



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR JUSTICE S SUNIL DUTT YADAV

ELECTION PETITION NO. 13 OF 2023

BETWEEN:

1. SRI.K. SHANKARA
S/O SRI MADAPPA URF MOLLAPPA
AGED ABOUT 42 YEARS,
R/AT NO.177, KOODANAHALLI GRAMA
VARUNA HOBLI, SOMESHWARA POST,
KOODANAHALLI, MYSORE
KARNATAKA-571 311

... PETITIONER

(BY SMT. PRAMILA NESARGI, SENIOR COUNSEL FOR
SRI SUNIL M.V., ADVOCATE AND
MS. PRIYANKA G., ADVOCATE)

AND:

1. SRI. SIDDARAMAIAH
S/O SIDDARAME GOWDA
AGED ABOUT 75 YEARS,
R/AT NO.32, SIDDARAMANA
HUNDI, VARUNA HOBLI,
MYSORE TALUK,
MYSORE DISTRICT - 570 010.

... RESPONDENT

(BY PROF. RAVIVARMA KUMAR, SENIOR COUNSEL FOR
MS. LEELA P. DEVADIGA, ADVOCATE)





THIS ELECTION PETITION IS FILED UNDER SECTION 81 OF THE REPRESENTATION OF PEOPLE ACT, 1951, PRAYING TO A) DECLARE THAT THE DECLARATION OF RESULTS OF RESPONDENT, ANNEXURE-B FOR THE ASSEMBLY CONSTITUENCY-219-VARUNA AS VOID; B) DECLARING THAT RESPONDENT HAS COMMITTED CORRUPT PRACTICE U/S 123(1), 123(2), 123(4), 123(6) OF THE REPRESENTATION OF PEOPLE ACT, 1951 AND HE WAS NOT QUALIFIED TO BE CHOSEN TO FILL THE SEAT OF 219-VARUNA ASSEMBLY CONSTITUENCY U/S 100(1)(B), (1)(D)(iv) OF THE REPRESENTATION OF PEOPLE ACT, 1951; C) TO DECLARE THAT THE RESULT OF THE ELECTION OF THE RESPONDENT HAS BEEN MATERIALLY AFFECTED BY THE IMPROPER RECEPTION AND COUNTING VOTES IN FAVOR OF THE RESPONDENT AS VOID UNDER SECTION 100(1)(A)(D)(iv) AND DISQUALIFY HIM FOR A PERIOD OF 6 YEARS FROM CONTESTING IN ELECTIONS; D) TO MAKE AN ORDER REGARDING THE CORRUPT PRACTICE COMMITTED BY PERSONS OTHER THAN THE RESPONDENT IN THE ELECTION HELD FOR 219 - VARUNA ASSEMBLY CONSTITUENCY AND NAME THEM AND TAKE ACTION AS CONTEMPLATED UNDER SECTION 99 OF THE REPRESENTATION OF PEOPLE ACT, 1951.

I.A. NO.1/2023 IS FILED UNDER ORDER VII RULE 11(A) OF THE CPC, 1908 READ WITH SECTION 87 OF THE REPRESENTATION OF PEOPLES ACT, 1951, PRAYING TO REJECT THE ABOVE ELECTION PETITION FILED BY THE PETITIONER FOR WANT OF CAUSE OF ACTION, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS I.A. NO.1/2023 IN ELECTION PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 25.01.2025 AND COMING ON FOR PRONOUNCEMENT OF ORDERS ON I.A. NO.1/2023, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE S SUNIL DUTT YADAV



CAV ORDER

S. SUNIL DUTT YADAV. J

THIS ORDER HAS BEEN DIVIDED INTO THE FOLLOWING SECTIONS TO FACILITATE ANALYSIS:

I.	BRIEF FACTS
II.	PRAYER SOUGHT
III.	CONTENTIONS OF PARTIES
IV.	I.A.No.1/2023 - FOR REJECTION OF ELECTION PETITION
V.	ANALYSIS

I BRIEF FACTS: -

The petitioner claims to be a voter in the '219 - Varuna Assembly Constituency'. The election for the Karnataka Legislative Assembly was notified on 13.04.2023 fixing the date of polling as 10.05.2023 and the declaration of result on 13.05.2023. It is stated that the Indian National Congress Party had nominated the respondent as its official candidate who was issued Form-



'B' from the Indian National Congress Party. The respondent having been declared elected from the '219 - Varuna-Assembly Constituency' and the same has been challenged.

