

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26<sup>TH</sup> DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

**ELECTION PETITION No.14/2023**

**BETWEEN:**

SMT. B.LAKSHMIDEVI

...PETITIONER

(BY SMT. PRAMILA NESARGI, SR. COUNSEL FOR  
SMT. BINDU V, ADV.)

**AND:**

SRI. RIZWAN ARSHAD

...RESPONDENT

(BY SRI K.N PHANINDRA, SR. COUNSEL FOR  
SMT. LATHA S SHETTY, ADV.)

THIS ELECTION PETITION IS PRESENTED UNDER SECTIONS 81 OF THE REPRESENTATION OF PEOPLES ACT, 1951, BY SMT.B.LAKSHMIDEVI PETITIONER-ELECTOR ALONGWITH HIS COUNSEL SRI.G.DEVARAJE GOWDA, SMT.PRIYANKA.G, SRI.SUNIL.M.V AND SMT.BINDU.V (ADVOCATE FOR PETITIONER) BEFORE THE REGISTRAR

(JUDICIAL) ON 26.06.2023, (THE PROCEEDINGS OF REGISTRAR (JUDICIAL) IS AT PAGE NO.3 OF THE PETITION).

THIS PETITION HAVING BEEN HEARD AND RESEVED, COMING ON FOR PRONOUNCEMENT THIS DAY,THE COURT MADE THE FOLLOWING:

**ORDER**

1. The petitioner, who claims to be a voter in Shivajinagar Assembly Constitutency, has filed this petition under Section 81 of the Representation of Peoples Act, 1951 (for short, 'the Act') seeking for the following reliefs:

a) To declare that the declaration of results of Respondent, Annexure-B for the Assembly Constituency-162 - Shivajinagar 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 162- Shivajinagar 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 of votes in favour 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 162-Shivajinagar Assembly constituency and name them and take action as contemplated under Section 99 of the Representation of People Act, 1951.

e) Pass such other orders deemed necessary under Section 125(A) of Representation of People Act, 1951, and

f) To award costs and such other consequential relief/reliefs in the circumstances of the case."

2. The grounds of challenge has been narrated by the petitioner in paragraph 13 of the Memorandum of Petition and from a reading of the grounds urged by the petitioner in the said paragraph, it is very clear that the allegation of corrupt practice against the respondent revolves wholly on the election manifesto published by the Indian National Congress party in two different

languages viz., English and Kannada, wherein assurance was given to the electorates that in the event of Indian National Congress party coming into power, the five guarantees assured by them would be implemented. The said five guarantees are as under:

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 grain every person in BPL family per month.

d. 'Yuva Nidhi' - Rs.3,000/- per month for two years to unemployed graduates and Rs.1,500/- per month for two years for unemployed diploma holders.

e. 'Shakthi' - free travel to all women throughout the State in regular KSRTC/BMTC buses.

3. According to the petitioner, the aforesaid five guarantees are the corrupt practices amounting to bribery and also undue influence under Section 123(2) of

the Act. It is alleged that the five guarantees are in the form of gratification to the electorates of the constituency with the object of directly inducing the electorates to vote in favour of Indian National Congress party candidates. The petitioner has also provided the estimated expenses for the proposed five guarantees and has stated that the same would be a burden on the State Exchequer. The five guarantees are the freebies assured in the election manifesto which is attacked by the petitioner on the ground that the same are violative of Article 14 of the Constitution of India and also on the ground that they are contrary to Articles 38 & 39 of the Constitution of India.

4. From a overall reading of the petition averments, it is very clear that the allegation of corrupt practice against the respondent is based only on the election manifesto published by the Indian National Congress party assuring implementation of the aforesaid five guarantees in the event the party comes to power.

