

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

Wednesday, The 1st Day of April 2026 / 11th Chaithra, 1948
IA.NO.1/2025 IN EL.PET. NO. 1 OF 2024

APPLICANT/1ST RESPONDENT:

SURESH GOPI, AGED 68, S/O GOPINATHA PILLAI, 10/219/2, BHARAT HERITAGE, NETTISSERY, NETTISSERY P.O., MAHADEVA TEMPLE ROAD, THRISSUR DISTRICT, PIN 680651.

RESPONDENT/PETITIONER:

BINOY A.S., AGED 34 YEARS, S/O A.K. SHABEER, ANANTHAKATT PARAMBIL (H), THAZHEKKAD P.O., THAZHEKKAD VILLAGE, CHALAKUDY TALUK, THRISSUR DISTRICT, PIN 680697.

Application praying that in the circumstances stated in the affidavit filed therewith, the High Court be pleased to dismiss the above Election Petition, in the interest of justice.

This Application coming on for orders upon perusing the application and the affidavit filed in support thereof, and upon hearing the arguments of SRI.K.RAMAKUMAR, SENIOR ADVOCATE and M/S. B.N.SHIVSANKAR, MEGHA MUKUNDASWAR, TINU T.JOSEPH, SANJOJ M.A., VISHNU B.KURUP, DEVIKA S., SHEHIN S., SINI V.S., KESAV S. NAIR & VAISAKH D.S., Advocates for the Applicant in I.A./Respondent in Election Petition and of SRI. RENJITH THAMPAN, SENIOR ADVOCATE and M/S. M/S.P.R.REENA, SANTHOSH PETER (MAMALAYIL), K.B.SUMESH, K.RAKESH, Advocates for the Respondent in I.A./Petitioner in Election Petition, the court passed the following:

"C.R."

DR.KAUSER EDAPPAGATH, J.

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Dated this, the 1st day of April, 2026**ORDER**

In the 18th Lok Sabha election held in 2024, the respondent, Sri. Suresh Gopi was elected from the Thrissur Lok Sabha constituency. He was nominated and contested as the Bharatiya Janata Party (BJP) candidate. One of the electors at the constituency, namely, Sri. Binoy A.S presented the above Election Petition under Section 81(1) of the Representation of the People Act, 1951 (for short, 'the RP Act'), calling into question the election of the respondent on the ground specified in sub-section 1(b) of Section 100 of the RP Act.

2. According to the petitioner, the respondent, his election agent, and other people, with the respondent's consent, committed corrupt practices as defined under Section 123 (1) and (3) of the RP Act. Various instances of the alleged corrupt practices are detailed in paragraphs 8 to 27 of the Election Petition. It is alleged that those corrupt practices have vitiated the election of the respondent. The prayer in the Election Petition

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is to declare the respondent's election from the Thrissur Lok Sabha constituency in the 18th Lok Sabha election held on 26.04.2024, as void.

3. On receipt of the notice issued by this Court under Rule 212 of the Kerala High Court Rules, 1971, the respondent entered appearance and filed IA No.1/2025 to dismiss the Election Petition as not maintainable under Section 86(1) of the RP Act. The respondent sought to dismiss the Election Petition at the threshold without going to trial on the following grounds:

- (i) The copy of the Election Petition served to the respondent is not attested as a true copy by the petitioner under his own signature as mandated under Section 81(3) of the RP Act.
- (ii) The requirement under Section 83(2) of the RP Act that the Annexures to Election Petition shall be verified in the manner laid down in the Code of Civil Procedure, 1908 (for short, CPC), for the verification of pleadings is not complied with.
- (iii) Annexures 1 to 8, which form an integral part of the Election Petition, have not been attested as mandated under Section 81(3) of the RP Act.
- (iv) There is no concise statement of material facts as required under Section 83(1)(a) of the RP Act.
- (v) The Election Petition does not contain the full particulars of the alleged corrupt practices as required under Section 83(1)(b) of the RP Act.

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(vi) The affidavit under Rule 94 A of the Conduct of Elections Rules, 1961 falls short of the legal requirement.

4. The petitioner filed a counter-affidavit to IA No.1/2025 refuting the allegations. It is contended that there is substantial compliance with Sections 81(3), 83(1) and 83(2) of the RP Act. It is further contended that all the particulars necessary for laying the foundation of proving the corrupt practices are pleaded in the Election Petition as required under Section 83(1)(b) of the RP Act. It is also contended that non-compliance with Section 83(1) or 83(2) would not attract Section 86(1) of the RP Act. According to the petitioner, the interim application challenging the maintainability has been filed to delay the disposal of the Election Petition. The respondent filed a reply affidavit, and the petitioner filed a rejoinder affidavit more or less reiterating the averments in the affidavit filed by the respondent in support of IA No.1/2025 and the counter affidavit filed by the petitioner to the same.

5. The objection raised by the returned candidate as to the maintainability of the election petition for non-compliance with mandatory provisions requires to be considered and decided as a preliminary issue before directing the parties to go for trial, in view of the law declared by the Supreme Court in *Dr. Shipra (Smt.) and Others v. Shantilal Khoiwal and Others*¹. The Court has observed at page 1695 thus :

¹ AIR 1996 SC 1691

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"12. The contention that the election petition cannot be dismissed under S.86 at the threshold on account of the omission on the part of the Registry of the High Court to point out the same as per its procedure cannot be countenanced. Lapse on the part of the Registry is not an insurance to deny to the returned candidate the plea that the attestation of the affidavit and its certification to be a true copy is an integral part of the pleadings in the election petition. S.81, S.83(1) (c) and 86 read with R.94 - A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read, if the Court finds on an objection, being raised by the returned candidate, as to the maintainability of the election petition, the Court is required to go into the question and decide the preliminary objection. In case the Court does not uphold the same, the need to conduct trial would arise. If the Court upholds the preliminary objection, the election petition would result in dismissal at the threshold, as the Court is left with no option except to dismiss the same."

6. In this order, I refer to the status of the parties as they have been shown in the Election Petition.

7. I have heard Sri. Ranjith Thampan, the learned Senior Counsel for the petitioner and Sri.K.Ramakumar, the learned Senior Counsel for the respondent. The learned Senior Counsel on either side cited so many precedents in support of their respective arguments, which will be dealt with in the course of my discussion on the different issues.

8. Part XV of the Constitution of India deals with the elections. Article 325 thereof provides that there shall be one general electoral roll for every territorial constituency and that no person shall be ineligible for inclusion in such rolls on the grounds only of religion, race, caste, sex or any of them. Article 326 provides that elections to the House of the People and to the Legislative Assemblies of States shall be on the basis of adult

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suffrage. Article 327 enables Parliament to make laws with respect to all matters relating to elections to either House of Parliament or to the House of the Legislature of a State. Article 328 enables the Legislature of a State, if Parliament has not made such legislation, to make laws with respect to all matters relating to elections to the Houses of the Legislature of the State. Article 329 bars interference by courts in electoral matters and clause (b) in particular provides that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an Election Petition presented to such authority and in such manner as may be provided by or under any law made by the appropriate Legislature.

9. The RP Act is a law enacted by Parliament under Article 327 of the Constitution to provide for the adjudication of election disputes. The right to challenge an election is granted under the Act in accordance with the provisions of Article 329(b) of the Constitution. Part VI of the RP Act addresses election disputes. Chapter II outlines the procedure for presenting Election Petitions, while Chapter III covers the trial of such petitions. Section 80 states that no election shall be challenged except through an Election Petition filed in accordance with the provisions in Part VI. Section 80A grants jurisdiction to the High Court to try Election Petitions. Section 81 deals with how petitions should be presented. Section 82 specifies who shall be the parties to the Election Petition. Section 83 describes the contents required in the petition. Section 86 provides for

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dismissing an Election Petition *in limine* for failure to comply with Sections 81, 82, and 117. The grounds on which the High Court can declare an election of the returned candidate void are listed in Section 100.

10. The right to vote, the right to be elected, and the right to challenge an election are not civil or common law rights but are purely statutory rights, and therefore, they must be subject to the limitations imposed by them.² The nature of the rights to elect, to be elected, and to dispute an election, along with the scheme of the constitutional and statutory provisions relevant to these rights, has been explained and interpreted by the Supreme Court since 1952. Notable cases include *N. P. Ponnuswami v. Returning Officer, Namakkal Constituency and Others*³, *Jagan Nath v. Jaswant Singh and Others*⁴, *Bhikaji Keshao Joshi and Another v. Brijlal Nandlal Biyani and Others*⁵, *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore and Others*⁶, and *Jyoti Basu and Others v. Debi Ghosal and Others*⁷, among others. I consider it apposite to quote the observation made in *Jyoti Basu*⁸.

"8. 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. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations

² *N. P. Ponnuswami v. Returning Officer, Namakkal Constituency and Others*, (1952) 1 SCC 94; *Satya Narain v. Dhuja Ram and Others*, (1974) 4 SCC 237

³ (1952) 1 SCC 94

⁴ AIR 1954 SC 210

⁵ AIR 1955 SC 610

⁶ AIR 1964 SC 1545

⁷ (1982) 1 SCC 691

⁸ *ibid*

they are, and therefore, subject to statutory limitation. An election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on considerations of alleged policy because policy in such matters, as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, Court is put in a straight jacket. Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a complete and self contained code within which must be found any right claimed in relation to an election or an election dispute. We are concerned with an election dispute. The question is who are parties to an election dispute and who may be impleaded as parties to an election petition. We have already referred to the Scheme of the Act. We have noticed the necessity to rid ourselves of notions based on Common Law or Equity. We see that we must seek an answer to the question within the four corners of the statute. What does the Act say?"