II PRAYER SOUGHT: -

2. The Election Petition is filed under Section 81 of the Representation of People Act, 1951 ('R.P. Act' for short) calling in question seeking the following prayers:-

(i) To declare the results of respondent for the '219-Varuna-Assembly Constituency' at Annexure-'B' as void;

(ii) To declare that the respondent has committed corrupt practice under Sections 123(1), (2), (4) and (6) of the R.P. Act and that the respondent was not qualified to be chosen to fill the seat of '219-Varuna-Assembly Constituency' under Sections 100(1)(b), 100(1)(d) (iv) of the R.P. Act;



(iii) To declare the result of the election of the respondent has been materially affected by the improper reception and counting votes in favour of the respondent as void under Section 100(1)(A)(d)(iv) (*sic*) and disqualify him for a period of six years from contesting in elections;

(iv) To make an order regarding the corrupt practice committed by persons other than the respondent in the election held from '219-Varuna-Assembly Constituency' and name them and take action as contemplated under Section 99 of the R.P. Act.

(v) To pass necessary orders under Section 125A of the R.P. Act.

III CONTENTIONS OF PARTIES: -

3. The grounds on which election has been challenged by the petitioner are as follows:-



- (i) The respondent has indulged in corrupt practice under Section 123(1) of the R.P. Act;
- (ii) The offering of hand outs by the respondent/ candidate is contrary to the Constitution of India, Representation of People Act and directions and orders issued by the Election Commission of India under Article 324 of the Constitution of India;
- (iii) That the Election Manifesto is in violation of Guidelines issued by the Election Commission of India insofar as it is required to adhere to Directive Principles of State Policy (DPSP) enshrined in the Constitution of India, that the Political Parties should avoid making promises which are likely to vitiate the purity of election process or exert undue influence on the voters in exercising their franchise, that the credibility of the promises in the Manifesto should indicate the ways and means to meet the financial



requirement. The acts of the Political Parties in making the promises in the Manifesto is attributable to the candidate set up by the Political Party.

(iv) The Election Manifesto published assures the Electorate that in the event of coming into power, they would fulfil the five guarantees which are as follows -

- (a) 'Gruha Jyothi' - 200 Units of Free Electricity to all the houses;
- (b) 'Gruha Lakshmi' - Rs.2,000/- every month to each and every women head of the family;
- (c) 'Anna Bhagya' - 10 kilograms of food grains every person in BPL family per month;
- (d) 'Yuva Nidhi' - Rs.3000/- per month for two years to unemployed graduates and Rs.1,500/- per month for two years to unemployed diploma holder;



- (e) 'Shakthi' - free travel to all women through out the state in regular KSRTC/BMTC Buses;

Such guarantees, it is construed are corrupt practices amounting to bribery and undue influence in terms of Section 123(2) of the R.P. Act. It is submitted that, as the Manifesto contains the guarantees promised by the Party and has the photo of the respondent, each such person whose photo is found on the Manifesto are jointly and severally responsible for the corrupt practice under Section 123(1) and 123(2) of the R.P. Act.

- (v) The guarantees offered are in the form of gratification to the electorate with the object of directly inducing the electorate to vote for the Congress Party.

- (vi) The Manifestos were distributed to the electorate in '219-Varuna-Assembly



Constituency' and consent for voting in their favour was taken.

(vii) The guarantees having not been implemented, were false assurances that could not have been implemented practically.

(viii) That the freebies are waste of tax payers' money and an economic disaster that could hamper India becoming self-reliant.

(ix) The expenses incurred by the five guarantees do not have any budgetary provision.

(x) The guarantee No.5 discriminates between men and women.

(xi) It is asserted that the respondent has given his consent for the Manifesto.