5. The respondent has filed a detailed written statement denying the petition averments and has stated

that the petitioner has failed to produce a single material fact or instance or an iota of evidence to substantiate any such allegation of corruption or any corrupt practice alleged in the petition. He has stated that the promise made in the election manifesto would not amount to corrupt practice committed by an individual candidate and has also contended that in view of the judgment in the case of **S.SUBRAMANIAM BALAJI VS STATE OF TAMIL NADU & OTHERS - (2013)9 SCC 659**, the grounds urged in the petition cannot be termed as corrupt practice under Section 123 of the Act. It is also stated that the respondent in his personal capacity has not given any guarantees or assurances to the electorate nor has he published any advertisements of such schemes either in the form of print or electronic media. He also has stated that all the five guarantee schemes have been implemented in the State of Karnataka after the party came to power. He has stated that the election manifesto is a declaration of public policy and is a future promise made if the Government is formed by the political party which has published the election manifesto and the

promises made in the election manifesto by a political party cannot be considered as a promise by the candidate of the political party who has contested the election. It is specifically contended that in the absence of necessary pleadings satisfying the requirement of Section 82 of the Act which points out corrupt practices of the respondent, the petition cannot be maintained. It is stated that the election petition does not satisfy the requirement of Section 83 of the Act and particulars of the alleged corrupt practices of the respondent have not been provided in the petition.

6. The petitioner has filed a rejoinder to the written statement filed by the respondent.

7. The respondent has filed IA-1/2023 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short, 'CPC') read with Section 85 of the Act, with a prayer to reject the election petition. In the affidavit filed in support of the application, it is averred that the freebies and guarantee schemes promised in a election manifesto would not amount to corrupt practices having regard to

the judgment of the Hon'ble Supreme Court in S.Subramaniam Balaji's case supra. It is stated that the election manifesto is a declaration of public policy and the future promises made by the political party if the Government is formed by the said political party, and the same cannot be considered as a promise made by the candidate to induce the voter. It is also stated that since the petition does not contain the particulars of the alleged corrupt practice of the respondent including the details about when and where the corrupt practice took place, the petition does not comply the requirement of Section 83 of the Act.

8. Petitioner has filed objections to IA-1/2023 contending that the said application is not maintainable either in law or on facts and the same is filed only to delay the proceedings. The judgment in S.Subramaniam Balaji's case supra is per incuriam as the same does not lay down the correct law. The election manifesto issued by Indian National Congress party, of which the respondent is a office bearer, is in violation of the fundamental rights and Directive Principles of State



Policy. It is also stated that the petition contains specific material facts in support of the grounds urged. The validity of the judgment in S.Subramaniam Balaji's case supra is being considered by the larger bench of the Supreme Court in W.P.No.43/2022, and therefore, it cannot be said that the judgment in S.Subramaniam Balaji's case has attained finality. Accordingly, she has prayed to dismiss the application.

9. Learned Senior Counsel appearing on behalf of the respondent submits that though the petitioner has contended that the election manifesto was published by the Indian National Congress party with the consent of the respondent, there is absolutely no material in support of such contention. He has referred to the pleadings in paragraph 13 and has submitted that the entire attack in the grounds urged in paragraph 13 is on the five guarantee schemes promised in the election manifesto of Indian National Congress party, and there is no pleading as to how such guarantees made by the political party can be considered as corrupt practice by the candidate who has contested the election as a candidate of the said

political party. He submits that petitioner has alleged that promises were made only to lure the electorates knowing well that the promises and assurances made are incapable of being fulfilled. All the five guarantees have been successfully implemented by the State Government in Karnataka, and therefore, it is evident that the allegations made in the petition are baseless. He submits that corrupt practice under Section 123(4) of the Act can be alleged only if publication is made by the candidate or his agent or by any other person with the consent of the candidate or his election agent. In the present case, there is no such material produced by the petitioner to show that the respondent would be covered under Section 123(4) of the Act. He submits that in view of the judgment of the Hon'ble Supreme Court in S.Subramaniam Balaji's case supra, the averments made in the petition and also the grounds urged cannot be termed or construed as corrupt practices under Section 123 of the Act. He submits that the guarantee schemes fall within the realm of fulfilling the Directive Principles of State Policy and in the absence of any enactment directly

governing the contents of election manifesto, it cannot be said that the schemes assured in the election manifesto would amount to corrupt practices. He submits that the scheme of constitutional and statutory provisions contained in the Act has been explained in the case of **KANIMOZHI KARUNANIDHI VS A.SANTHANA KUMAR & OTHERS - 2023 SCC OnLine SC 573** and law has been laid down in the said case with regard to compliance of the requirement of Section 83 of the Act constituting cause of action and the ground as contemplated under Section 100(1)(d)(iv) of the Act, for declaring the election of the Returned Candidate to be void. He has placed reliance on the judgment in the case of **ANIL VASUDEV SALGAONKAR VS NARESH KUSHALI SHIGAONKAR - (2009)9 SCC 310**, and submits that lack of material facts and full particulars in a election petition amounts to non-compliance of the requirement of Section 83 of the Act and under the said circumstances, the election petition can be summarily dismissed under Order VII Rule 11 CPC on the ground that it does not disclose cause of action.

