

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
WEDNESDAY, THE 12TH DAY OF APRIL 2023 / 22ND CHAITHRA, 1945

EL.PET. NO. 6 OF 2021

PETITIONER:

SHRI.THOMAS J.UNNIYADAN,
AGED 62 YEARS,
S/O.JOSEPH, UNNIYADATH HOUSE, 23/438,
IRINJALAKKUDA P.O., THRISSUR DISTRICT, PIN-680121.

BY ADVS.
SRI.S.SREEKUMAR (SR.)
SRI.K.C.VINCENT
SRI.P.MARTIN JOSE
SRI.R.GITESH
SRI.MANJUNATH MENON
SRI.THOMAS P.KURUVILLA
SRI.SACHIN JACOB AMBAT
SRI.AJAY BEN JOSE
SMT.ANNA LINDA V.J
SRI.HARIKRISHNAN S.

RESPONDENTS:

- 1 SMT.R.BINDU,
AGED 53 YEARS,
W/O.VIJAYARAGHAVAN.A, THEJASWINI, HARISREE NAGAR,
AYYANTHOLE P.O, THRISSUR DISTRICT, PIN-680003.
- 2 DR.JACOB THOMAS,
AGED 60 YEARS,
S/O. M.J.THOMAS, SHELOOMIYEL, JAWAHAR NAGAR,
KADAVANTHRA.P.O, ERNAKULAM DISTRICT, PIN-682020.
- 3 SHRI.JOSHY,
AGED 47 YEARS, S/O.JOSE, ELUVATHINGAL HOUSE, VELLANI.P.O,
KARALAM, THRISSUR DISTRICT, PIN-680701.

- 4 SMT.BINDU,
AGED 49 YEARS, W/O.RAMACHANDRAN, THEKKIL HOUSE,
VELLANI.P.O, KARALAM, THRISSUR DISTRICT, PIN-680701.
- 5 SMT.BINDU,
AGED 46 YEARS, W/O.SIVADASAN, MANIYADAN HOUSE,
VETTELAPPARA.P.O, ATHIRAPPALLY, CHALAKKUDY, THRISSUR
DISTRICT, PIN-680721.
- 6 SHRI.VAXERIN,
AGED 38 YEARS, S/O.VARGHESE, PEREPPADAN HOUSE,
AVITTATHUR.P.O, THRISSUR DISTRICT, PIN-680683.
- 7 ELECTION COMMISSION OF INDIA
NOT A PARTY

BY ADVS.

SRI.P.V.SURENDRANATH (SR.)

SRI.P.K.VARGHESE

SRI.T.SAJI RAPHEL

SHRI.DEEPULAL MOHAN, SC, ELECTION COMMISSION OF INDIA

SRI.K.S.ARUNKUMAR

SRI.P.S.ANISHAD

SRI.K.R.ARUNKRISHNAN

SRI.P.T.MANOJ

SMT.SANJANA RACHEL JOSE

SRI.BIJUKUMAR

SRI.REGHUSREEDHARAN

SRI.VIJAYSANKAR V.H.

SMT.AMRUTHA K P

SMT.AMRUTHA P S

SMT.BINDU MOHAN

SRI.RAPHAEL THEKKAN

THIS ELECTION PETITION HAVING COME UP FOR ADMISSION ON
12.04.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“CR”

J U D G M E N T

Elections are fundamental and pre-requisite for a democracy. In a democracy, the authority of the Government derives, solely from the consent of the governed. The principal mechanism for translating that consent into governmental authority is the holding of free and fair elections.

2. As observed by the Hon'ble Supreme Court in **Lok Prahari through its General Secretary S.N.Shukla v. Union of India and Others** [(2018) 4 SCC 699], the framers of the Constitution were aware of the fact that no election process can be infallible nor can any election be absolutely pure. Therefore, disputes are bound to occur in elections. Hence, Article 329(b) of the Constitution, stipulates:-

“329. **Bar to interference by Courts in electoral matters.**- Notwithstanding anything in this Constitution-

- (a) xxx
- (b) 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 for by or under any law made by the appropriate Legislature”.