(xii) The offers of guarantee have been made to all the houses of the voters by distributing Manifestos and Guarantee Cards;



(xiii) The hand outs are contrary to the provisions of Part-IV of the Constitution of India;

(xiv) The respondent is an agent of the Indian National Congress;

(xv) The respondent has not included in his returns of expenditure the expenses incurred for providing Manifesto, Guarantee Cards;

4. The written statement has been filed by the respondent contending as follows:-

(i) That the petitioner has failed to produce material facts or instances to substantiate the allegations of corrupt practices.

(ii) It is the respondent's Political Party that has announced welfare schemes and measures as part of their progressive Manifesto.



- (iii) That the allegations of the petitioner are vague, bald and unsubstantiated.
- (iv) The promises made in the Manifesto would not amount to a corrupt practice committed by an individual candidate and hence, the petition must fail. Further, it is asserted that promises made in the Manifesto would not amount to a corrupt practice.
- (v) The petition does not conform to Section 83(1)(a) and (b) of the R.P. Act;
- (vi) Full particulars and details of corrupt practices are not enumerated;
- (vii) The Election Manifestos are not legally binding documents, but serve as moral commitments.
- (viii) The guarantee schemes outlined in the Manifesto are rooted in the principles enshrined within the DPSPs.



(ix) The Apex Court in **S. Subramaniam Balaji v. State of Tamil Nadu and Others¹ [S. Subramaniam Balaji]** has held that promises outlined in a Manifesto cannot constitute corrupt practice.

Accordingly, the petition is sought to be rejected.

IV. I.A. No. 1/2023 - FOR REJECTION OF ELECTION PETITION: -

5. The respondent has filed an application under Order VII Rule 11(a) of C.P.C. read with Section 87 of the R.P. Act seeking for rejection of Election Petition on the ground of want of cause of action.

6. The averments make out following grounds:-

(i) That the allegations made are bald and baseless and no ground is made out in terms of Section of 100 of the R.P. Act.

¹ (2013) 9 SCC 659



- (ii) The particulars of corrupt practices including date and place of commission of corrupt practice is absent in the entire petition.
- (iii) There are no material facts averred to prove any of the allegations of corrupt practices and hence, petition is liable to be dismissed, as it does not conform with Section 83(1)(a) and (b).
- (iv) The assertion that respondent has committed corrupt practice as provided under Section 100 (b) of the R.P. Act is not supported by any averment in support of such contention.
- (v) The petitioner has averred that the result of the election has been materially affected by improper acceptance of nomination by virtue of grounds under Section 100(d)(i) of the R.P. Act, but no details of such contravention are pointed out;



- (vi) The petitioner has failed to aver material facts to substantiate allegations of corruption;
- (vii) The Hon'ble Supreme Court has clarified that Election Manifestos are not legally binding documents;
- (ix) That the Manifesto has been released by the Karnataka Pradesh Congress Committee and the guarantees are a part of it.
- (x) Section 123 of the R.P. Act clarifies that the corrupt practice must be of the candidate or agent and does not refer to Political Parties.
- (xi) That the law regarding freebies offered in the Manifesto amounting to corrupt practice is settled by the judgment of the Apex Court in **S. Subramaniam Balaji (supra)**;



- (xii) That the Election Petition is filed with factual and legal *mala fides* and contains no cause of action;

OBJECTIONS TO I.A. No. 1/2023: -

7. The petitioner has raised following objections:
- (i) The respondent is the functionary of the Political Party and a Party to the Election Manifesto and has distributed the Manifesto as a star campaigner promising freebies to the electorate as a reward and gratification for votes.
- (ii) The application of the petitioner must be decided without reference to the written statement;
- (iii) The respondent is candidate and agent of the Indian National Congress Party and is a party to the corrupt practice;



- (iv) The contentions must be proved in a full-fledged trial and cannot be determined only on the basis of application;
- (v) Manifesto is contradictory to ideals and principles enshrined in the Constitution of India as well as spirit of Model Code of Conduct;
- (vi) The respondent is bound by the contents of the Manifesto which he has accepted and canvassed;

Accordingly, the petitioner seeks for dismissal of the application.