10. Per contra, learned Senior Counsel appearing on behalf of the petitioner submits that the memorandum of petition contains all such particulars in support of the grounds urged alleging corrupt practice by the respondent. For the purpose of considering an application under Order VII Rule 11 CPC, only the averments made in the petition is required to be looked into and no other material can be taken into consideration. From the scheme of the Act, it is clear that the election petition can be dismissed only under Section 86 of the Act and not otherwise. The judgment in S.Subramaniam Balaji is per incuriam as the same is rendered without taking into consideration, the earlier judgment of the Hon'ble Supreme Court in **S.R.BOMMAI VS UNION OF INDIA - (1994)3 SCC 1**. She submits that the larger bench of the Hon'ble Supreme Court in W.P.No.43/2022 is considering the correctness of the judgment in S.Subramaniam Balaji's case supra, and therefore, based on the judgment of S.Subramaniam Balaji's case supra, no orders can be passed by this Court. In support of her arguments, she has placed reliance on the judgment of

the Hon'ble Supreme Court in the case of **DAHIBEN VS ARVINDBHAI KALYANJI BHANUSALI (GAJRA) DEAD THROUGH LEGAL REPRESENTATIVES & OTHERS - (2020)7 SCC 366.**

11. From a reading of the entire pleadings made in the memorandum of election petition, it is seen that the gamut of allegations regarding corrupt practice against the respondent revolves solely around the election manifesto published by Indian National Congress party assuring five guarantee schemes in the event the political party coming into power. Except the same, there is no allegation found in the petition against the respondent which comes within the meaning of corrupt practices under Section 123 of the Act. Though the petitioner has contended that the election manifesto was published by the Indian National Congress party with the consent of the respondent who had contested the assembly election as candidate from the said political party, there is no material placed before the court in support of such allegation. Section 83 of the Act which provides to the contents of the election petition reads as under:

"83. Contents of petition.—(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the 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.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."

12. In Kanimozhi Karunanidhi's case supra, the Hon'ble Supreme Court in paragraphs 23, 24 & 28 has observed as under:

"23. The law so far developed and settled by this Court with regard to the non-compliance of the requirement of Section 83(1)(a) of the EP Act, namely - "an Election petition must contain a concise statement of material facts on which the petitioner relies", is that such non-compliance of Section 83(1)(a) read with Order VII, Rule 11, CPC, may entail dismissal of the Election Petition right at the threshold. "Material facts" are facts which if established would give the petitioner the relief asked for. 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.

24. A Three-Judge Bench in Hari Shanker Jain vs. Sonia Gandhi (supra) had an occasion to deal with Section 83(1)(a) of the RP Act and the Court dismissed the Election petition 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 CPC. It was observed in para 23 and 24 as under:-

"23. Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, 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. 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. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. 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. (See *Samant N. Balkrishna v. George Fernandez* [(1969) 3 SCC 238 : (1969) 3 SCR 603] , *Jitendra Bahadur Singh v. Krishna Behari* [(1969) 2 SCC 433] .) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a

negative fact, if necessary. In V.S. Achuthanandan v. P.J. Francis [(1999) 3 SCC 737] this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure 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.

24. 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. 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. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings."

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 judgement 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."

13. In S.Subramaniam Balaji's case supra, the Hon'ble Supreme Court in paragraphs 55, 60, 61, 67, 68, 69, 74, 75, 78 & 84, has observed as under:

"55. We have carefully considered the rival contentions, perused the relevant provisions, various Government orders, guidelines and details furnished in the counter affidavit. The following points arise for consideration:

(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?