3. In the year 1951, the Parliament enacted the Representation of People Act, 1951 (hereinafter referred as 'the RP Act') to provide for the conduct of elections, to the House of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices, and other offences, at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.

4. Here is an election petition filed under Sections 80, 80A, 81, 83, 100(1)(b), 100(1)(d)(iv), 101 read with Sections 123(2), 123(4) and 127-A of the RP Act, 1951, in connection with the 15th General Election held on 06.04.2021 to the Kerala Legislative Assembly.

5. The election petitioner and respondents 1 to 6 contested the general election held on 06.04.2021 from 070 Irinjalakuda Assembly Constituency. The counting of votes was held on 02.05.2021 and the result was notified on 03.05.2021. The 1st respondent was declared as the returned candidate with a margin of 5949 votes. The election petitioner contested the election as a candidate of Kerala Congress and the 1st respondent was a candidate of Communist Party of India

(Marxist). According to the election petitioner, the election of the 1st respondent is liable to be declared as void, since she and other persons with her consent, indulged in various corrupt practices.

6. The 1st respondent was a College Teacher, who took voluntary retirement. She proclaimed herself as a Professor, and requested the Returning Officer of 070 Irinjalakuda Assembly Constituency, to show her name as 'Prof.R.Bindu', though she was not a designated Professor. She conducted election campaigns throughout Irinjalakuda Assembly Constituency, describing her as 'Prof.R.Bindu'. She printed, published, circulated and distributed Annexures-E to G notices and pamphlets, describing her as 'Prof.R.Bindu'. She persuaded the electors to vote for her, saying that only a Professor like her, can alleviate the grievances of the electors of 070 Irinjalakuda Assembly Constituency, which she claimed to be an educational hub with many educational institutions. Persuading the electors as a Professor and Academician, she canvassed votes and that amounts to undue influence as envisaged under Section 123(2) of the RP Act, as it was a deliberate attempt on her part to interfere with the free exercise of the electoral right of the electors of 070 Irinjalakuda Assembly Constituency.

7. Mr.K.R.Jojo, who is a member and ardent worker of CPI(M),

actively participated in the election campaign of the 1st respondent from 16.03.2021 till 06.04.2021. He inaugurated several election conventions, and election campaign meetings of the 1st respondent, and was an orator in her election campaign. On 04.04.2021, during the course of the election campaign of the 1st respondent, in Aloor Grama Panchayat, Sri.K.R.Jojo and the 1st respondent discussed their plans to succeed in the ensuing election, and they decided to adopt dubious illegal and corrupt practices to defeat the election petitioner. In pursuance to that, the 1st respondent prepared a notice on 04.04.2021, and handed over the same to Sri.K.R.Jojo for printing, publication, circulation and distribution among the electors of 070 Irinjalakuda Assembly Constituency. Sri.K.R.Jojo, on 04.04.2021 itself, with the consent of the 1st respondent printed thousands of Annexure-N notice with the caption "don't befool people brother Joseph" at Grama Sree Printing and Binding Industrial Co-operative Society, Kallettumkara. The notice was printed in the name of Sri.K.R.Jojo, and it was published, circulated and distributed among the electors of Irinjalakuda Assembly Constituency. The name of the printing press has not been shown in the notice deliberately. So, Annexure-N notice prepared by the 1st respondent and printed, published and circulated by Sri.K.R.Jojo with her consent, amounts to corrupt

practice under Section 123(4) of the RP Act, as it was depicting the election petitioner as a corrupt person. Many of the electors, who happened to read that notice, decided not to vote for him, as they got an impression that the election petitioner was a corrupt person, not fit to be elected as the member of the Kerala Legislative Assembly.

8. There was violation of Section 127-A of the RP Act, as the name and address of the printer and publisher were not there in Annexure-N notice. So the election petitioner is seeking a declaration that the election of the 1st respondent in the general election held on 06.04.2021 from 070 Irinjalakuda Assembly Constituency to the 15th Kerala Legislative Assembly is void, and to declare the election petitioner as the duly elected candidate from that Constituency.