V ANALYSIS: -

Heard learned Senior Counsel Smt. Pramila Nesargi for Sri Sunil M.V. and Ms. Priyanka G., appearing on behalf of petitioner and learned Senior Counsel Prof. Ravivarma Kumar, appearing for Ms. Leela P. Devadiga, on behalf of respondent.



8. The application I.A.No.1/2023 is filed seeking rejection of Election Petition on the ground of lack of cause of action and is filed under Order VII Rule 11(a) of C.P.C. The recourse to C.P.C. is purportedly by virtue of Section 87 of the R.P. Act.

9. The cause of action made out for the relief sought for is that there has been commission of corrupt practice in terms of Section 123 of the R.P. Act and that further grounds are made out for declaring it to be void under Section 100 of the R.P. Act.

10. For the applicability of Section 123, the question is as to whether the Manifesto of the Party holding out grant of freebies would amount to a corrupt practice.

11. Section 123 of the R.P. Act contemplates the gift, offer or promise by a candidate or his agent or any other person with the consent of the candidate or his election agent.



12. The present allegation made out is the promise of guarantees that are provided in the Manifesto of the Political Party which is sought to be termed as a corrupt practice. The answer to such query must begin with the provision, i.e. Section 123(2)(b) of the Act which provides that "*a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause*".

13. At the outset, the 'guarantees' which are promised freebies in the Manifesto cannot be considered to constitute a corrupt practice under Section 123 of R.P. Act in light of the law laid down by the Apex Court in **S. Subramaniam Balaji (supra)**. The point for consideration framed by the Apex Court was:-

"55.1. (i) Whether the promises made by the political parties in the election manifesto would amount to "corrupt practices" as per Section 123 of the RP Act?"



The findings and conclusion of the Apex Court on such point is as follows:-

"57. Keeping the parameters fixed in the above section, we have to analyse the claim of both the parties hereunder. A perusal of clauses (1) to (8) of Section 123 makes it clear that it speaks only about a candidate or his agent or any other person. There is no word about political parties. Taking note of the conditions mandated in those sub-sections, let us test the respective stand of both the parties.

61.1. Firstly, if we are to declare that every kind of promises made in the election manifesto is a corrupt practice, this will be flawed. Since all promises made in the election manifesto are not necessarily promising freebies per se, for instance, the election manifesto of a political party promising to develop a particular locality if they come into power, or promising cent per cent employment for all young graduates, or such other acts. Therefore, it will be misleading to construe that all promises in the election manifesto would amount to corrupt practice. Likewise, it is not within the domain of this Court to legislate what kind of promises can or cannot be made in the election manifesto.

61.2. Secondly, the manifesto of a political party is a statement of its policy. The



question of implementing the manifesto arises only if the political party forms a Government. It is the promise of a future Government. It is not a promise of an individual candidate. Section 123 and other relevant provisions, upon their true construction, contemplate corrupt practice by individual candidate or his agent. Moreover, such corrupt practice is directly linked to his own election irrespective of the question whether his party forms a Government or not. ***The provisions of the RP Act clearly draw a distinction between an individual candidate put up by a political party and the political party as such.*** The provisions of the said Act prohibit an individual candidate from resorting to promises, which constitute a corrupt practice within the meaning of Section 123 of the RP Act. The provisions of the said Act place no fetter on the power of the political parties to make promises in the election manifesto.

61.3. Thirdly, the provisions relating to corrupt practice are penal in nature and, therefore, the rule of strict interpretation must apply and hence, ***promises by a political party cannot constitute a corrupt practice on the part of the political party as the political party is not within the sweep of the provisions relating to***



corrupt practices. As the rule of strict interpretation applies, there is no scope for applying provisions relating to corrupt practice contained in the said Act to the manifesto of a political party.

