misplaced understanding of the application of judicial precedentcontained in the Supreme Court judgment in *Kisan Shankar Kathore*on which the High Court relied heavily for their decision in voiding the election of the Appellant in the instant case.[223] The High Court wrongly considered the decision in that case as of "general application" by ignoring the "well established" practice principle "that a case cannot be considered in abstract, without having reference to the facts and circumstances evolving in a case."[224]

Second judgment: Re. *Ashwini Kumar Upadhyay v. Union of India (UOI)*.[225]

> I this case, the three-Judge Bench of the Supreme Court has unequivocally held that permitting a person to contest election simultaneously from more than one constituency at a time under Section 33(7) of RPA 1951 is not just an issue of huge expenditure causing a drain on the public exchequer, but a matter of continuing

219 *Id*., para 16.
220 *Ibid*.
221 *Id.,* para 17.
222 See generally, *supra*, Part II.
223 See, *supra*, note 19 and the accompanying text [in Part II].
224 See, *supra*, note 20 and the accompanying text [in Part II].
225 Seegenerally*, supra*, Part III.

public policy.[226] However, the role of the Supreme Court in this matter is extremely limited: "Absent any manifest arbitrariness of the provision so as to implicate the provisions of Article 14 or a violation of Article 19, it would not be possible for this Court to strike down the provision as unconstitutional."[227]

Third judgment: Re. *Bhim Rao Baswanth Rao Patil v. K. Madan Mohan Rao*.[228]

This judgment reveals that if the returned candidate through his Application seeks outright rejection of the Election Petition alleging that it does not disclose the cause of action despite of petitioner's showing non-observance of some mandatory provisions, then the Appellant has no right to compel the election petitioner to provide "full and up to date information" in summary proceedings.[229]To drive home the requisite message, the Supreme Court even dismissed the appeal by the returned candidate "with costs" when he persisted with his plea for "full and up to date information."[230]

Fourth judgment: Re. *Kanimozhi Karunanidhi v. A. Santhana Kumar.*[231]

In search of finding some reasonable test as a determinant of 'the absence of the material facts betraying a clear cause of action' instantly resulting into dismissal of election petition *in limine*, the Supreme Court in the instant case revisited the various judgments that involved the interpretation of Section 83(1)(a) of the Act of 1951, read with Order VII, Rule 11, Code of Civil Procedure.[232] On perusal of such judgments in which non-compliance 'entailed dismissal of the Election Petition at the threshold' has come across the following, the so-called, an 'acid test':"The test required to be answered is whether the court could have given a direct verdict in favour of the election Petitioner in case the returned candidate had not appeared to oppose the Election petition on the basis of the facts pleaded in the petition."[233] However, they "must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of

226 See, *supra*, notes 65 and 66, and the accompanying text [in Part III] Hitherto, the Parliament has restricted the unlimited choice of a candidate for electoral contest to two seats in one the same election *vide* Act 21 of 1996. But this would not restrain Parliament from taking an appropriate view of restricting it further only to one seat, "if it decides to do so at any point of time in pursuance of its legislative authority."

227 *See,*supra, note 75 [in Part III].

228 See generally, *supra*, Part IV.

229 See, *supra,* notes 99 and 100 and the accompanying text [in, supra, Part IV].

230 *Ibid.*

231 See generally, supra, Part V.

232 See, *supra*, note 121 and the accompanying text (in Part V).

233 See, *supra*, note 122 and the accompanying text (in Part V).

Civil Procedure 1908."[234] In other words, "Material facts would include positive statement of facts as also positive statement of a negative fact."[235]

Fifth judgment: Re *Senthilbalaji V. v. A.P. Geetha*.[236]

The Supreme Court Bench through their cryptic comments has shown, how the High Court has gone astray in their decision-making[237] and that how the course-correction is required in the given fact matrix of the case.[238]Pointedly, the Supreme Court observed that how the Election Petitioner could be allowed to rely upon "the emails, photographs, and video footage have not been relied upon in the list of documents filed along with the Election Petition."[239] "At the highest, these documents will constitute particulars and not material facts."[240] Besides, the High Court "had no reason to direct the election Petitioner to file the said documents on record while dismissing applications filed by the Appellant."[241]"Even if the documents are produced, the same will be without any foundation in the pleadings," and, therefore, "it is very difficult to sustain the said direction as well."[242]

Sixth judgment: Re *Thangjam Arunkumar* v. *YumkhamErabot Singh*.[243]

Notwithstanding agreeing with the impugned judgment of the High Court, the Supreme Court sternly differed with the approach of the High Court in their decision-making on the basis of applicable judicial precedents.[244]In this wise, the Supreme Court has observed "at the very outset" "that there is absolutely no consideration of this issue by the High Court."[245] "Neither the implications of Section 83(1)(c) of the Act, nor the interpretation of its proviso were taken up for consideration by the High Court."[246] Seemingly, it must have been a matter of utmost 'surprise' when it is found that "the High Court

234 *Ibid*.

235 *Ibid.* For the elaboration of this test, see, supra, notes123-138, and the accompanying text.

236 Seegenerally, *supra*, Part VI.

237 See*, supra*, note 176, and the accompanying text (in Part VI).

238 See, *supra*, note 177, and the accompanying text (in Part VI).

239 *Ibid*.

240 *Ibid.*

241 *Ibid.*

242 *Ibid,*

243 See generally*, supra*, Part VII.

244 See, supra, note 193, and the accompanying text (in Part VII).

245 *Ibid.*

246 *Ibid.*

simply referred to the decision of this Court in *Lok Prahari* (*supra)*and rejected the submission,"[247] when "*Lok Prahari (supra)* has no bearing on the issue."[248]

247 *Ibid.*
248 *Ibid.*