9. There are six respondents in the election petition who were all contesting candidates in the general election held on 06.04.2021 along with the election petitioner. Among them, only the 1st respondent appeared and opposed the petition by filing preliminary objections, along with I.A.No.2 of 2022 to accept the same. Respondents 2 to 6 opted to remain absent, though service was complete on them.

10. The preliminary objection filed by the 1st respondent on 25.01.2022 was to the effect that the election petition is liable to be

dismissed *in limine*, as there is no cause of action, and it does not make out a *prima facie* case also. The essential material facts and material particulars to be pleaded, for invocation of jurisdiction of this Court under the RP Act are absent in the petition, and so, it is not liable to be tried before this Court.

11. According to the 1st respondent, the pleadings regarding Section 123(2) of the RP Act are incomplete and absolutely baseless. Since the 1st respondent is popularly known as Prof.R.Bindu, and the people and the electorate generally identify and address her as Prof.R.Bindu, and there were two other candidates contesting in that election by name Bindu, she made a request before the Returning Officer, under the Proviso to Rule 8(2) of the Conduct of Election Rules, 1961, to correct her name in the Ballot paper as 'Prof.R.Bindu'. The Returning Officer, on being satisfied of the genuineness of her request corrected her name in the Ballot paper as 'Prof.R.Bindu'. In the list of contesting candidates in Form 7A also, her name was corrected as 'Prof.R. Bindu'.

12. The election petitioner is not specifically challenging the fact that the 1st respondent was popularly known as Prof.R.Bindu. The fact that she was the Head of the Department of English at Sree Kerala Varma College of Thrissur is admitted by the election petitioner in paragraph

6(m) of the election petition. She was popularly known as Prof.R.Bindu from the year 2000 onwards, when she contested the Municipal Corporation Election from Poothole Division of Thrissur Corporation. Thereafter, she contested the election to Thrissur Municipal Corporation during the year 2005 from Kanattukara Division of Thrissur Corporation, pursuant to which, she served as the Mayor of Thrissur Corporation. Since then, she was widely known as Prof.R.Bindu among the general public. She was a member of Senate of Calicut University, member of Syndicate of Calicut University, member of Academic Council of Calicut University, member of PG Board of Studies of Calicut University and also a member of Advisory Board of Higher Education Council. She functioned as Vice-Principal of Sree Kerala Varma College, Thrissur, and she also served as the Principal-in-charge of that College. She was an Associate Professor, and was serving the College for 26 years in various capacities. Associate Professors are identified and addressed by the public and students generally as Professors only, and not as Associate Professors. She was awarded with Ph.D. and there were several published works in her name and because of all these reasons, she was popularly known as Prof.R.Bindu. The entire visual and print media, making and publishing news about her, addressed her as Prof.R.Bindu.

13. The Returning Officer, after due enquiry and on being satisfied as to the genuineness of Annexure-C request made under the Proviso to Rule 8(2) of the Conduct of Election Rules, 1961, decided to show the name of the 1st respondent in the Ballot paper as well as in the list of candidates as Prof.R.Bindu. The election petitioner never objected Annexure-C request. He has no case that the decision taken by the Returning Officer was illegal. He has no case that he ever objected or challenged the decision of the Returning Officer before any authority. If the decision taken by the Returning Officer to show the name of the 1st respondent as Prof.R.Bindu, in the Ballot paper and in list of contesting candidates is correct, there is no question of any corrupt practice of undue influence committed by the 1st respondent. Once the Returning Officer entered her name in the Ballot paper and list of candidates as Prof.R.Bindu, she could have conducted election campaign in that name only, and so there was no question of any undue influence.

