

WEDNESDAY, THE 24TH DAY OF JUNE 2026

EL.PET. No. 1 of 2024 (FILING NO)

A.M.ARIFF

VS

K.C.VENUGOPAL & OTHERS

ADVS FOR PETITIONER/S:

SHRI.J.OM PRAKASH

ADVS FOR RESPONDENT/S:

SRI.THOMAS P.KURUVILLA, SRI.R.GITESH, SHRI.HARIKRISHNAN S.,
SHRI.AJAY BEN JOSE, SRI.MANJUNATH MENON, SHRI.SACHIN JACOB
AMBAT, SMT.ANNA LINDA EDEN, SMT.HANI P.NAIR, SHRI.NAVEEN
A.VARKEY, SHRI.CYRIAC TOM, SRI.S.SREEKUMAR (SR.)

G. GIRISH,J.

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Unnumbered Election Petition No..of 2024
(Filing No.1/2024)

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*Dated this the 24<sup>th</sup> day of June , 2026*

**ORDER**

The election of first respondent from Alappuzha Parliamentary Constituency on 26.04.2024 is under challenge in this election petition filed by the defeated candidate who secured the highest number of votes among the remaining 10 candidates.

2. The ground alleged for setting aside the election of the first respondent, and for declaration of the petitioner as duly elected, is corrupt practice as envisaged under Sections 123(3), 123(3-A) and 123(4) of the Representation of People Act, 1951 (for short 'RP Act').

3. The Registry noted as many as 12 defects in the filing of this election petition and placed the matter before Bench, by assigning a filing number, for deciding whether the election petition could be received to files. In the meanwhile, the learned counsel for the petitioner sought multiple adjournments for advancing arguments against the aforesaid objections raised by the Registry, due to the reason that he was indisposed pursuant to a bypass surgery. Thus, the status of the case remained as unnumbered Election Petition. While so, the first

respondent appeared through counsel and filed I.A.No.1/2025 for dismissal of the Election Petition in limine.

4. Heard the learned counsel for the petitioner, and the learned counsel for the first respondent.

5. At the time of arguments, the learned counsel for the first respondent submitted that the maintainability of this Election Petition is at stake, not only due to the defects noted by the Registry but also for the absence of any cause of action to entertain such a petition. Adverting to the 12 defects noted in tabular form by the Registry, the learned counsel for the first respondent pointed out that the defect noted as Serial No.4 thereunder, is incurable.

6. The aforesaid defect noted under Sl.No.4 pertained to the failure of the election petitioner to mention about the Annexures produced by him as 'H' to 'M' in the affidavit filed under Form No.25. The Registry has pointed out that, as per Rule 94A of the Conduct of Election Rules, details regarding each and every paragraph of the petition including documents, shall be mentioned in the affidavit.

7. Among the 20 documents produced by the petitioner as Annexures A to M, Annexures A to G related to the screenshots of the videos alleged to have been uploaded and published by the election agents and associates of the first respondent in social media, and its

English translations. Annexure H is a compact disc which is said to be containing the videos described as Annexures A to G. Annexure I is a certificate as required under Section 63 of the Bharatiya Sakshya Adhiniyam in respect of Annexure H. Annexure-J is the true copy of a hash report in respect of the seven videos said to have been preserved in Annexure-H. Annexure-K is also a certificate pertaining to the seven videos said to have been preserved in Annexure-H compact disc. Annexure-L is the hash report prepared by another person, in respect of the seven videos said to have been preserved in Annexure-H compact disc. Annexure-M is the true copy of the challan dated 17.07.2024.

8. The requirement to file an affidavit in the prescribed form in support of corrupt practice alleged in an election petition, is contained in the proviso to Section 83(1) RP Act. Rule 94A of the Conduct of Election Rules, 1961, requires that the aforesaid affidavit shall be in Form No.25. A perusal of Form No.25 would make it clear that the affidavit so filed should contain solemn affirmation that the statements made in the relevant paragraphs of the election petition about the commission of corrupt practice, and the particulars of the corrupt practice mentioned in the relevant paragraphs of the election petition and that of the schedule annexed thereto, are true to the knowledge and information of the deponent. As far as the present case is concerned, the Annexures

produced by the election petitioner as A to G are screen-shot documents pertaining to the corrupt practice alleged to have been committed by the agents and associates of the returned candidate. Annexure-H is the compact disc which is said to contain the videos of the corrupt practice described in Annexures-A to G. The certificates, and hash reports mentioned as Annexures-I to L also relate to the documents which the petitioner has produced as Annexures-A to H. That being so, the failure of the petitioner to mention about Annexures-H to L in the affidavit filed would clearly amount to a violation of the requirement of Rule 94A of the Conduct of Election Rules, 1961. However, the non-mentioning of Annexure-M which is true copy of the challan showing the remittance of the prescribed fees by the petitioner, need not be mentioned in the affidavit, since it does not relate to the corrupt practice alleged in this election petition.