61.4. Lastly, it is a settled law that the courts cannot issue a direction for the purpose of laying down a new norm for characterising any practice as corrupt practice. Such directions would amount to amending provisions of the said Act. The power to make law exclusively vests in the Union Parliament and as long as the field is covered by parliamentary enactments, no directions can be issued as sought by the appellant. ***As an outcome, we are not inclined to hold the promises made by the political parties in their election manifesto as corrupt practice under Section 123 of the RP Act.***

(emphasis supplied)

14. It is the contention that the candidate is the agent of the Political Party and that "...the acts of the Political Parties as promised by way of their Manifesto directly attributable to the candidate set up by that Political Party." Such contention has been noticed in para-



60 and is considered and rejected by the Apex Court² by virtue of the observations in paras-60 and 61 to the effect that the Act does not place a fetter on the Political Party, but only places a fetter on the individual. Further, in **Prof. Ramchandra G. Kapse v. Haribansh Ramakbal Singh**³ at para 21, the Apex Court has stated that "*...Admittedly, B.J.P. had been so registered as a Political Party and continues to be registered as a Political Party under this provision. In such a situation, contesting as a candidate of B.J.P. could not be faulted and any part of its Manifesto could not by itself be held to form the basis of holding a B.J.P. candidate guilty of a corrupt practice when no part in its drafting or specific use in the campaign is attributed to the candidate in the pleading or evidence. Ex-facie contents of a Manifesto, by itself, cannot be a corrupt practice committed by a candidate of that Party. In this context, reference to the decision in **Kultar Singh v. Mukhtiar Singh** - (1964) 7 SCR 790 is useful."*

² S. Subramaniam Balaji (supra)

³ (1996) 1 SCC 206



15. It is necessary to note that in the case of Legislators belonging to the Indian National Congress Party who had contested elections for Karnataka Legislative Assembly for the term 2023 to 2028, identical allegations have been made in Election Petitions filed against them. In such of the petitions, it was once again contended that the promises in the Manifesto of the Indian National Congress amounted to corrupt practice.

Learned Senior Counsel appearing for the respondents has contended that the petitions relating to E.P.No.14/2023 and E.P.No.15/2023 are identical to the present petition and pleadings in the present petition are "copy paste" of the pleadings in E.P.No.14/2023.

16. It is pertinent to note the observations made by the Co-ordinate Bench of this Court in E.P. No. 14/2023 (Order dated 26.03.2024) [relevant para - 14]; E.P.No.15/2023 (Order dated 25.04.2024) [relevant paras 12,13 & 14] and Co-ordinate Bench at Dharwad in E.P.No.100001/2023 (Order dated 25.03.2025) [relevant



para 10] wherein, it is held that the promises in the Election Manifesto by itself do not amount to corrupt practice by placing reliance on the judgments of the Apex Court and consequently dismissed the petitions.

Accordingly, this Court is to take note of findings in the above referred Election Petitions on a point of law in an identical factual matrix.

17. Insofar as the contention that the respondent has affixed his signature to the Hand Out and thus adopted the Manifesto as his own, the promises that were provided in the Manifesto and he would be jointly and severally liable for the corrupt practice, the said contention requires to be rejected.

18. It is to be noted that the owning up of a Manifesto or the Hand Out does not take away from the Manifesto and Hand Out being admittedly an appeal by the Party to vote for its candidate.



19. When such appeal of the Party in its Manifesto is not actionable in terms of Section 123 of the R.P. Act, such promise cannot be imputed to the respondent and nor are there material particulars to demonstrate that the promise is that of the candidate *de hors* the promise in the Manifesto.

The affixing of the signature on the Hand Out at Annexure-'M' is only in the capacity as a 'CLP Leader' and not more.

20. The petitioner's further contention is that the election is to be declared void by virtue of Section 100(1)(d)(iv) of the R.P. Act which averment is found in para-13 of the petition.

21. Section 100(1)(d)(iv) reads as hereunder:-

"(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act."



22. There are stray observations in the petition that the Manifesto published is contrary to the Model Code of Conduct. It is contended that the instructions of the Election Commission are in the nature of directions issued and Political Parties are bound to comply with the same. It is the contention that, if the Election Manifesto violates Article 14 of the Constitution of India, same would fall within the mischief envisaged under Section 100(1)(d)(iv) of the R.P. Act.