11. Thus, it is fairly well settled that our election law, being statutory in character, must be strictly complied with, and no departure

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from the prescribed law is permissible. But at the same time, the purity of the election process must be maintained at all costs, and those who violate the statutory norms must suffer for such a violation. If the returned candidate is shown to have secured his success at the election by corrupt means, he must suffer for his misdeeds.⁹ It is equally settled that for the purpose of considering a preliminary objection as to the maintainability of the Election Petition, the averments in the petition should be assumed to be true, and the court has to find out whether these averments disclose a cause of action or a triable issue as such.¹⁰ Thus, reminded by the law, let me analyse each ground in detail.

Ground (i): Infraction of Section 81(3) of the RP Act

12. Section 86(1) of the RP Act provides for dismissal of the Election Petition *in limine* for non-compliance with Sections 81, 82 and 117. The learned Senior Counsel for the respondent submitted that the copy of the Election Petition supplied to respondent is not attested by the petitioner under his own signature to be true copy of the Election Petition, which is a mandatory requirement under Section 81(3) and the non-compliance of that requirement should result in the dismissal of the petition as required under Section 86(1). In support of this submission, the learned Counsel relied upon judgments of the Supreme Court in *Satya Narain v. Dhulja*

⁹ F.A. Sapa and Others v. Singora and Others, (1991) 3 SCC 375

¹⁰ V. Narayanaswamy v. C. P. Thirunavukkarasu, (2000) 2 SCC 294

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Ram,¹¹ *Sharif - ud - Din v. Abdul Gani Lone*,¹² *Dr. Shipra (Smt.) v. Shantilal Khoiwal and Others*,¹³ *Rajendra Singh v. Usha Rani*¹⁴ and those of this Court in *Kaveri Amma v. Devaki*¹⁵ and *Mary Thomas v. Anil Akkara (M.L.A. Wadakkancherry)*.¹⁶ Per contra, the learned Senior Counsel for the petitioner submitted that the copies of the Election Petition supplied to the respondent is attested and verified by the petitioner himself and merely because, petitioner has not stated and attested the copies as "True Copy" of the petition, it cannot be said that the Election Petition is either defective or suffers from non - compliance of mandatory provisions. The learned Counsel argued that there is substantial compliance with the statutory provisions, and therefore, the petition need not be dismissed *in limine* on this ground. Reliance was placed on the judgments in *Ch. Subbarao v. Member, Election Tribunal, Hyderabad and Others*,¹⁷ *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore and Others*,¹⁸ *Dr Anup Singh v. Shri. Abdul Ghani and Others*,¹⁹ *Sahodrabai Rai v. Ram Singh Aharwar and Others*,²⁰ *F.A. Sapa and Others v. Singora and Others*,²¹ *T.M. Jacob v. C. Poulouse*,²² *M. Kamalam v. Dr V.A. Syed Mohamad*,²³ *Dr K.K.*

¹¹ (1974) 4 SCC 237

¹² AIR 1980 SC 303

¹³ Supra note 1

¹⁴ AIR 1984 SC 956

¹⁵ 1996(2) KLT 189

¹⁶ 2017(2) KHC 518

¹⁷ AIR 1964 SC 1027

¹⁸ Supra note 6

¹⁹ AIR 1965 SC 815

²⁰ AIR 1968 SC 1079

²¹ Supra note 9

²² (1999) 4 SCC 274

²³ 1978 KHC 90

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Mohamad Koya v. P.M.Sayeed,²⁴ *K.K. Sumangala Teacher v. Usha Teacher*,²⁵
Yerra Krishnamoorthy v. Mariserlashibannaidu.²⁶

13. Section 81(3) of the RP Act reads thus:

"S.81(3): Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition, and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition."

A reference to the above provision shows that it consists of two parts. The first part requires that every Election Petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition, and the second part requires that every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. The first part of the section has been held to be a mandatory requirement by the Supreme Court in *Satya Narain's case*.²⁷ The second part of the section was also held to be mandatory in *Sharif - ud - Din's case*.²⁸ The Supreme Court in the said decision, while considering the provisions of S.89(3) of the Jammu and Kashmir Representation of the People Act, which corresponds to S.81(3) of the Central Act, 1951, has observed that the attestation of the copy of the Election Petition is mandatory and the attestation by the advocate of the petitioner cannot be treated as equivalent to the attestation by the petitioner, and non - compliance with

²⁴ 1977 KHC 339

²⁵ 2007 (3) KHC 299

²⁶ 1990 Supreme (AP) 249

²⁷ Supra note 11

²⁸ Supra note 12

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that requirement should result in the dismissal of the Election Petition. In *Dr Shipra*,²⁹ it was held that the absence of the endorsement of the notary on the copy of the affidavit accompanying the Election Petition renders the copy as not conforming to Section 81(3) of the RP Act, and the Election Petition is liable to be dismissed for the said omission. In *Kaveri Amma*,³⁰ the Division Bench of this Court took the view that non-compliance with the mandatory requirement that the petitioner shall attest the Election Petition would result in dismissal of the petition without going to its merits.

14. However, the Constitution Bench of the Supreme Court in *Murarka Radhey Shyam Ram Kumar's case*³¹ held that substantial compliance with the provisions of S.81(3) of the Act is sufficient to avoid the wrath of the provisions of S.86 of the Act. Agreeing with the view of the Constitution Bench in *Murarka Radhey Shyam Ram Kumar's case*,³² the Constitution Bench in *Ch. Subbarao's case*³³ ruled that substantial compliance with S.81(3) was sufficient, and the petition could not be dismissed where there had been substantial compliance with the requirements of S.81(3) of the Act *in limine*, under S.81(1) of the Act. Finally, another Constitution Bench in *T.M. Jacob*³⁴ concurred with the view expressed by the Constitution Bench in *Murarka Radhey Shyam Ram Kumar's case* as well as in *Ch. Subbarao's case*. I consider it is apposite to

²⁹ Supra note 1

³⁰ Supra note 15

³¹ Supra note 6

³² Supra note 6

³³ Supra note 17

³⁴ Supra note 22

quote paragraphs 39 and 40 of T. M. Jacob's case³⁵.

"39. Applying the test as laid down in Murarka Radhey Shyam Ram Kumar's case (supra), to the fact situation of the present case, we come to the conclusion that the defects complained of in the present case were not such as could have misled the appellant at all. The non-mention of the name of the Notary or the absence of the stamp and seal of the Notary in the otherwise true copy supplied to the appellant could not be construed to be omission or variation of a vital nature and, thus, the defect, if at all it could be construed as a defect was not a defect of any vital nature attracting consequences of S.86(1) of the Act. Under the circumstances, it must be held that there was no failure on the part of the election petitioner to comply with the last part of sub-section (3) of S.81 of the Act and, under the circumstances, S.86(1) of the Act was not attracted and the election petition could not have been dismissed by reason of the alleged failure to comply with the provisions of S.81 of the Act. In this connection, it is also relevant to note that the appellant, neither in the memo of objections nor in the written objections or in C.M.P. No. 2903 of 1996 has alleged that he had been misled by the absence of the name, rubber stamp and seal of the Notary on the copy of the affidavit supplied to him or that he had been prejudiced to formulate his defence. Even during the arguments, learned Counsel for the appellant was not able to point out as to how the appellant could have been prejudiced by the alleged omissions on the copy of the affidavit served on him.

40. In our opinion, it is not every minor variation in form but only a vital defect in substance, which can lead to a finding of non-compliance with the provisions of S.81(3) of the Act with the consequences under S.86(1) to follow. The weight of authority clearly indicates that a certain amount of flexibility is envisaged. While an impermissible deviation from the original may entail the dismissal of an election petition under S.86(1) of the Act, an insignificant variation in the true copy cannot be construed as a fatal defect. It is, however, neither desirable nor possible to catalogue the defects which may be

³⁵ Supra note 22

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classified as of a vital nature or those which are not so. It would depend upon the facts and circumstances of each case and no hard and fast formula can be prescribed. The tests suggested in Murarka Radhey Shaym's case, AIR 1964 SC 1545 (supra) are sound tests and are now well settled. We agree with the same and need not repeat those tests. Considered in this background, we are of the opinion that the alleged defect in the true copy of the affidavit in the present case did not attract the provisions of S.86(1) of the Act for alleged non-compliance with the last part of S.81(1) of the Act and that there had been substantial compliance with the requirements of S.81(3) of the Act in supplying 'true copy' of the affidavit to the appellant by the respondent."

15. The purpose and object of sub-section (3) of S.81 of the RP Act is to ensure that the petitioner takes full responsibility for the contents of the copy served on the respondent and the respondent gets a copy of the petition duly attested under the signature of the petitioner to be the true copy of the petition at the earliest possible opportunity to prevent any unauthorised alteration or tampering of the contents of the petition after it is filed in the Court. Based on the identical copy, the respondent can prepare his defence, including the plea of deficiency in the contents of the Election Petition.³⁶ In *T.M. Jacob*,³⁷ the Supreme Court observed that the object of serving a "True Copy" of an Election Petition and the affidavit filed in support of the allegations of corrupt practice on the respondent in Election Petition is to enable the respondent to understand the charge against him so that he can effectively meet the same in the written statement and prepare his defence. The requirement is, thus, of substance

³⁶ Sharif - ud - Din (supra), Manohar Joshi v. Niti Bhaurao Patil and Another, AIR 1996 SC 796

³⁷ Supra note 22

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and not of form.