14. The mere use of the word "Prof." cannot be termed as a misrepresentation. That word could not have induced the electors to vote for her. By using the prefix "Prof." to her name, she never interfered with the free exercise of electoral rights of the voters, as she was an Associate Professor, Vice-Principal and the Head of the English Department of Sree

Kerala Varma College, Thrissur. Since the Returning Officer was empowered to allow Annexure-C request under the Proviso to Rule 8(2) of the Conduct of Election Rules, it cannot be termed as an illegal activity from his part. The election petitioner has not pleaded with necessary material facts and particulars, how the word "Prof." could induce the voters in his constituency to cast their votes in favour of the 1st respondent. The averment that the 1st respondent persuaded the electors to vote for her saying that only a Professor can alleviate the grievances of the electors of Irinjalakuda Assembly Constituency, which she claimed to be an educational hub with many educational institutions is absolutely vague, incorrect and without any material facts or material particulars. Those vague averments are not sufficient to attract the corrupt practice of undue influence.

15. Necessary material facts and material particulars to attract the corrupt practice of undue influence are not pleaded in the election petition. Moreover, the affidavit filed by the election petitioner did not disclose the source of information in respect of the averments in paragraph 6, and that is a material defect which cannot be cured, and it is fatal to the election petition. There is no pleading to the effect that the 1st respondent canvassed vote for a Professor and she distributed

Annexures-E to G notices/pamphlets to any of the electors. There is no averment in paragraph 6(e) of the election petition to the effect that the 1st respondent committed corrupt practice of undue influence. No triable issue can be framed on the basis of the pleadings in paragraph 6(e) and therefore, it is liable to be struck off. Necessary material facts and material particulars are not there, in paragraph 6(g) also, as to the places in which the posters, wall-writings, notices, pamphlets, banners etc. of the 1st respondent soliciting votes from the electors describing her as Prof.R.Bindu were seen, or the date on which the election petitioner had seen the posters, wall-writings etc.

16. Regarding paragraph 6(h) of the election petition also, there is no pleading as to the names of persons who gathered in the bus stand while the 1st respondent was leading the march, who distributed Annexures-E to G notices to the electors, or who canvassed votes describing her as a Professor. The name of at least one member of the march will find a place in the election petition. In order to place a cause of action, the election petitioner has to plead the full material facts and particulars regarding the allegation of committing a particular corrupt practice. Regarding the allegations in paragraph 6(i) of the election petition also, the particulars as to the date of receipt of Annexure-E to G

notices by the electors mentioned in the table, and who brought those notices to the house of those electors etc. will not find a place in the pleadings.

17. Regarding the averments in paragraph 7(c) of the election petition, that there was consent of the 1st respondent to print and publish Annexure-N notice by Sri.K.R.Jojo, is pleaded without sufficient material facts and particulars. It is pleaded that on 04.04.2021 during the course of election campaign of the 1st respondent in Aloor Grama Panchayat, the 1st respondent discussed plans with Sri.Jojo to overcome the defeat, and on the same day, she prepared a notice and handed over the same to Sri.K.R.Jojo for printing, publication, circulation and distribution among the electors. There is no specific pleading as to the place of meeting, the place of discussion or the place of handing over of the notice. Those material aspects are absent in the election petition. The materials now placed by the election petitioner, are not sufficient to show the consent of the 1st respondent, to invoke the jurisdiction of this Court under Section 123(4) of the RP Act. If the election petitioner is not able to show the necessary material facts and particulars regarding the consent of the 1st respondent for printing, publication and distribution of Annexure-N notice, all subsequent averments are absolutely worthless, and there cannot be

any cause of action for the election petitioner in that regard. The specific particulars regarding the time, venue etc. is very much material, since the discussion, preparation, handing over, printing of thousands of notices etc. were all over on 04.04.2021 itself, according to the election petitioner. Hence there is no triable issue under Section 123(4) of the RP Act.