23. It is clear that for the purpose of declaring election to be void under Section 100(1)(d)(iv) of the R.P. Act that the High Court must be of the opinion that the result of the election insofar as it concerns a returned candidate as being materially affected by non-compliance with the provisions of the Constitution of India or of the Representation of People Act or of any Rules or Orders made under the said Act.



24. It is settled position that for the purpose of raising a serious triable issue, there has to be pleading of material facts as distinct from material particulars. In the event of failure to plead material facts, the petition itself would be bad in law and such defect cannot be cured even by way of any amendment once the time limit prescribed for filing the Election Petition has expired. This is in contradistinction to failure to plead material particulars which could be cured at a subsequent stage.

25. The Apex Court in **Harkirat Singh v. Amrinder Singh**⁴ has observed the distinction between material facts and material particulars at para-51 as follows:-

"51. A distinction between "material facts" and "particulars", however, must not be overlooked. "Material facts" are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. "Particulars", on the other hand, are details in

⁴ (2005) 13 SCC 511



support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. "Particulars" thus ensure conduct of fair trial and would not take the opposite party by surprise."

It is clarified at para-52 that failure to state even single material fact would entail dismissal of the petition.

Para-52 reads as follows:-

"52. All "material facts" must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial."

26. The Apex Court in **Kanimozhi Karunanidhi v. A. Santanakumar and Others**⁵, while dealing with the difference of material facts and material particulars in the context of rejection of plaint has summarised the legal position in para-28 as follows:-

⁵ 2023 SCC Online SC 573



"28. The legal position enunciated in afore-stated cases may be summed up as under:—

i. Section 83(1)(a) of RP Act, 1951 mandates that an Election petition shall contain a concise statement of material facts on which the petitioner relies. If material facts are not stated in an Election petition, the same is liable to be dismissed on that ground alone, as the case would be covered by Clause (a) of Rule 11 of Order 7 of the Code.

ii. The material facts must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action, that is every fact which it would be necessary for the plaintiff/petitioner to prove, if traversed in order to support his right to the judgment of court. Omission of a single material fact would lead to an incomplete cause of action and the statement of plaint would become bad.

iii. Material facts mean the entire bundle of facts which would constitute a complete cause of action. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary.

iv. In order to get an election declared as void under Section 100(1)(d)(iv) of the RP Act,



the Election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of the Act or any rules or orders made under the Act, the result of the election, in so far as it concerned the returned candidate, was materially affected.

v. 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 it as a handle for vexatious purpose.

vi. An Election petition can be summarily dismissed on the omission of a single material fact leading to an incomplete cause of action, or omission to contain a concise statement of material facts on which the petitioner relies for establishing a cause of action, in exercise of the powers under Clause (a) of Rule 11 of Order VII CPC read with the mandatory requirements enjoined by Section 83 of the RP Act."

27. In light of the above observations, the averments in the petition must contain assertions to the effect that the election of the returned candidate has been materially affected by non-compliance of the provisions of the Constitution of India or law. No doubt, there are



averments that the 'Guarantees' are in contravention of the Constitution of India as also the directions of the Election Commission of India, but such pleadings are bald and not sufficient so as to constitute material facts. There is no averment in the petition as to how the aforesaid 'Guarantees' have materially affected the result of the election.

28. It must be noticed that even otherwise, if the assertion of 'Guarantees' has been ground to set aside the election, the question of invoking the same to declare an election to be void would require an act by the returned candidate. Admittedly, the 'Guarantees' flow from a promise made in the Manifesto of the Party and cannot be attributed to the candidate and accordingly, the question of invoking Section 100(1)(d)(iv) of the R.P. Act in the present case does not arise.

29. The petitioner has raised a contention that the result of the election has been materially affected by improper acceptance of nomination.



Another contention is that the respondent has failed to disclose the expenditure incurred for providing the 'Guarantees' under the Manifesto, Guarantee Cards, Advertisement and also the expenses incurred for canvassing votes and the expenditure that is required to be incurred by the Government for implementing the 'Guarantees'. Accordingly, it is contended that non-disclosure of accounts by the respondent would amount to offence punishable under the R.P. Act and also amounts to embezzlement of Government money if the expenditure is beyond the limit.