(ii) Whether the schemes under challenge are within the ambit of public purpose and if yes, is it violative of Article 14?

(iii) Whether this Court has inherent power to issue guidelines by application of Vishaka principle?

(iv) Whether the Comptroller and Auditor General of India has a duty to examine expenditures even before they are deployed?

(v) Whether the writ jurisdiction will lie against a political party?

60. With this background, let us analyze the contention of the appellant. The gist of appellant's argument is that promises of freebies such as colour TVs, mixer-grinders, laptops, etc., are in form part of an election manifesto of a political party but in substance is a bribe or inducement under Section 123. Thus, it is the stand of the appellant that the promise of this nature indeed induces the voters thereby affecting the level playing field between the candidates, which in turn disrupts free and fair election. Therefore, the appellants suggested for construing the promises made in the election manifesto as a corrupt practice under Section 123 of RP Act. He mainly relied on the principle that one cannot do indirectly what it cannot do directly.

61. As appealing this argument may sound good, the implementation of this suggestion becomes difficult on more than one count:

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 percent 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 settled law that the courts cannot issue a direction for the purpose of laying down a new norm for characterizing 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.

67. The concepts of livelihood and standard of living are bound to change in their content from time to time. It is factual that what was once considered to be a luxury has become a necessity in the present day. It is well settled that the concept of livelihood is no longer confined to bare physical survival in terms of food, clothing and shelter but also now necessarily includes basic medicines, preliminary education, transport, etc. Hence, the State distrusting largesse in the form of distribution of colour TVs, laptops, etc. to eligible and deserving persons is directly related to the directive principles of the State policy.

68. As a result, we are not inclined to agree with the argument of the appellant that

giving of colour TVs, laptops, mixer-grinders etc. by the Government after adhering to due process is not an expense for public purpose. Judicial interference is permissible when the action of the government is unconstitutional and not when such action is not wise or that the extent of expenditure is not for the good of the State. We are of the view that all such questions must be debated and decided in the legislature and not in court.

69. More so, the functioning of the Government is controlled by the Constitution, the laws of the land, the legislature and the Comptroller and Auditor General of India. As per Article 73 of the Constitution, the executive power of the Union of India is co-extensive with its legislative power. Similarly, the executive power of the State is co-extensive with its legislative power (Article 162). In *Bhim Singh (supra)*, this Court has held that the Government can frame a scheme in exercise of its executive powers but if such a scheme entails any expenditure, then it is required to be backed by law. Article 266 of the Constitution lays down that all monies received by the Central Government or by the State Government by way of taxes or otherwise must be credited to

the Consolidated Fund of India. Article 267 also constitutes Contingency Fund of India. If any money (except which is charged on the Consolidated Fund) is to be withdrawn for any governmental purpose, then there has to be an Appropriation Act under Article 266(3) read with Article 114 of the Constitution. Every department of the Government presents its demand to the legislature concerned and the legislature votes on the same, and thereafter, the Appropriation Act is passed which authorizes the Government to withdraw the money from the Consolidated Fund. There are similar provisions relating to the State. The Contingency Fund can be established only by enacting a law in that behalf and not by an executive fiat. The law creating the Contingency Fund authorizes the purposes for which the amount in it can be spent. This is how the money is being spent by the Government on its schemes under the control of the Legislature.

74. If we analyze the abovementioned articles and the rules of procedure, it is established that there are various checks and balances within the mandate of the Constitution before a scheme can be implemented. As long as the schemes come

within the realm of public purpose and monies for the schemes is withdrawn with appropriate Appropriation bill, the court has limited power to interfere in such schemes.

75. Further, the appellant contended by referring to various foreign cases to highlight the principle that public money cannot be used to create private assets. In our opinion, there is no merit in this contention also. The purpose of the schemes is to enforce the directive principles of state policy. In what way the state chooses to implement the directive principles of state policy is a policy decision of the State and this Court cannot interfere with such decisions. Ordinarily, this Court cannot interfere with policy decisions of the government unless they are clearly in violation of some statutory or Constitutional provision or is shockingly arbitrary in nature.