9. Now, the question to be looked into is whether the infraction of law in the above regard is sufficient to dismiss the election petition *in limine*. As per Section 86(1) of the RP Act, the High Court shall dismiss an election petition which does not comply with the provisions Section 81 or Section 82 or Section 117. Since the violation alleged is one relating to the non-compliance of the proviso to Section 83(1) of the RP Act, there is no applicability of the mandate contained in Section 86(1) of the

said Act, which requires the High Court to dismiss the election petition. Thus, the position that emerges is that the failure of the petitioner to mention in the affidavit about Annexures-H to L can only be taken as a curable defect, and there is absolutely no scope of dismissal of the election petition at the threshold for the omission in the above regard,

10. As rightly pointed out by the learned counsel for the election petitioner, the proposition of law in this regard is laid down in the Constitution Bench decision of Hon'ble Supreme Court in ***T.M. Jacob v. C. Paulose & Ors.* [(1999) 4 SCC 274]**, and various subsequent decisions thereafter up to ***Thangjam Arun Kumar v. Yumkham Erabot Singh & Ors.* [AIR 2023 SCC 4531]**. Therefore, the challenge against the maintainability of the election petition in view of the aforesaid defect noted by the Registry, is totally untenable, since it is only a curable defect. The other 11 defects noted by the Registry are also trivial in nature, and hence those defects cannot be termed as substantial defects fatal to the very maintainability of the election petition.

11. The learned counsel for the first respondent pointed out that the corrupt practices alleged under Section 123 of the RP Act can only be those acts committed after the submission of nomination by the returned candidate against whom the election petition is filed. Adverting to the

definition of “candidate” as envisaged under section 79(b) of the RP Act, the learned counsel for the first respondent argued that before the submission of nomination, the first respondent cannot be termed as a candidate, and hence the acts alleged to have been committed prior to the submission of nomination of the first respondent will not come within the purview of the objectionable acts contained under Sections 123(3), 123(3-A) & 123(4) of the RP Act. The law laid down by the Constitution Bench of the Hon’ble Supreme Court in ***Indira Nehru Gandhi v. Raj Narain* [AIR 1975 SCC 2299]** which has been followed by the Apex Court in ***Subhash Desai v. Sharad J. Rao* [1994 Suppl. (2) SCC 446]**, ***Mohan Rawale v. Damodar Tatyaba* [(1994) 2 SCC 392]**, ***Chandrakantha Goyal v. Sohan Singh Jodh Singh Kohli* [(1996) 1 SCC 378]** and ***Manohar Joshi v. Nitin Bhaurao Patil* [(1996) 1 SCC 169]** are relied on by the learned counsel for the first respondent in support of the argument that the allegations pertaining to the objectionable acts committed by the agents and associates of the first respondent, prior to the date of submission of nomination by the first respondent, cannot be termed as corrupt practices envisaged under Sections 123(3), 123(3-A) & 123(4) of the RP Act.

12. There is absolutely no need for this Court to elaborate upon the aforesaid decisions of the Hon’ble Supreme Court since the law is

now trite that the corrupt practices envisaged under Section 123 of the RP Act for challenging the election of a returned candidate can only be those acts committed by the candidate, his election agents or associates after the date of submission of nomination by that candidate. As far as the present case is concerned, all the allegations levelled by the petitioner in this election petition pertain to those acts allegedly committed by the agents and associates of the first respondent even before the publication of the election notification on 28.03.2024. Therefore, it cannot be said that the allegations levelled by the petitioner in his election petition to set aside the election of the first respondent and to declare him as the duly elected candidate, would come within the purview of the corrupt practices envisaged under Section 123 of the RP Act.

13. Now, the next question to be looked into is whether the aforesaid reason is a ground to dismiss the election petition at the threshold. The learned counsel for the first respondent, by adverting to Section 87 of the RP Act, pointed out that an election petition has to be tried by this Court in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the extent possible, and hence if the election petition does not disclose a cause of action, it has to be rejected at the threshold under Order VII Rule 11(a) of the said Code. It is

further pointed out by the learned counsel for the first respondent that, when the averments in the election petition do not constitute any legally sustainable grounds to set aside the election of the returned candidate, it could only be said that the said petition does not disclose a cause of action. Thus, according to the learned counsel for the first respondent, the election petition has to be rejected.

14. Per contra, it is argued by the learned counsel for the petitioner that the election petition is not liable to be rejected at the very inception, since the petitioner is entitled to incorporate appropriate allegations in the said petition by way of amendment in the further course of procedures. I am not impressed by the aforesaid argument of the learned counsel for the petitioner, since the law prohibits the petitioner from making such amendments in the election petition in respect of material aspects which he has omitted to incorporate at the time of filing of that petition.

15. The learned counsel for the first respondent brought to my notice the decisions rendered by the Hon'ble Supreme Court in **Anil Vasudev Salgaonkar v. Naresh Kushali Shigaonkar [(2009) 9 SCC 310]** and **G.M. Siddeshwar v. Prasanna Kumar [(2013)4 SCC 776]** wherein it has been held in unequivocal terms that an election petition can be summarily dismissed in exercise of the relevant provisions

of Code of Civil Procedure, 1908, if it does not furnish any cause of action. In paragraph No.52 of ***G.M. Siddeshwar*** (supra), it has been observed by the Hon'ble Supreme Court as follows:

"52. The principles emerging from these decisions are that although non-compliance with the provisions of Section 83 of the Act is a curable defect, yet there must be substantial compliance with the provisions thereof. However, if there is total and complete non-compliance with the provisions of Section 83 of the Act, then the petition cannot be described as an election petition and may be dismissed at the threshold."

16. Going by the settled principles of law laid down by the Hon'ble supreme court in ***G.M. Siddeshwar & Anil Vasudev Salgaonkar*** (supra), the present election petition cannot be entertained, since the averments contained in it, even if accepted as such, will not constitute any of the grounds envisaged under Section 123 of the RP Act to set aside the election of the first respondent. Since the election petition is yet to be numbered, there is no scope for a dismissal. The proper course to be adopted is a rejection of the election petition.

In the result, the election petition stands rejected under Order VII Rule 11(a) of the Code of Civil Procedure, 1908.

(sd/-)  
**G. GIRISH, JUDGE**