16. The meaning of the expression 'copy' in S.81(3) of the RP Act has been elaborately dealt with by the Constitution Bench of the Supreme Court in *Murarka Radhey Shyam Ram Kumar's case*³⁸. It was held that the test to determine whether a copy was a true one or not was to find out whether any variation from the original was calculated to mislead a reasonable person. The Constitution Bench found as untenable the contention that since copies of the petition served on the returned candidate did not contain signatures of the petitioner below the word "petitioner", they had ceased to be true copies of the original petition, attracting the consequences of S.86(1). The Bench opined that the word 'copy' in sub-section (3) of S.81 does not mean an absolutely exact copy, but means that the copy shall be so true that nobody can by any possibility misunderstand it. A similar view was reiterated by another Constitution Bench in *Ch. Subbaro's case*.³⁹ wherein it was held that the expression 'copy' occurring in S.81(3) of the Act did not mean an exact copy but only one so true that no reasonable person could by any possibility misunderstand it as not being the same as the original. In *T.M. Jacob's case*.⁴⁰ the Constitution Bench, after considering all the earlier decisions, has explained the meaning of the expression 'True Copy', with reference to the provisions of S.81(3) of the Act in paragraph 36, thus:

³⁸ Supra note 6

³⁹ Supra note 17

⁴⁰ Supra note 22

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"36. The expression "copy" in S.81(3) of the Act, in our opinion, means a copy which is substantially so and which does not contain any material or substantial variation of a vital nature as could possibly mislead a reasonable person to understand and meet the charges/allegations made against him in the Election Petition. Indeed, a copy which differs in material particulars from the original cannot be treated as a true copy of the original within the meaning of S.81(3) of the Act, and the vital defect cannot be permitted to be cured after the expiry of the period of limitation."

17. The decisions mentioned above clarify that the legislative purpose of Section 81(3) of the RP Act is to guarantee the authenticity of the copy served on the respondent, to hold the petitioner accountable for its contents, and to prevent unauthorised changes or tampering after it is filed in court. The word "copy" in the provision does not mean a replica but one so accurate that no one can, by any possibility, mistake it for not being the same as the original. The test for whether a copy is true is whether any difference from the original is likely to mislead an ordinary person. However, a copy that differs in significant details from the original cannot be regarded as a true copy under Section 81(3). An Election Petition cannot be dismissed at the threshold under Section 86(1) if there is substantial compliance with Section 81(3).

18. Coming to the merits of the case, the respondent has no case that there is no signature of the petitioner on the copy served to him. What is stated in the affidavit filed along with IA No.1/2025 is that there is no proper attestation of the Election Petition as required under Section 81(3) of the RP Act, insofar as there is no attestation that it is a "True Copy" of

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the Election Petition. The definite case of the petitioner is that he has filed six copies along with the original in the office of the High Court, and every copy of the Election Petition is signed under his own signature on each page. However, he admits that it does not contain the endorsement "True Copy".

19. Exhibit R1(a) is a copy of the Election Petition served to the respondent. It is a photostat copy of the certified copy of the original of the Election Petition obtained from the Court. As per Rule 212(1) of the Rules of High Court of Kerala, 1971, every Election Petition shall be accompanied by three authenticated copies of the application for the use of the Court and twice the number of additional copies as there are respondents to be produced along with the application for service, along with summons. In view of the submission of the learned counsel for the petitioner that the petitioner has produced six copies of the Election Petition, each containing the petitioner's signature on each page, along with the Original Election Petition, I called for the entire records from the Registry and found that the said submission is correct. There are four authenticated copies and two additional copies still in the file. Moreover, going by the endorsement made in the original of the Election Petition, along with the Election Petition, the petitioner has filed four authenticated copies and two additional copies along with the original. Those six copies and Ext.R1(a) are identical. All the pages (pages from 1 to 21) in Ext.R1(a), as well as in the six copies of the Election Petition filed by the petitioner

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before the Court, contain the signature and name of the petitioner. The Advocate of the petitioner also subscribed to his signature on all the pages. At the bottom of the last page (page No.22), after the verification, the petitioner as well as the Advocate have subscribed to their respective signatures apart from putting their names. Below that, an additional signature has been subscribed by the petitioner after writing his name in his own handwriting. However, the words "True Copy" are not there.

20. The word used in Section 81(3) of the RP Act is 'attested', not 'signed'. What is contemplated is not simply signing as a true copy but attesting as a true copy. The attestation in the context of Section 81(3) of the RP Act is an act of authentication of the copy produced, that it is the true copy of the original. Thus, for the purpose of attesting a copy as a true copy of the original Election Petition, an additional signature is required. The law requires the petitioner's own signature, not just a certification by an advocate or an officer. The signature is usually accompanied by an endorsement, "True Copy". While the requirement is mandatory, the courts have held that "substantial compliance" is sufficient. If the copy is accurate, the absence of the exact words "True Copy" might not be fatal if the petitioner's signature indicates authentication.

21. The question whether the absence of the words "True Copy" above the signature of the petitioner would render the attestation invalid came up for consideration before the Supreme Court as early as 1964 in

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C.H. Subbarao.⁴¹ In that case, the copies were signed by the petitioner, but there was no attestation in the sense that the words "True Copy" were omitted above the signature of the petitioner. The Supreme Court held that as the signature in the original was there in the copy, the presence of such original signature in the copy was sufficient to indicate that the copy was attested as a true copy, even though the words "True Copy" were not written above the signature in the copies. The Court held that there was substantial compliance with S.81(3) of the RP Act and that the petition could not be dismissed under S.90(3) of the RP Act. Almost a parallel case arose for consideration by the Supreme Court in *Dr. Anup Singh v. Shri.Abdul Ghani*.⁴² In that case, the necessary number of copies were filed, and the copies bore the signature of the petitioner concerned, but the words "True Copy" were not written. The copies were carbon copies of the original, and there was no dispute that they were not true copies thereof. The Supreme Court again held that there is substantial compliance with S.81(3) of the RP Act. Further, the Division Bench of this Court in *Dr.K.K.Mohamad Koya v. P.M.Sayeed*,⁴³ had occasion to consider the same question. In that case, though all the pages of the true copy of the Election Petition were signed by the petitioner, there was no attestation that they were true copies. This is the same situation in the present case, where all copies were signed by the petitioner, just as he has signed the original

⁴¹ Supra note 17

⁴² Supra note 19

⁴³ Supra note 24

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Election Petition; there was no further attestation. Relying on *C.H.Subbarao's case*,⁴⁴ the Division Bench held that since the copies filed contained the signature of the petitioner, there was substantial compliance with Section 81(3) even though the words "True Copy" were not written above the signatures. The Karnataka High Court in *Sadanandaiah S.M v. Returning Officer, Chitradurga and Others*⁴⁵ also took the same view and held that merely because the petitioner has not stated at the end of the copy of the petition as "True Copy", the petition cannot be dismissed *in limine*, since the petitioner has filed copies of the petition verified by him. In *M. Kamalam*,⁴⁶ even though there was no signature of the petitioner on the copy of the Election Petition, the signature put on the foot of the copy of the affidavit was found to be sufficient compliance with Section 81(3).

22. A perusal of the authenticated copies produced before the court, as well as Ext. R1(a), would show that there is an additional signature on the bottom of the last page (page No.22) of the Election Petition of the petitioner. It is true that the original also contains an additional signature. For the simple reason that the original contains an additional signature, the attestation done in the copy by putting an additional signature will not lose its validity.

23. The learned Senior counsel for the respondent vehemently

⁴⁴ Supra note 17
⁴⁵ 2001 KHC 3481
⁴⁶ Supra note 23

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argued that even with the extra signature found on the bottom of page No.22, there is no indication that the signatory is the petitioner. According to the learned Senior Counsel, the Court at this stage is not permitted to compare the signature as the signature put is that of the petitioner or counsel. I cannot subscribe to the said submission. Beneath the additional signature of the petitioner on the bottom of page No.22, the petitioner has written his name himself. Mere absence of the word 'petitioner' is insignificant to identify that the signature is that of the petitioner.

24. The learned Senior counsel also argued that a fraudulent attempt has been made by the petitioner to introduce the words "True Copy" in Annexure 9 copy produced along with the counter affidavit to IA No.1/2025. According to the counsel, since the petitioner himself has taken a stand that Annexure 9 is the authenticated copy of the Election Petition, necessarily, the copy supplied to the respondent without the endorsement "True Copy" cannot be authentic. I see no merit in the said submission. In the counter affidavit to IA No.1/2025, the petitioner has taken a clear stand that in Ext. R1(a) produced by the respondent along with IA No.1/2025, in the bottom portion of all the pages from the docket of the Election Petition, index portion, synopsis etc. up to the end of the Election Petition at page 22 and the Annexures, the petitioner has affixed his signatures which would show that the copy of the Election Petition submitted to the respondent is the true copy of the Election Petition filed by the petitioner before this court. What is stated in paragraph 21 of the

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counter affidavit is that, as an abundant caution, a fresh copy of the Election Petition was produced as Annexure 9. For the simple reason that it contains the endorsement as 'True Copy', that does not mean that Ext. R1(a) served to the respondent or the authenticated copies produced by the petitioner, along with the Election Petition, is not an attested true copy.