78. With regard to the contention that distribution of State largesse in the form of colour TVs, laptops, mixer-grinders, etc., violates Article 14 of Constitution as the unequals are treated equally. Before we venture to answer this question, we must recall that these measures relate to implementation of Directive Principles of

State Policy. Therefore, the principle of not to treat unequals as equal has no applicability as far as State largesse is concerned. This principle applies only where the law or the State action imposes some burden on the citizen either financial or otherwise. Besides, while implementing the directive principles, it is for the Government concerned to take into account its financial resources and the need of the people. There cannot be a straight jacket formula. If certain benefits are restricted to a particular class that can obviously be on account of the limited resources of the State. All welfare measures cannot at one go be made available to all the citizens. The State can gradually extend the benefit and this principle has been recognized by this Court in several judgments.

#### 84. Summary:

84.1 After examining and considering the parameters laid in Section 123 of RP Act, we arrived at a conclusion that the promises in the election manifesto cannot be read into Section 123 for declaring it to be a corrupt practice. Thus, promises in the election manifesto do not constitute as a corrupt practice under the prevailing law. A reference to a decision of this Court will be timely. In

Prof. Ramchandra G. Kapse vs. Haribansh Ramakbal Singh (1996) 1 SCC 206 this Court held that “..Ex facie contents of a manifesto, by itself, cannot be a corrupt practice committed by a candidate of that party.”

84.2 Further, it has been decided that the schemes challenged in this writ petition falls within the realm of fulfilling the Directive Principles of State Policy thereby falling within the scope of public purpose.

84.3 The mandate of the Constitution provides various checks and balances before a Scheme can be implemented. Therefore, as long as the schemes come within the realm of public purpose and monies withdrawn for the implementation of schemes by passing suitable Appropriation Bill, the court has limited jurisdiction to interfere in such schemes.

84.4 We have also emphasized on the fact that judicial interference is permissible only when the action of the government is unconstitutional or contrary to a statutory provision and not when such action is not wise or that the extent of expenditure is not for the good of the State.

84.5 It is also asserted that the schemes challenged under this petition are in consonance with Article 14 of the Constitution.

84.6 As there is no legislative vacuum in the case on hand, the scope for application of Vishaka principle does not arise.

84.7 The duty of the CAG will arise only after the expenditure has incurred.

84.8 Since this petition is fit for dismissal de hors the jurisdiction issue, the issue of jurisdiction is left open."

14. In S.Subramaniam Balaji's case supra, the Hon'ble Supreme Court has held that as per the prevailing law, promises made in an election manifesto by a political party cannot be construed as corrupt practice under Section 123 of the Act. In the said case, the Hon'ble Supreme Court has observed that the schemes in the form of freebies assured by the political party in its election manifesto fall within the realm of fulfilling the Directive Principles of State Policy and in the absence of any enactment directly governing the contents of election

manifesto, the assurance or guarantees made in the election manifesto by the political party cannot be considered as corrupt practice for the purpose of Section 123 of the Act. In the said case, the Hon'ble Supreme Court has held that Section 123 of the Act speaks about a candidate or his agent or any other person and not about the political parties, and therefore, the promise made by a political party cannot constitute a corrupt practice by a candidate. Though allegation has been made that with the consent of the respondent the election manifesto was published by the political party, there is absolutely no basis or material in support of such a allegation.

15. The Hon'ble Supreme Court in the case of Anil Vasudev Salgaonkar's case supra has held that all material facts with full particulars needs to be pleaded by the party in support of his case within the period of limitation and failure to state even a single material fact entails dismissal of the election petition summarily. In paragraph 50 of the said judgment, the Hon'ble Supreme Court has observed as under:



"50. The position is well settled that an election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under the Code of Civil Procedure. Appropriate orders in exercise of powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with."