30. Both the contentions of the petitioner do not merit consideration in the absence of necessary pleading based on legal provisions and in the absence of demonstration that there has been any legal wrong committed by the petitioner.

31. As regards the contention that including the expenditure relating to preparation of Manifesto, implementation of the promises in the Manifesto and



handing out of copies of Manifesto, in the declared expenditure by the candidate, once it is held that the Manifesto relates to the Political Party and not to the candidate himself as observed supra, the question of disclosure of such expenditure by the candidate does not arise.

32. The learned counsel for the petitioner has contended that an application under Order VII Rule 11 of C.P.C., can be decided by looking into the averments of the plaint as well as the rejoinder/replication and accordingly, has sought to rely upon the averments made in the rejoinder.

33. It is a settled position of law that in the case of pleadings in an Election Petition there is a requirement that an Election Petition which does not comply with the provision of Section 81 of the R.P. Act would entail dismissal as laid down in Section 86 of the R.P. Act. The mandate for presentation of petition under Section 81 of the R.P. Act is for its presentation within 45 days from the



date of the election of returned candidate, for presentation beyond 45 days there is no provision for condonation of delay. Section 86(1) of the R.P. Act provides that the High Court shall dismiss an Election Petition which does not comply with the provisions of Section 81 of the R.P. Act⁶. Such provision being interpreted strictly, it is held that material facts cannot be introduced by way of amendment beyond the period prescribed under Section 81 of the Act⁷. On such ground, the applicability of C.P.C. cannot be read into the provisions of Representation of People Act, 1951, which is a special legislation.

34. It is also a settled legal position that material legal facts relating to commission of corrupt practice if made in replication after the expiry of period of limitation for filing an Election Petition cannot be looked into. Such

⁶The Apex Court in **Hukumdev Narain Yadav v. Lalit Narain Mishra [(1974) 2 SCC 133]**; **Lachhman Das Arora v. Ganeshi Lal and Others [(1999) 8 SCC 532]** has strictly held that the High Court shall dismiss an election petition which does not comply with the provisions of sections 81 or 82 of R.P. Act and that the provisions of Section 4 to 24 of Indian Limitation Act do not apply.

⁷ The Apex Court in **Khanimozhi (supra)** at para 23 has held that no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.



position is made out from the observations of the Apex Court in **Jeet Mohinder Singh v. Harminder Singh Jassi**⁸ as follows:

45. The appellant filed replication to the written statement filed by the respondent. It is in the replication that the appellant has come out with an averment (vide para 8) that some amongst the electors who were threatened by Shri Sangram Singh, SHO were Jagseer Singh (not examined), Dharminder Singh, PW 13, Jaswant Singh (not examined), Jagraj Singh (not examined), and Mander Singh (not examined). Here itself, we may observe that material facts and particulars as to commission of corrupt practice are required to be given in the election petition and not in the replication filed much after the expiry of the period of limitation for filing election petition. The material facts and particulars alleged for the first time in the replication and not forming part of the averments made in the election petition cannot be tried and cannot be made the subject-matter of issues framed by the court. The learned Designated Election Judge has taken care to frame the issues only by reference to the averments made in the election petition and not

⁸ (1999) 9 SCC 386



by referring to the averments made for the first time in the replication. Firstly, the respondent does not have an opportunity of denying the averments — whether facts or particulars, introduced for the first time in replication. Secondly, as already stated material facts and particulars as to corrupt practice are required to be supported by an affidavit in the prescribed pro forma. The replication is not supported by any affidavit in the prescribed pro forma.

35. Accordingly, the question of looking into the rejoinder filed on 06.10.2023 to sustain the grounds of corrupt practice or other grounds providing for a cause of action does not arise.