25. Thus, when the copies furnished along with the original Election Petition in terms of Section 81(3) of the RP Act and Rule 212(1) of the Rules of High Court of Kerala, 1971 were signed by the petitioner both before and after the verification, it amounts to substantial compliance of Section 81(3) even though they were not specifically attested as "True Copy". The copy served on the respondent is also a photocopy of the certified copy of the Election Petition. A certified copy obtained from the same court in which the Election Petition was filed, which is exactly the copy of the Original Election Petition, will also be a substantial compliance with Section 81(3) of the RP Act, especially in view of paragraph 36 of the judgment in *T.M.Jacob's case*.⁴⁷

26. Neither Chapter II of Part VI of the RP Act, which deals with the presentation of Election Petitions to High Court, nor Chapter XVI of the Rules of High Court of Kerala, 1971, which deals with Election Petitions, casts any responsibility on the election petitioner to serve the copy of the Election Petition or Annexures therein on the respondents. On the other

⁴⁷ Supra note 22

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hand, it is the duty of the Registry to serve copies of the Election Petition on the respondent. The election petitioner only needs to produce sufficient number of true copies of the Election Petition as mandated by the statutory provisions, along with the Election Petition, before the Court. Section 81(3) of the RP Act says that every Election Petition shall be accompanied by as many copies thereof as there are respondents in the petition. Rule 212(1) of the Rules of High Court of Kerala, 1971 mandates that every Election Petition shall be accompanied by three authenticated copies of the application for the use of the court and twice the number of additional copies as there are respondents to be produced along with the application for service, along with summons as per Rules 210 and 211. A conjoint reading of Rules 210, 211 and 212 would show that summons by hand and registered post shall be sent by the Court to the respondents to the address given by the petitioner. This Court in *K.K.Sumangala Teacher*⁴⁸ held that so long as the statute does not cast a duty on the petitioner to serve the copies of petition and documents, an Election Petition cannot be dismissed for the failure on the part of the Court to serve the copy of the petition and the documents on the respondent. The Andhra Pradesh High Court in *Yerra Krishnamoorthy*⁴⁹ also took the same view and held that unless the statute empower the election petitioner to serve the copy of the Election Petition or the Annexures thereto on the respondents, he has

⁴⁸ Supra note 25

⁴⁹ Supra note 26

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no responsibility to serve the same to the respondent and the duty of serving the same vests in the Registry.

27. In the present case, along with the original Election Petition, four authentic copies of the Election Petition and two additional copies were submitted before the Court. All of them contain the signature of the petitioner on all the pages and an additional signature on the bottom of the last page 22 after the verification, suggesting attestation, though there are no words "True Copy". It is the duty of the Court to serve any of the said true authenticated copies to the respondent. For failure, if any, on the part of the Court to serve the same on the respondent, the petitioner cannot be penalised. The copy served on the respondent is also a photocopy of the certified copy of the Election Petition. Since the petitioner had filed as many copies of the Election Petition along with the original as required under Section 81(3) of the RP Act and Rule 212(1) of the Rules of High Court of Kerala, 1971 which carry his original signature in all pages and an additional signature in the bottom of last page after verification signifying the attestation and copy served on the respondent is also the photocopy of the certified copy of the Election Petition, I am of the view that there is substantial compliance of Section 81(3) of the RP Act.

28. In *Rajendra Singh*,⁵⁰ the Supreme Court held that Section 81(3) of the RP Act does not contemplate the filing of incorrect copies, and it is

⁵⁰ Supra note 14

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not the duty of the respondent to sift through the entire records to find which is the correct copy. If out of the copies filed, the respondent's copy is found to be incorrect, it amounts to non compliance of Section 81(3). In that case, the objection was raised after the evidence was over, and the respondent before the Supreme Court, in her evidence before the trial court, admitted that some of the copies were not duly signed. In the present case, the case is only in the preliminary stage, and not even a written statement has been filed. Hence, there is no question of any misleading of the respondent regarding the contents of the Election Petition. Moreover, the said decision cannot be relied upon in view of the judgment of the Supreme Court in *T.M.Jacob's case*⁵¹ in which it was held that the object of Section 81(3) is to ensure that the respondent in the Election Petition gets identical copy of the Election Petition presented to the court to acquaint the respondent with the contents of the Election Petition as is presented in the court. As is held in paragraph 40 of the judgment, the copy which is served on the respondent does not contain any material or substantial variation of a vital nature as could mislead a reasonable man to understand and meet the charges made against him. On the other hand, Ext. R1(a) copy served on the respondent, and the six copies produced before the court are identical to that of the original. That apart, the petitioner has filed an interim application as IA No.3/2025 to serve on the respondent the authenticated copy of the Election Petition

⁵¹ Supra note 22

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submitted before the court, along with the original of the Election Petition. In *Chandrakant Uttam Chodankar v. Dayanand Rayu Mandrakar and Others*⁵², the Supreme Court took the view that the copies of the Election Petition served on the respondent subsequently, though such copies were produced along with the Election Petition, amount to compliance with Section 81(3) of the R.P. Act.

29. For the aforementioned reasons, I answer ground No.(i) in favour of the petitioner and against the respondent, holding that there is no infraction of Section 81(3) of the RP Act.

Grounds (ii) & (iii): Non-attestation or verification of Attachments and Schedules as mandated under Sections 83(2) and 81(3) of the RP Act

30. Section 83(1)(c) of the RP Act mandates that an Election Petition shall be verified in the manner laid down in the Code of Civil Procedure, 1908 (for short, C.P.C), for the verification of pleadings. Section 83(2) prescribes that any Schedule or Annexure to the Election Petition shall also be verified in the same manner as the petition. However, Section 86, which gives the power to dismiss the Election Petition at the threshold for non-compliance with certain provisions, does not mention Section 83.

31. The respondent has no case that the Election Petition is not verified in the manner laid down in the CPC. The learned Senior Counsel for the respondent submitted that Annexures 1 to 8 produced along with the Election Petition, as well as the Schedules, are not verified as

⁵² 2005 KHC 386

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contemplated in Order VI Rule 15 of CPC; instead, strangely, the Annexures are attested and certified as true copies, which is not what is required by a verification of the contents of the Schedule and Annexures. Since Annexures are an integral part of the Election Petition, there is non-compliance of Section 81(3), besides infraction of Section 83(2), submitted the learned Senior Counsel. Per contra, the learned Senior Counsel for the petitioner submitted that the Annexures are not an integral part of the Election Petition but are only produced as evidence to substantiate its contents. The learned Senior Counsel further submitted that the schedules referred to by the petitioner are not Schedules of the Election Petition, but are formats of Section 63(4)(c) of Bharatiya Sakshya Adhiniyam, 2023 (for short, BSA, 2023), and they do not require any verification or attestation. The learned Senior Counsel further submitted that the attestation of the Annexures as true copies by affixing the petitioner's signature is sufficient compliance with Section 81(3). At any rate, the non-compliance of Section 83(2) does not attract Section 86 of the RP Act, added the Senior Counsel.

32. As rightly argued by the learned Senior Counsel for the petitioner, the Schedules found on pages 30, 32, 34 and 36 of the paper book and Ext.R1 (a) are not the Schedule of the Election Petition but the certificate of the electronic document (pen drive) under Section 63(4)(c) of BSA. Hence, they do not require any verification. On the bottom of the pages 30, 32, 34 and 36, the signature affixed by the petitioner evidences that they are true copies. Indeed, Annexures 1 to 8 do not contain

verification as contemplated in Order VI Rule 15 of CPC.

33. The question whether an Election Petition could be summarily dismissed under Section 86(1) of the RP Act for non-compliance with the provisions of S.83 thereof has come up repeatedly for consideration before the Supreme Court. In *Murarka Radhey Shyam Ram Kumar*,⁵³ a preliminary objection to the maintainability of the Election Petition was raised on the ground that the verification was defective. The verification stated that the averments made in some paragraphs of the petition were true to the petitioner's personal knowledge, and that the averments in some other paragraphs were verified to be true on advice and information received from legal and other sources. There was no statement that the advice and information received by the election petitioner were believed by him to be true. It was held that a defect in verification, which is to be made in the manner laid down in CPC for the verification of pleadings as required by Clause (c) of sub-section (1) of Section 83 is not fatal to the maintainability of the petition. The ratio laid down in *Murarka Radhey Shyam Ram Kumar*⁵⁴ was reiterated by a three-member Bench of the Supreme Court in *F. A. Sapa*⁵⁵ holding that the mere defect in the verification of the Election Petition is not fatal to the maintainability of the petition, and the petition cannot be thrown out solely on that ground. It was further held that since Section 83 is not one of the three provisions mentioned in Section 86(1),

⁵³ Supra note 6

⁵⁴ *ibid*

⁵⁵ Supra note 9

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ordinarily it cannot be construed as mandatory unless it is shown to be an integral part of the petition under Section 81. It was also held that though an allegation involving corrupt practice must be viewed very seriously and the High Court should ensure compliance with the requirements of Section 83 before the parties go to trial, the defective verification of a defective affidavit may not be fatal. This decision was followed by another three-member Bench in *R. P. Moidutty v. P. T. Kunju Mohammad*.⁵⁶ In *Sardar Harcharan Singh Brar v. Sukh Darshan Singh*,⁵⁷ the Supreme Court reiterated that non-compliance with the provisions of Section 83 does not attract the consequences envisaged by Section 86(1) and that the defect in the verification and the affidavit is curable. In *K. K. Ramachandran Master v. M. V. Sreyamakumar*,⁵⁸ the Supreme Court followed *F. A. Sapa*⁵⁹ and *Sardar Harcharan Singh Brar*⁶⁰ to hold that defective verification is curable. The Court again reiterated that the consequences that may flow from a defective affidavit are required to be judged at the trial of an Election Petition and that such an Election Petition cannot be dismissed under Section 86(1).

34. In *Saritha S. Nair v. Hibi Eden*,⁶¹ a three-Judge Bench of the Supreme Court, after referring to all the decisions referred above, held that a defective verification is a curable defect and an Election Petition cannot

⁵⁶ (2000) 1 SCC 481

⁵⁷ (2004) 11 SCC 196

⁵⁸ (2010) 7 SCC 428

⁵⁹ Supra note 9

⁶⁰ Supra note 57

⁶¹ AIR 2021 SC 483

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be thrown out *in limine*, on the ground that the verification is defective. In that case, the nominations filed by the petitioner to contest from the Ernakulam and Wayanad constituencies in the Lok Sabha election held in 2019 were rejected on the ground that she was convicted in two criminal cases. After the election was over, she filed two Election Petitions before the High Court, primarily contending that the rejection of her nominations was illegal. The High Court framed a preliminary issue as to whether the Election Petitions were maintainable when the conviction was not suspended in appeal or revision. The High Court decided to take up the preliminary issue for consideration along with the question relating to the curability of defects noticed in the Election Petitions. On the first issue, the High Court noted in paragraph 18 that there were three defects. They were:

- (i) Petitioner has not signed the declaration portion of the verification of the Election Petition;
- (ii) In the verification portion, in respect of Annexures, affidavits and petitions, it is stated that the index has been verified instead of Annexures, affidavits and petitions;
- (iii) Annexures are not verified by the petitioner as mandated, and instead of verification, annexures are seen certified as true copies by the petitioner and the counsel.