16. If on the basis of the pleadings made, the Court is able to award a remedy, then there is a cause of action to sue. A cause of action is the legal right based on which the relief is sought. It is a right of action used to seek legal remedy in a court. The basic set of facts which are relevant for granting the relief will give rise to cause of action. If on the set of facts pleaded, no relief can be granted, then the petition or the plaint, as the case may be, is liable to be rejected at the threshold. Court's time is too precious, and therefore, the courts should terminate the proceedings which is bereft of cause of action to sue. It is trite that the court is required to determine whether the plaint or petition prima facie

discloses cause of action only on the basis of the averments made in the plaint/petition and the documents relied upon in support of the pleadings found in the plaint/petition without addition or subtraction of any word. In Anil Vasudev Salgaonkar's case supra, the Hon'ble Supreme has observed that the court has to find as to whether the plaint discloses real cause of action or illusory cause of action created by clever drafting or suppression and the courts have to be vigilant and if the suit is found to be vexatious amounting to abuse of process of court, the powers under Order VII Rule 11 CPC should be exercised. In the context of charge of corrupt practice, material facts would mean the basic facts which constitute the ingredients of the corrupt practice alleged in the petition. In the present case, the allegation of corrupt practice is publication of election manifesto by the political party assuring five guarantee schemes. In S.Subramaniam Balaji's case, the Hon'ble Supreme Court has held that such publication in a election manifesto by a political party cannot be construed as corrupt practice for the purpose of Section 123 of the Act. Therefore,

cause of action for filing the election petition does not arise and based on the material facts which constitutes the cause of action, no relief can be granted to the petitioner.

17. In the present case, the allegation against the respondent is that he had indulged in corrupt practice and such allegation is based solely on the election manifesto published by the Indian National Congress. In addition to the same, since for the purpose of Section 123 of the Act, the promise or assurance should be made by the candidate or his agent or by any other person with the consent of the candidate or his election agent, in the absence of any material which would prima facie show that the five guarantees or promises published in the election manifesto by the political party, of which the respondent was a candidate in the assembly election, was published with the consent of the respondent or his election agent, the allegations cannot be termed to be corrupt practice for the purpose of the Act.

18. In the case of **SENTHILBALAJI.V. VS A.P.GEETHA & OTHERS - 2023 SCC OnLine SC 679**, the Hon'ble Supreme Court in paragraphs 14 & 16 has observed as under:

"14. Section 123 of the RP Act of 1951 defines corrupt practices. In paragraphs 6 and 7, even bare particulars of any of the corrupt practices covered by Section 123 have not been pleaded. 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 Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 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-compliance with the requirement of stating material facts must result in the rejection of the petition at the threshold.

16. The consensus of judicial opinion is that the failure to plead material facts concerning alleged corrupt practice is fatal to the election petition. The material facts are the primary facts which must be proved on trial by a party to establish the existence of a cause of action. 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.

19. In the case of **DHARTIPAKA MADAN LAL AGARWAL VS RAJIV GANDHI - 1987 Supp SCC 93**, the Hon'ble Supreme Court at paragraphs 13 & 14, has observed as under:

"13. The appellant's grievance that in entertaining the preliminary objections and rejecting the election petition under Order VII Rule 11 the High Court deprived the appellant's opportunity to amend the Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 petition and to make good the deficiencies by supplying the necessary particulars and details of the corrupt practice alleged in the petition, is devoid of any merit. Firstly, the appellant was free to file amendment application, but at no stage he expressed any desire to make any amendment application

nor he made any application to that effect before the High Court. It was open to the appellant to have made that application but he himself did not make any such application. The High Court was under no legal obligation to direct the appellant to amend pleadings or to suo moto grant time for the same. Secondly, the allegations of corrupt practice as required by Section 83 were not complete and the same did not furnish any cause of action, any amendment made after the expiry of the period of limitation could not be permitted which would amount to raise a new ground of challenge. The question, however, does not arise as the appellant did not file any amendment application. During the course of hearing of this appeal before us the appellant has made applications for amendment of the election petition which we shall deal with later.

14. Before we consider various paragraphs of the election petition to determine the correctness of the High Court order we Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 think it necessary to bear in mind the nature of the right to elect, the right to be elected and the right to dispute election and the trial of the election petition. Right to