36. It is the case of the petitioner that the judgment in ***S. Subramaniam Balaji (supra)*** is being reconsidered by larger Bench consisting of three Judges by virtue of judgment in **Ashwini Kumar Upadhyay v. Union of India and Another**⁹ [(2023) 14 SCC 611 Writ Petition (C) No. 43 of 2022 and connected petitions]. It is further submitted that the said judgment does not lay

⁹ (2023) 14 SCC 611 = Writ Petition (C) No.43/2022



down the correct legal position and is required to be ignored and ought not to be followed.

Such contention of the petitioner is liable to be rejected in light of the settled position that the High Court is required to decide the matter on the basis of the law as it stands unless the order of reference itself makes certain observations.

37. The observations of the Apex Court in **Union Territory of Ladakh and Others v. Jammu and Kashmir National Conference and Another**¹⁰, at para 35 is as follows -

"35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this

¹⁰ 2023 SCC OnLine SC 1140



*Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in *National Insurance Company Limited v. Pranay Sethi*, (2017) 16 SCC 680. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it."*

38. The observations hereinabove clarify the legal position and accordingly, this Court has no option but to follow the law as laid down in ***S. Subramaniam Balaji (supra)***.

39. While the application for rejection of plaint has been filed on the ground that "there is want of cause of action", however, the power of the court to reject a plaint can be exercised *suo motu* as well. The Apex Court in ***Patil Automation Private Limited and Others v. Rakheja Engineers Private Limited***¹¹ has observed that

¹¹ (2022) 10 SCC 1



the Courts possess such power and the relevant extract is as follows:-

"94.3 ...Undoubtedly, on issuing summons it will be always open to the defendant to make an application as well under Order 7 Rule 11. In other words, the power under Order 7 Rule 11 is available to the court to be exercised suo motu..."

40. Accordingly, in the present case, the plaint is liable to be rejected both on the ground of "want of cause of action" as well as being barred by law.

41. A perusal of the Election Petition would indicate that the same is drafted with no attention to detail with vague pleadings, factual errors and replication of pleadings from other Election Petitions.

The learned counsel for the respondent has highlighted the said aspect in written submissions filed on 18.04.2024 and has further enclosed a Table "VI. TABULAR REPRESENTATION OF CORRESPONDING IDENTICAL COPIED AVERMENTS IN THE DIFFERENT ELECTION PETITIONS FILED BEFORE THIS HON'BLE



COURT", at page 20 and has attempted to demonstrate that the pleadings in the present petition amount to copy and pasting of other petitions i.e., E.P. No.14/2023.

42. Further, the said aspect could be highlighted by noticing error in mentioning the provisions of law as well. For instance, the petitioner has sought for a prayer wherein, non-existent provision is mentioned i.e., Section 100(1)(A)(d)(iv) of the R.P. Act. It is also noticed that the Election Petition contains '27' numbered paragraphs but in the verifying Affidavit, the petitioner has verified that the Election Petition contains '1 to 76' numbered paragraphs to be true to his belief and based on legal advice. The learned counsel for respondent during the course of argument has pointed out that at para-27 of the petition, incorrect person is named as the Chief Secretary, however, these instances are only illustrative and not exhaustive and would indicate very casual attitude in drafting an election dispute. It must be noticed that an Election Petition has serious repercussions and by law it is



mandated that an Election Petition requires careful drafting¹² and the present petition does not evidence attention to necessary details and is drafted in a very casual manner.

43. Accordingly, I.A.No.1/2023 filed under Order VII Rule 11(a) of Code of Civil Procedure, 1908 filed by the respondent is **allowed** and consequently, the Election Petition is **rejected**.

44. All pending Interlocutory Applications stand disposed off as not calling for adjudication, in light of closure of the present proceedings by virtue of allowing I.A.No.1/2023 filed under Order VII Rule 11(a) of Code of Civil Procedure, 1908.

Sd/-
(S SUNIL DUTT YADAV)
JUDGE

VGR

¹² The Apex Court *Bhagwati Prasad Dixit 'Ghorewala' v. Rajeev Gandhi, (1986) 4 SCC 78* has held that the pleadings in an election petition have to be precise, specific and unambiguous and if the election petition does not disclose a cause of action, it is liable to be rejected in *limine*.