(emphasis supplied)

The High Court, after hearing both sides, passed an order dated

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31/10/2019 rejecting both the Election Petitions on two grounds, namely:

- (i) that there were incurable defects in the Election Petitions in terms of Section 86(1) of the Representation of the People Act, 1951; and
- (ii) that the petitioner was disqualified in view of the inhibitions contained in Section 8(3) of the Act read with Article 102(1)(e) of the Constitution.

In appeal, the Supreme Court took the view that the High Court committed a grave error in holding the three defects mentioned hereinabove as incurable. It was held that the defects are curable and the petitioner is entitled to an opportunity to cure the defects. The defect (iii) noted in the above case is the same in the instant case as well.

35. The learned Senior Counsel for the respondent submitted that though Section 86 of the RP Act does not refer to Section 83 thereof, and so, *prima facie*, an Election Petition cannot be summarily dismissed under Section 86 for non-compliance with the provisions of Section 83, nevertheless, it can be summarily dismissed if it does not furnish cause of action in exercise of the powers under C.P.C. Another facet of this argument is that if the provisions of Section 83 of the Act are not complied with, then the Election Petition cannot be treated as an Election Petition at all. Strong reliance was placed on *Hardwari Lal v. Kanwal Singh*⁶², *Azhar Hussain v. Rajiv Gandh*⁶³ and *M. Karunanidhi v. H. V. Hande*⁶⁴.

⁶² (1972) 1 SCC 214

⁶³ AIR 1986 SC 1253

⁶⁴ (1983) 2 SCC 473

36. The contention urged in *Hardwari Lal*⁶⁵ that since Section 83 of the RP Act does not find a mention in Section 86 thereof, an Election Petition could not be summarily dismissed for non-compliance of Section 83. A three-judge Bench of the Supreme Court held that the fact that Section 83 does not find a place in Section 86 does not mean that powers under C.P.C cannot be invoked, and in a case where an Election Petition does not furnish cause of action, it can be summarily dismissed invoking the power under Order VII Rule 7 of C.P.C. The issue was, again, specifically raised in *Azhar Hussain*.⁶⁶ Following *Hardwari Lal*,⁶⁷ it was held that an Election Petition can be summarily dismissed if it does not furnish a cause of action in exercise of the powers under the C.P.C. However, both these cases related to non-incorporation of material facts and particulars relating to the corrupt practice alleged by the election petitioner in the Election Petition as required under Section 83(1)(a) and (b) of the RP Act. In *Hardwari Lal*,⁶⁸ it was contended that an Election Petition could not be dismissed for want of material facts because Section 86 of the RP Act conferred power on the High Court to dismiss the Election Petition which did not comply with the provisions of Sections 81, 82 or 117. It was emphasized that Section 83 did not find a place in Section 86. Repelling the said contention, it was held that under Section 87, every Election Petition shall be tried by the High Court as nearly as may be in accordance

⁶⁵ Supra note 62

⁶⁶ Supra note 63

⁶⁷ Supra note 62

⁶⁸ *ibid*

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with the procedure applicable under CPC to the trial of the suits and thus an Election Petition which does not furnish a cause of action can be dismissed summarily. In *Azhar Hussain*⁶⁹ it was held that all the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a) and an Election Petition therefore can be and must be dismissed if it suffers from any such vice.

37. It emerges from the aforesaid decision that appropriate orders dismissing an Election Petition in exercise of powers under the CPC can be passed if the mandatory requirements enjoined by Section 83 (1) (a) or (b) of the Act to incorporate the material facts in the Election Petition are not complied with. Neither *Hardwari Lal*⁷⁰ nor *Azhar Hussain*⁷¹ is an authority for the proposition that an Election Petition could be summarily dismissed invoking the powers under C.P.C for non-compliance of the provisions of 83(1)(c) or 83 (2) of the RP Act regarding the verification of the Election Petition and Schedules and Attachments thereto. It would follow that if an Election Petition did not comply with the provisions of 83(1)(c) or 83 (2) of the RP Act, it would still be called an Election Petition.

38. The learned Senior Counsel for the respondent further submitted that the Annexures 1 to 7 are an integral part of the Election Petition, and as none of the Annexures contains verification as

⁶⁹ Supra note 63

⁷⁰ Supra note 62

⁷¹ Supra note 63

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contemplated under law, there is non-compliance with Section 81(3), warranting dismissal of the Election Petition. Meeting the said argument, the learned Senior Counsel for the petitioner submitted that the Annexures are not an integral part of the Election Petition but are only produced as pieces of evidence and hence absence of proper verification would not amount to non-compliance of Section 81(3), but would, at best, amount to non-compliance of Section 83(2) only, which is not fatal.

39. It is well settled by a catena of decisions of the Supreme Court, which have been cited and relied on by both sides, that where the document is incorporated by reference in the Election Petition without reproducing its contents in the body of the Election Petition, it forms an integral part of the petition, and if a copy of that document is not furnished to the respondent with a copy of the Election Petition, the defect is fatal attracting dismissal of the Election Petition under Section 86(1) of the RP Act. On the other hand, when the contents of the document are fully incorporated on the body of the Election Petition and the document also is filed with the Election Petition, not furnishing a copy of the document with a copy of the Election Petition in which the contents of the document are already incorporated, does not amount to non-compliance of Section 81(3) to attract Section 86(1) of the RP Act. In other words, in the former case, the document filed in the Election Petition is an integral part of the Election Petition, being incorporated by reference in the Election Petition and without a copy of the document, the copy is an incomplete copy of the

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Election Petition, and therefore, there is non-compliance with Section 81(3), while in the latter case, the document annexed to the petition is mere evidence of the averments in the Election Petition which incorporate fully the contents of the document in the body of the Election Petition and, therefore, non supply of a copy of the document is mere non supply of a document which is evidence of the averments in the Election Petition and, therefore, there is no non compliance of Section 81(3). The Court would have to decide in each case whether the Annexure referred to in Section 83(2) constitutes an integral part of the Election Petition or not [See *Sahodrabai Rai*⁷² *Manohar Joshi v. Nitin Bhaurao Patil*,⁷³ *U.S.Sasidharan v. K.Karunakaran*⁷⁴ and *Ajay Maken v. Adesh Kumar Gupta*⁷⁵].

40. In all the above decisions cited at the Bar, the document in question had been filed in the court along with the Election Petition, but a copy of that document was not supplied to the respondent with a copy of the Election Petition. In those cases, wherein the annexed document was treated to be incorporated by reference in the Election Petition, forming an integral part of the Election Petition, non-supply of a copy of the document was held to be fatal, warranting dismissal of the Election Petition under Section 86(1) for non-compliance with Section 81(3). In the other cases, the document was filed with the Election Petition, but the contents thereof were also incorporated in the body of the Election Petition, a copy of which

⁷² Supra note 20

⁷³ AIR 1996 SC 796

⁷⁴ (1989) 4 SCC 482

⁷⁵ (2013) 3 SCC 489

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had been supplied to the respondent, even though a copy of that document was not furnished in addition. In those cases, non-supply of a copy of the document was held not to be non-compliance with Section 81(3) because the document annexed to the Election Petition was treated as evidence of the averments contained in the body of the Election Petition, a copy of which had been furnished to the respondent. Though the question of integral part or not arose only with reference to non-furnishing of a copy of the Annexures to the respondent in the above decisions, the dictum laid down therein could be applied to verification of the Annexures as required under Section 83(2) as well.

41. Annexure 1 is a certificate issued by the Tahsildar certifying that the petitioner is a voter in the Thrissur Parliamentary Constituency. The said fact has been pleaded in paragraph 1 of the Election Petition. Annexure 1 has been produced to prove the claim in the Election Petition that the petitioner is a voter in the Thrissur Parliamentary Constituency. Annexure 2 is a pen drive containing the alleged corrupt practice committed by the respondent during the election campaign at Panchavady colony, uploaded on the Facebook page of "BJP Thrissur" on 29/3/2024, along with the certificate under Section 63 of BSA. In paragraph 8 of the Election Petition, the relevant facts stated by the respondent and others in Annexure 2 are fully reproduced in Malayalam. Annexure 2 pen drive has been produced to prove the contents of the corrupt practice at Panchavady colony with evidence. Annexure 3 is a pen drive containing the alleged

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corrupt practice committed by the respondent during the election campaign at Pope Nagar. The details of the corrupt practice at Pope Nagar, which forms part of Annexure 3, are elaborately mentioned in paragraphs 12, 13, and 15. It has also been reproduced in Malayalam in paragraph 13. Annexure 4 is a screenshot of the Facebook page showing the distribution of shade umbrellas by BJP workers, including the District President of BJP, published on the Facebook page of BJP Thrissur, along with the certificate under Section 63 of the BSA. The contents of Annexure 4, the corrupt practice of distributing SG umbrellas, are clearly described in paragraph 16 of the Election Petition. Paragraph 17 of the Election Petition refers to a corrupt practice involving the distribution of money to voters at Sivaramapuram colony on 25/4/2024. Details of this practice are provided in paragraph 17. Annexure 5 is a pendrive containing a news item published in Manorama News about the allegation of corrupt practice mentioned in paragraph 17. Annexure 6 is a copy of the complaint filed by the petitioner against the respondent before the Returning Officer of the Thrissur Parliamentary Constituency, alleging the respondent's corrupt practice of erecting a flex board with the respondent's photo, the Prime Minister's photo, and the Sree Ram Temple, Ayodhya, in Uttar Pradesh, with the statement "ചതിക്കില്ല വിശ്വസിക്കാം". Paragraph 20 of the Election Petition clearly alleges this corrupt practice. Annexure 7 is a copy of the complaint filed by Sri K.P. Rajendran, the Chief Election Agent of Sri.V.S. Sunil Kumar, the LDF candidate, before the District

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Collector/Election Commissioner, alleging that Sri A.P. Abdullakutty, the BJP National Vice President, during an election convention at Poothakkulam Maithanam in Irinjalakuda on 30/3/2024, appealed to voters of the Thrissur constituency to vote for the respondent by referencing the religious symbol Lord Sree Rama. The entire content of Annexure 7 has been reproduced in Malayalam in paragraph 23 of the Election Petition. Annexure 8 is a receipt issued by the Section Officer of the Kerala High Court for the payment of the security deposit to file the Election Petition. This shows that Annexures 1 to 7 have been produced as evidence to prove their contents, which are clearly pleaded in the Election Petition and are not an integral part of it.