contest election or to question the election by means of an election petition is neither common law nor fundamental right, instead it is a statutory right regulated by the statutory provisions of the Representation of People Act, 1951. There is no fundamental or common law right in these matters. This is well settled by a catena of decisions of this Court in N.P. Ponnuswami v. Returning Officer [(1952) 1 SCC 94: AIR 1952 SC 64 : 1952 SCR 218 : 1 ELR 133], Jagan Nath v. Jaswant Singh [AIR 1954 SC 210 : 1954 SCR 892 : 9 ELR 231], Jyoti Basu v. Debi Ghosal [(1982) 1 SCC 691 : AIR 1982 SC 983 : (1982) 3 SCR 318]. These decisions have settled the legal position that outside the statutory provisions there is no right to dispute an election. The Representation of People Act is a complete and self-contained Code within which any rights claimed in relation to an election or an election dispute must be found. The provisions of the Civil Procedure Code are applicable to the extent as permissible by Section 87 of the Act. The scheme of the Act as noticed earlier would show that an election can be questioned under the statute as provided by Section 80 on the grounds as contained in Section 100 of



the Civil Appeals @ SLP (C) Nos.7219-7220 of 2018 Act. Section 83 lays down a mandatory provision in providing that an election petition shall contain a concise statement of material facts and set forth full particulars of corrupt practice. The pleadings are regulated by Section 83 and it makes it obligatory on the election petitioner to give the requisite facts, details and particulars of each corrupt practice with exactitude. If the election petition fails to make out a ground under Section 100 of the Act it must fail at the threshold. Allegations of corrupt practice are in the nature of criminal charges, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet. If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving inquiry. It is therefore necessary for the Court to scrutinise the pleadings relating to corrupt practice in a strict manner.”

(emphasis added)

20. Section 83 of the Act makes it obligatory for the petitioner to give all the requisite facts, details and particulars of each practice with exact date and place, and in the absence of requisite facts and if the allegations are made either generally or vaguely, then it can be clearly said that there is no cause of action to proceed on the ground of corrupt practice.

21. Power under Order VII Rule 11 CPC is an independent and special remedy, wherein the court can summarily dismiss a case at the threshold, if it is satisfied that proceeding should be terminated on any of the grounds contained in this provision. If on a meaningful reading of the pleading in the petition or plaint, it is found that on the cause of action pleaded no relief can be granted, then the petition or plaint is liable to be rejected. The word used in Order VII Rule 11 CPC is "shall", and therefore, Order VII Rule 11 CPC is mandatory in nature. A duty is cast on the court to determine whether petition/plaint discloses a cause of action based on the averments in the body of the petition/plaint.

22. Learned Senior Counsel appearing for the petitioner has strenuously contended before this Court that since the judgment in S.Subramaniam Balaji's case supra is referred to the larger bench in W.P.(Civil).No.43/2022, the said judgment cannot be made applicable since the correctness of the said judgment is doubted. The Hon'ble Supreme Court in the case of **UNION TERRITORY OF LADAKH & OTHERS VS JAMMU KASHMIR NATIONAL CONFERENCE & ANOTHER - 2023 SCC OnLine SCC 1140**, in paragraph 35, has observed as under:

"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 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."

23. In the present case, learned Senior Counsel appearing for the petitioner has not pointed out to this Court any other judgment of the Hon'ble Supreme Court which deals with the point that arises for consideration in this petition. This petition is filed on the ground that the election manifesto published by Indian National Congress party which contains five guarantees of which implementation was assured by the party in the event it comes into force, would amount to corrupt practice under Section 123 of the Act. In S.Subramaniam Balaji's case,

the Hon'ble Supreme Court has held that such assurance given by a political party in its election manifesto cannot be construed as corrupt practice for the purpose of Section 123 of the Act in the absence of the law governing publication of election manifesto by a political party. In view of the observations made by the Hon'ble Supreme Court in Union Territory of Ladakh's case, this Court is required to decide the matter on the basis of the law as it stands. Therefore, the contention urged by the learned Senior Counsel that the judgment in S.Subramaniam Balaji's case supra cannot be made applicable to the present case, is liable to be rejected.

24. In the present case, from a overall reading of the averments made in the petition and the grounds urged in support of the prayer made in the petition, I am of the view that the same do not constitute a cause of action for the purpose of proceeding against the respondent on the ground of corrupt practices contemplated under Section 123 of the Act. Accordingly, I proceed to pass the following order:

25. IA-1/2023 is allowed. Consequently, the election petition is rejected under Order VII Rule 11(a) of CPC.

**SD/-  
JUDGE**

KK