42. The learned counsel for the respondent strongly relied on the decision of the Supreme Court in *M.Karunanidhi*⁷⁶ and that of a Single Bench of this Court in *Mary Thomas*.⁷⁷ In *M. Karunanidhi*⁷⁸ it was held that the photograph referred to in paragraph 18(b) of the Election Petition is an Annexure within sub-section (2) of Section 83 and forms an integral part of the Election Petition, and failure to furnish a copy of the said photograph along with the Election Petition violates Section 81(3). The controversy in that case was whether the photograph was an Annexure in terms of Section 83(2) or merely a document to prove the allegation. After referring to *Sahodrabai's case*,⁷⁹ the Supreme Court observed that the photograph

⁷⁶ Supra note 64

⁷⁷ Supra note 16

⁷⁸ Supra note 64

⁷⁹ Supra note 20

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was not a mere document accompanying the Election Petition but was a part and parcel of the pleading. It was in these circumstances that the Supreme Court held that the photograph mentioned in paragraph 18(b) of the Election Petition was an integral part of the Election Petition and failure to supply the same is in violation of Section 81(3). In *Mary Thomas*,⁸⁰ it was held that when a Schedule to the Election Petition suffers from a total lack of verification, it falls within the mischief of Sections 81(3) and 83(2) of the RP Act. In that case, the Schedule I was admittedly an integral part of the Election Petition, which does not contain any verification at all. It was in those circumstances that the Single Bench took the view that such defects, which are incurable in nature, would result in the dismissal of the Election Petition. In this case, as already observed, Annexures 1 to 7 are only documents to prove the pleadings in the Election Petition and not an integral part of the Election Petition, unlike in *Karunanidhi's* case⁸¹ and *Mary Thomas's* case.⁸² Hence, the dictum laid down in *Karunanidhi's* case⁸³ and *Mary Thomas's* case⁸⁴ does not apply to the facts of the present case. That apart, in the present case, at the bottom of all Annexures, the signature of the petitioner is clearly affixed, apart from the signature provided above the words "name and signature". Hence, there is proper attestation by affixing a signature in all the Annexures. In *M. Kamalam*,⁸⁵

⁸⁰ Supra note 16

⁸¹ Supra note 64

⁸² Supra note 16

⁸³ Supra note 64

⁸⁴ Supra note 16

⁸⁵ Supra note 23

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it was held that even when there was no signature appended by the election petitioner on the copy of the Election Petition, the signature placed on the foot of the affidavit was sufficient compliance with the requirement under Section 81(3). Since Annexures 1 to 7 have been produced as evidence to prove their contents and not an integral part of the Election Petition, the absence of proper verification of Annexures would not amount to non-compliance with Section 81(3). The defect in the verification of Annexures 1 to 7 as required under Section 83(2) is not fatal, attracting the dismissal of the Election Petition under Section 88(1) of the RP Act. The point is hence answered against the respondent.

Ground (iv) & (v): Non-disclosure of material facts and full particulars of the corrupt practices as required under Section 83(1)(a) and (b) of the RP Act

43. As provided in Section 81 of the RP Act, an Election Petition could be filed only on any one or more of the grounds specified in Section 100(1) or 101, which include corrupt practices. Section 100 (1)(b) of the RP Act empowers the High Court to declare the election of the returned candidate to be void on the ground that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent. Corrupt practice in an Election Petition is like a criminal charge. If accepted, it may lead to disqualification. The election law, therefore, insists that to unseat a returned candidate, the corrupt practice must be specifically

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alleged and strictly proved to have been committed by the returned candidate himself, by his election agent or by any other person with the consent of the returned candidate or by his election agent. Since pleadings play an important role in an Election Petition, the legislature has provided that the allegations of corrupt practice must be properly alleged and both the material facts and particulars provided in the petition itself so as to disclose a complete cause of action.

44. Under Section 83(1) of the RP Act, 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. All primary facts to be proved at the trial by a party to establish the existence of a cause of action or defence are material facts. Material facts would mean all the basic facts constituting the ingredients of the particular cause of action that the party is bound to establish before the court to succeed in that cause of action. As distinguished from material facts under Section 83(1)(a), particulars under Section 83(1)(b) are details of the case set up by the party. Material particulars would mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a). 'Particulars' serve the purpose of finishing touches to the basic contours of

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a picture already drawn, to make it full, more detailed and more informative.

45. Though the omission to comply with Section 83 of the RP Act is not made a ground under Section 86 for dismissal of the petition, the powers of the court to strike out pleadings under Order VI Rule 16 and reject the petition under Order VII Rule 11 of C. P. C. is always there in view of Section 87 of the RP Act, which makes the provisions of C. P. C. applicable as nearly as may be, subject to the provisions of the RP Act and any of the Rules. Under Order VI Rule 16 of C.P.C., the Court is empowered at any stage of the proceedings to strike out any pleading which may be unnecessary, scandalous, frivolous, vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit or which otherwise is an abuse of the process of the court. Order VII Rule 11(a) of C.P.C. mandates that a plaint shall be rejected where it does not disclose a cause of action. Failure to allege even a single material fact will render the cause of action incomplete and render the pleadings in respect of that cause of action liable to be struck off under Order VI Rule 16 of C.P.C. If the Election Petition is based on such incomplete causes of action alone and if no other triable issue remains after the pleadings are thus struck off, the entire petition itself will be liable to be rejected under Order VII Rule 11(a) as not disclosing a cause of action even at the threshold or at any later stage.⁸⁶ In the case of an Election Petition, based on allegations of

⁸⁶ See Azhar Hussian v. Rajiv Gandhi (AIR 1986 SC 1253), Manphul Singh v. Surinder Singh [(1973) 2 SCC 599], Kona

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commission of corrupt practice, the standard of proof is that of criminal trials, which requires strict proof of the charge beyond a reasonable doubt.⁸⁷

46. The respondent, by way of preliminary objection, sought the Election Petition itself to be rejected under Order VII Rule 11 of C.P.C on the ground that the averments in the petition regarding corrupt practices do not disclose any cause of action at all.

47. The learned Senior counsel for the respondent submitted that the averments contained in the Election Petition cannot, by any stretch of imagination, be construed to constitute allegations of corrupt practice as envisaged under the provisions of the RP Act and thus do not make out a triable case. On the other hand, the learned Senior Counsel for the petitioner submitted that a reference to the pleadings in the Election Petition will show that the full particulars of the corrupt practice, including the names of the parties alleged to have committed such corrupt practice and the date and place of commission of the corrupt practice, are specifically mentioned. Hence, it cannot be said that the allegation made in the Election Petition is vague and does not reveal the cause of action warranting its rejection at the threshold.

48. Section 123 of the RP Act defines various corrupt practices. The

Prabhakara Rao v. M. Seshagiri Rao [(1982) 1 SCC 442], Arun Kumar Bose v. Mohd. Furkan Ansari and Others (AIR 1983 SC 1311) , Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi (1987 Supp. SCC 93), Balan v. Manoharan Master (1988(1) KLT 717)


⁸⁷ Daulat Ram Chauhan v. Anand Sharma, AIR 1984 SC 621 and Quamarul Islam v. S. K. Kanta, 1994 Supp (3) SCC 5

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petitioner has averred seven specific corrupt practices in the Election Petition falling under Sections 123 (1) (A) and 123 (3). Paragraphs 8 to 17 deal with bribery, which falls under Section 123 (1) (A) and paragraphs 18 to 27 deal with the use of religious symbol for the furtherance of the prospects of the election, which falls under Section 123 (3).

49. As stated already, Section 83 (1) (b) in clear peremptory terms obligates an election petitioner to allege corrupt practices with all the necessary particulars. In order to constitute corrupt practices, the following necessary particulars, statement of facts and essential ingredients must be contained in the pleadings:

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- (i) Direct and detailed nature of corrupt practice as defined in the Act.
 - (ii) Details of every important particular must be stated, giving the time, place, names of persons, use of words and expressions, etc,
 - (iii) It must clearly appear, from the allegations that the corrupt practices alleged were indulged in by (a) the candidate himself, (b) his authorised election agent or any other person with his express or implied consent.

50. Now, let me examine whether the pleadings regarding each corrupt practice contained in paragraphs 8 to 27 of the Election Petition satisfy the above parameters.

Corrupt Practice (i)

51. The first corrupt practice refers to the gifting of a mobile phone to the daughter of a voter and offering gratification of pension to the voters alleged to have committed on 29.03.2024 at Panchavady Colony. This corrupt practice is described as bribery under Section 123(1)(A) (b). Paragraphs 8 to 11 of the Election Petition deal with this corrupt practice.

52. Section 123 (1) (A) (b) relates to any gift, offer or promise to any person whatsoever with the object of directly or indirectly inducing an elector to vote or refrain from voting at an election. The learned Senior Counsel for the respondent submitted that there is a promise of pension to many persons whose names and particulars are omitted to be specified in the petition as required by law. There is no averment that any elector was induced, which is mandatory to attract the relevant provision of law. The learned Senior Counsel further submitted that there is no statement in the Election Petition in any part of it that pursuant to the alleged offer of pension, any of the electors voted or refrained from voting; in the absence of such an allegation, the cause of action is incomplete and cannot be set for trial. The learned Senior Counsel also submitted that Section 123 (1)(A)(b) applies only to an elector; there is no mention in the Election Petition as to whether the person to whom the mobile phone was gifted is an elector or not. There is also no mention that any one of the persons to whom pension was promised is an elector. Thus, Section

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123(1)(A)(b) cannot even be *prima facie* attracted. I cannot subscribe to these submissions.

53. In paragraph 8 of the Election Petition, it is clearly mentioned that the respondent had committed the corrupt practice of bribery on 29.03.2024. Annexure 2 is a pen drive containing the video of the alleged corrupt practice committed by the respondent during the election campaign at Panchavady colony, uploaded on the Facebook page of “BJP Thrissur” on 29/3/2024, along with the certificate under Section 63 of the BSA. In paragraph 8, the relevant facts stated by the respondent and others in Annexure 2 are fully reproduced in vernacular language. In paragraph 9, it is averred that the respondent has gifted a mobile phone to the daughter of the woman who is a voter, and that, after obtaining gratification, the said woman has assured that all three members of her family will vote for the respondent as gratification for the gift. It is also specifically averred in paragraph 9 that the respondent gifted a mobile phone to the daughter of a voter with the object of directly and indirectly inducing her and her three family members to vote for the respondent in the election.

54. The assurance of payment of pension made by the respondent on the same day through Sreejith to Shafeer, Rejula, Farook and Shamee has been pleaded in paragraph 10. It is clearly mentioned that the said corrupt practice of bribery, offering gratification of pension to the voter, is with the object of directly or indirectly inducing the elector to vote in the

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election in favour of the respondent. It is also mentioned in paragraph 11 that the Annexure 2 video was propagated on the Facebook page of "BJP Thrissur" up to the date of polling with the consent of the respondent, giving the impression that the respondent offers a pension to persons, which is an inducement for voting for the respondent.

55. To attract Section 123 (A) (b), it is not at all necessary that the gift, offer or promise of any gratification should be made to the elector himself. Any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever with the object of directly or indirectly of inducing an elector to vote or refrain from voting at an election, is bribery as defined under Section 123 (A) (b). Thus, there is no merit in the submission of the learned Senior Counsel for the respondent that there is no mention in the Election Petition as to whether the person to whom the mobile phone was gifted is an elector or not, or that any one of the persons to whom pension was promised is an elector.

56. All the essential particulars required are clearly mentioned. Hence, the contention that specific averments are not made regarding the allegation of corrupt practice at Panchavadi colony must fail.

Corrupt Practice (ii)

57. The second corrupt practice refers to an incident on 22/4/2024 at Pope Nagar, offering free medical treatment to a voter. This corrupt

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practice, described as bribery, is dealt with in paragraphs 12 to 15 of the Election Petition.

58. The petitioner has averred in paragraphs 12 and 13 of the Election Petition that on 22.04.2024 at Pope Nagar in Mannuthy area, the respondent had assured a voter, namely Smt.Manju Francis, whose address is mentioned in the said paragraph, gratification by way of free medical treatment with the object of directly or indirectly inducing the elector to vote for the respondent. The name of the hospital where the free treatment would be provided, and the name of the person to be contacted at Rajagiri hospital, namely Jaison Achan, is also mentioned. In paragraph 13 of the Election petition, the name of the voter to whom the gratification/offer was offered, the institution where such gratification will be realized and the person to whom the said voter has to approach is clearly mentioned. Annexure 3 is a pen drive containing the video of the alleged corrupt practice committed by the respondent during the election campaign at Pope Nagar, uploaded on the Facebook page of "BJP Thrissur", along with the certificate under Section 63 of the BSA.

59. In paragraph 13 of the Election Petition, the relevant facts stated by the respondent in Annexure 3 are fully reproduced in Malayalam. It is also mentioned in paragraph 15 that the said video was propagated widely in the Facebook page of "BJP Thrissur" with the consent of the respondent, with the object of giving a message that if the respondent is given a vote, he will offer by way of gratification free medical treatment,

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which attracts Section 123(1)(A) of the RP Act. As regards the propagation of the 2nd corrupt practice in paragraph 13 of the Election Petition, it is stated that the Annexure 3 video is propagated throughout the election campaign. Thus, as regards the 2nd corrupt practice, the date of commission of the corrupt practice, the person who has committed the corrupt practice, the place where the corrupt practice occurred, the nature of the corrupt practice and the person to whom the corrupt practice was committed are clearly and unambiguously mentioned.

Corrupt Practice (iii)

60. The third corrupt practice alleged is the incident on 25/4/2024 at Sivaramapuram Colony, in which Rs. 500/- was distributed to each voter. This is allegedly done by the respondent's election agent.

61. In paragraph 17 of the Election Petition, the allegation of the corrupt practice of distributing money to the voter with the consent of the respondent is mentioned. The date on which the said corrupt practice happened, 25.04.2024, the person who had distributed the money with the consent of the respondent, namely Subash, the place in which such corrupt practice occurred, namely Sivaramapuram Colony, and the persons who received such amount, namely Leela and Omana, are also specifically mentioned in paragraph 17 of the Election Petition. There is no ambiguity or lack of material particulars as regards the said allegation also.

Corrupt Practice (iv)

62. The fourth corrupt practice alleged is the distribution of shade umbrellas having the colour of the flag of the BJP and the photo of the respondent at the Vegetable market and public places at Thrissur Parliament constituency from 16/3/2024 onwards. This is narrated in paragraph 16 of the Election Petition.

63. The learned Senior Counsel for the respondent submitted that, though the petitioner is claiming the said corrupt practice to be falling under Section 123 (1) (A) (b), even the basic ingredients, facts and particulars required to attract the said provision are totally absent to make up a cause of action. On the other hand, the learned Senior Counsel for the petitioner submitted that the necessary details, necessary for laying the foundation of proving the said corrupt practice, are made in the Election Petition.

64. As stated already, Section 123 (1) (A) relates to any gift, offer or promise to any person whomsoever with the object of directly or indirectly inducing an elector to vote or refrain from voting at an election. Under Section 83 (b), an Election Petition shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice.

65. A perusal of paragraph 16 of the Election Petition would show that there is absolutely no pleading that the shade umbrellas were distributed to the electors. None of the vegetable merchants is stated to be an elector in the constituency. The place and time of distribution are not mentioned. The name of the vegetable markets or public places are also not mentioned. It is settled law that the allegations regarding corrupt practice are like a criminal charge and therefore, the averments regarding corrupt practice must be specific with exactitude. Significantly, the Election Petition does not contain a concise statement of the material facts constituting the alleged corrupt practice of the distribution of shade umbrellas or full particulars of the said corrupt practice. Hence, the contention raised by the respondent that there is no specific pleading regarding the commission of corrupt practice (iv) is only to be upheld.

Corrupt Practice (v)

66. The fifth corrupt practice is placing a large number of flex boards with the religious symbol of Lord Krishna and Radha throughout the coastal areas of Thrissur Lok Sabha Constituency.

67. In paragraph 18 of the Election Petition, the petitioner has averred that the respondent and, with his consent, the members of the BJP, had placed large numbers of flex boards showing the respondent wearing a shirt with the religious symbol of 'Lord Krishna and Radha'.

68. Under Section 123(3) of the RP Act, the appeal by a candidate

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or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate shall be deemed to be a corrupt practice.

69. The learned Senior Counsel for the respondent submitted that to attract Section 123(3), the appeal to a religious symbol must be mandatorily stated to be for the furtherance of the prospect of the election of that candidate or prejudicially affecting the election of any candidate, which is significantly absent in paragraph 18 of the Election Petition. The above being a mandatory requirement, material facts are totally lacking in the Election Petition as regards an appeal to a religious symbol. It is further submitted that the place, date, time, etc. of the commission of that alleged corrupt practice is not mentioned in any part of the Election Petition. I cannot subscribe to the said submissions.

70. The date of commission of corrupt practice (05.04.2024 onwards), the person who had placed the flex boards with the consent of the respondent, namely Senthil Thekkiniyedathu and Baiju Panaparambil, is clearly mentioned in paragraph 18. It is also mentioned that the flex boards were placed along the coastal areas of the Thrissur constituency. Though the exact wording in the provision that the use of or appeal to the

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religious symbol was 'for the furtherance of the prospects of the election of that candidate' has not been pleaded in the Election Petition, there is specific pleading that the religious symbol was used by the respondent and his men to appeal to the voters to vote for the respondent. The said pleadings convey that the respondent and the persons with the consent of the respondent, placed the flex board with the religious symbol of Lord Krishna and Radha with a view to appealing to the voters to vote for the respondent. Merely quoting the words of the section will not amount to stating material facts. Hence, the verbatim reproduction of the wording of the provision in the pleading is insignificant.

71. Therefore, the contention that there is no pleading in the Election Petition to constitute the alleged corrupt practice by the use of religious symbols in the flex boards placed along the coastal areas of the Thrissur constituency cannot be sustained.

Corrupt Practice (vi)

72. This corrupt practice is similar to that of the corrupt practice described as the corrupt practice (v). It is alleged in paragraph 20 of the Election Petition that M/s Water Plus Energy, with the consent of the respondent, placed flex boards at Vallappad Panchayat carrying an appeal to vote for the respondent along with a religious symbol of Sree Rama Temple at Ayodhya in Uttar Pradesh. The date of erection of the flex boards, the contents of the flex boards, as well as the place where the flex boards

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were fixed, and the persons who placed the flex boards are specifically alleged. The material of corrupt practice appealed in the name of religious symbol - Sree Rama temple, has also been mentioned. In paragraph 21, it is alleged that the petitioner has personally seen the flex board and filed a complaint on 28.03.2024 to the returning officer.

73. The very same contention taken by the respondent as regards the corrupt practice (v) that there is no averment in the Election Petition that the appeal to religious symbol was done in furtherance of the prospectus of the election of the respondent has been taken in the case of this corrupt practice as well. There is specific pleading that the religious symbol Sree Rama Temple at Ayodhya was used by the respondent and his men as part of the election campaigning with the intention to induce voters to vote for the respondent, which is sufficient to attract the ingredients of Section 123(3).

74. Therefore, the contention that there are no pleadings in the Election Petition to constitute the allegation of corrupt practice by the use of religious symbols in the flex boards placed at Vallappad Panchayat also cannot be sustained.

Corrupt Practice (vii)

75. The seventh and last corrupt practice alleged is the speech of Sri. A.P. Abdullakutty, National Vice President of the BJP, on 30/3/2024 at Poothakulam Maithan in Irinjalakuda, appealing to vote for the respondent

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using the religious symbol of Lord Sree Rama.

76. The learned Senior Counsel for the respondent submitted that what is forbidden by Section 123(3) is an appeal by a candidate for votes on the ground of his religion. In the Election Petition, the respondent's religion is nowhere mentioned. Nor is any averment made in the Election Petition that the said appeal was made in the name of the religion of the respondent. The learned Senior Counsel further submitted that the allegations are insufficient to constitute a cause of action, as an appeal to vote based on the religion of the respondent is not even stated. The learned Senior Counsel also submitted that Sri.A.P. Abdullakutty is not described as an agent of the elected candidate. An appeal to the voters to pray to God before voting will not constitute an appeal to religion, added the learned Counsel.

77. Section 123(3) comprises two parts. The first part pertains to an appeal by a candidate or their agent, or by any other person with the candidate's or their election agent's consent, to vote or refrain from voting for a person based on religion, race, caste, community, or language, with the aim of promoting the candidate's prospects or unfairly affecting the election of another candidate. The second part relates to the use or appeal to religious or national symbols, such as the national flag or emblem, by a candidate, their agent, or any other person with the candidate's or their election agent's consent, for the same purpose. Both are considered corrupt practices. To constitute the corrupt practice under the first part, an

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appeal by a candidate for votes based on 'his' religion is required. Conversely, under the second part, merely using or appealing to religious or national symbols by a candidate, his agent, or any other person with the candidate's or his election agent's consent, is enough. There is no need for an appeal by the candidate based on his religion to activate the second part of Section 123(3). The alleged speech by Sri. Abdulla Kutty, appealing to vote for the respondent using a religious symbol, is a corrupt practice falling under the second part of Section 123(3), not the first. Therefore, the argument that the Election Petition lacks any allegation that the appeal was made in the respondent's name based on his religion is unfounded.

78. Paragraph 23 of the Election Petition clearly states that on 30/3/2024, Sri A.P. Abdullakutty, in a speech at a public meeting at Poothakulam Maithanam in Irinjalakuda, urged voters to vote for the respondent, keeping in mind the religious symbol of 'Lord Sree Rama'. The verbatim words spoken by Sri Abdullakutty in Malayalam are reproduced in that paragraph. It is stated that the petitioner personally heard the speech. Details of this corrupt practice, including the date of the speech, the location, and the name and designation of the speaker, are explicitly pleaded. It is mentioned that the appeal was made with the consent of the respondent. It is also mentioned that the speech was published on the BJP Thrissur Facebook page, as well as on other YouTube channels and social media platforms. These pleadings sufficiently establish that the speech was an appeal by 'any other person with the consent of the candidate' to

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vote for the respondent using the religious symbol of Lord Rama to enhance the prospects of the respondent's election. Consequently, the argument by the respondent's counsel that the averments in paragraph 23 cannot be interpreted as allegations of corrupt practice under Section 123(3) is rejected.

79. The Election Petition sets forth material facts and material particulars regarding all the corrupt practices except corrupt practice (iv) as required under Section 83(1)(a) and (b) of the RP Act. However, it lacks full facts and particulars in respect of the corrupt practice (iv) to make up a cause of action. It is trite that even if it is found that there is any lack of pleading of any material in any one of the corrupt practices alleged, the said corrupt practice for which there is no material pleading of fact alone needs to be struck off. There is no necessity for dismissing the Election Petition in toto.⁸⁸ Thus, only corrupt practice (iv), which lacks pleading of material facts and full particulars, is liable to be struck off.

Ground (vi): Defective affidavit under Rule 94 A of the Conduct of Elections Rules, 1961

80. An Election Petition levelling a charge of corrupt practice is, by law, required to be supported by an affidavit of the election petitioner. The proviso to Section 83(1) of the RP Act mandates that if the relief claimed in the Election Petition is on the allegation of corrupt practice indulged in

⁸⁸ Rama Rai vs Ramanna Rai and Ors (1991 KHC 10), Prasanna Kumar vs G.M Siddeshwar and Others (2010 KHC 6735), Navjot Singh Sidhu v. Om Parkash Soni and Others (AIR 2016 SC 4965)

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by the respondent, an affidavit in the prescribed form in support of the allegation of such corrupt practice should accompany the Election Petition. Rule 94-A of the Conduct of Elections Rules, 1961 prescribes that the affidavit referred to in the proviso to sub-section (1) of Section 83 shall be sworn before a Magistrate of the First Class, a Notary or a Commissioner of Oaths and shall be in Form No. 25.

81. The learned Senior Counsel for the respondent submitted that the affidavit that accompanies the Election Petition, based on allegations of corrupt practice, is not in accordance with the requirements of the proviso to Section 83(1) of the Representation of the People Act, Rule 94 A of the Conduct of Elections Rules, 1961 and Form No. 25 referred to in that Rule. It is submitted that the affidavit was not sworn before any of the persons mentioned in Rule 94-A of the Rules. It is further submitted that the affidavit does not specify the name of the corrupt practice, and the alleged corrupt practices are not specified with particulars with reference to the contents of the paragraphs of the Election Petition. According to the learned Senior Counsel, strict compliance with the requirements of Rule 94-A of the Conduct of Elections Rules and Form 25 is mandatory, and the affidavit being obviously defective, the Election Petition itself is not maintainable. Reliance was placed on the decisions of the Supreme Court in *Dr. (Smt) Shipra*⁸⁹ and of this Court in *A. Mohammed v. Nalakath Soopy*.⁹⁰

⁸⁹ Supra note 1

⁹⁰ 1997 (1) KLT 697

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82. It appears that the respondent is under the impression that the affidavit on pages 25 to 27 of the Election Petition is the affidavit under Rule 94 A of the Conduct of Elections Rules. As a matter of fact, the affidavit under Rule 94A is on pages 23 and 24 of the Election Petition. In paragraph 1 of the said affidavit, election petitioner has clearly stated that the statement in the paragraphs No.3 to 6, 8, 9, 10, 12, 16 to 20, 22, 25 to 28 of the Election Petitions are about the commission of corrupt practice of bribery and appeal to religious symbol on the part of the respondent and all particulars of corrupt practices mentioned in those paragraphs and Annexures 2 to 5 of the Election Petition are true to his information and belief. Similarly in paragraph 2 of the said affidavit, election petitioner has clearly stated that the statement in the paragraphs No.3, 7, 11, 13 to 15, 21, 23 and 28 of the Election Petition are about the commission of corrupt practice by the use of and appeal to religious symbol by the respondent and all particulars of corrupt practices mentioned in those paragraphs and Annexure 7 of the Election Petition are true to his knowledge. The petitioner has also clearly stated in the affidavit that the names of persons who have given the information to him about the corrupt practice are mentioned in the Election Petition. The affidavit is seen attested before the Notary Public. Hence, it is idle to contend that the particulars mandatorily required to be specified in the Form 25 affidavit are lacking.

The upshot of the above discussions and findings is that the challenge to the maintainability of the Election Petition on all grounds

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raised by the respondent must fail. Hence, the preliminary objection raised by the respondent is overruled, and it is held that the Election Petition is not liable to be dismissed *in limine* under Section 86 (1) of the RP Act. However, the corrupt practice (iv) regarding the distribution of shade umbrellas to voters at the vegetable market and public places in the Thrissur Parliament constituency, mentioned in paragraph 16 of the Election Petition, is hereby struck off under Order VI Rule 16 of the C.P.C. The respondent shall face trial for the other corrupt practices alleged in the Election Petition. IA No.1/2025 is disposed of accordingly.

Sd/-

DR. KAUSER EDAPPAGATH
JUDGE



Rp

APPENDIX

PETITIONER'S EXHIBITS

Exhibit R1(a)

TRUE COPY OF THE ELECTION PETITION DATED 19/7/2024 IN ELECTION PETITION NO 1/24 ON THE FILE HONOURABLE HIGH COURT OF KERALA.

RESPONDENT'S EXHIBITS

ANNEXURE 9

FRESH COPY OF THE ELECTION PETITION, AFTER CURING THE DEFECTS, MENTIONED IN THE I.A. FILED BY THE RESPONDENT.