18. Annexure-N notice does not contain any statement which affects the personal character or conduct of the election petitioner or in relation to his candidature. It is seen addressed to a person named one Mr.Joseph. The election petition will not show any relation whatsoever for Mr.Joseph with the election petitioner. The other person named in Annexure-N notice is one Mr.M.P.Jackson, and it has nothing to do with the election petitioner. The election petitioner has not stated which part of Annexure N notice affects his personal character, and which part affects his conduct. There is nothing in Annexure N notice, depicting him as a corrupt person. If there was no direct statement in the notice, he would have specifically pleaded that the said notice is an innuendo, and the meaning of the innuendo also should have been pleaded in the election petition. Since no such pleadings are available in the election petition, he failed to make out a *prima facie* case under Section 123(4) of the RP Act.

19. There is no pleading regarding the source of information of the election agent of the petitioner Mr.M.S.Anilkumar and for that reason also, there is no *prima facie* case under Section 123(4) of the RP Act. It is not pleaded who handed over Annexure N notice to Adv.Sri.M.S.Anilkumar, when it was handed over etc. The onus is heavily upon the election petitioner who seeks to set aside the election of a successful candidate. The election petitioner cannot discharge the onus of proof merely on preponderance of probabilities. In Paragraph 7(b) of the election petition, it is not stated who were all present along with Sri.Paul, when he read Annexure N notice and to whom he declared that he will not vote for the election petitioner. In paragraph 7(f) also, the names of agents and workers of the election petitioner who came to the election committee office on 06.04.2021 at 8 p.m and appraised him regarding distribution of Annexure N notice will not find a place. In paragraphs 7(g) and 7(h) of the election petition also, the pleading is not specific as to the names of persons who came along the road at the time of throwing Annexure-N notice. The said details and particulars are material and necessary, otherwise the information would be only hearsay.

20. It is the duty of the election petitioner to state specifically the material facts, particulars, source of information etc. regarding the

commission of corrupt practice either in the election petition or in the affidavit. Since there is lack of pleadings as to the material facts, particulars, source of information etc., it is fatal to the election petition. According to the 1st respondent, no cause of action is made out or even indicated by the election petitioner, and so there is no scope for further continuance of the election petition. So, her prayer is to invoke the powers under Order VII Rule 11 of CPC to ensure that the meaningless litigation is not occupying the precious time of this Court. So, she prayed for rejecting this election petition at the threshold, for not following the mandatory requirements of the provisions of the RP Act.

21. The election petitioner filed counter to the preliminary objection filed by the 1st respondent contending that the 1st respondent was not a Professor, to enable her to use the prefix "Prof." to her name. There is nothing in Annexure-C to *prima facie* show that, she was popularly known as Prof.R.Bindu. It is not correct to say that the Returning Officer, on being satisfied as to the genuineness of her request, showed her name in the Ballot paper as Prof.R.Bindu. In fact she proclaimed and misrepresented herself as a Professor. She was popularly known as Prof.R.Bindu, is a case set up for the first time in the preliminary objection. Whether the 1st respondent was popularly known

as Prof.R.Bindu or not, is a matter of evidence, and it cannot be the basis for the dismissal of the election petition at the threshold. Misrepresenting herself as a Professor and canvassing votes from the electors knowing fully well that she was not a Professor, interfered with the free exercise of electoral rights, amounting to corrupt practice of undue influence under Section 123(2) of the RP Act. In Annexure-C, the 1st respondent never had a case that she was popularly known as Prof.R.Bindu. It is not correct to say that, she was widely known as Prof.R.Bindu while contesting Municipal Corporation Election from the year 2000. It is not correct to say that college teachers were generally addressed by the general public as Professors. It is also not correct that Associate Professors are identified and addressed by the people and students generally as Professors. The media, both visual and print media, styled her as Prof.R.Bindu, only after she proclaimed and misrepresented herself as a Professor during the election campaign, and especially after she managed to change her name as Prof.R.Bindu in the Ballot papers. It is not correct to say that the election petitioner never objected or challenged the decision of the Returning Officer. In fact there was no provision for submitting any objection regarding the decision of the Returning Officer, other than by filing an election petition. The election

petitioner never admitted that the 1st respondent was popularly known as Prof.R.Bindu. All the material facts required to constitute a complete cause of action have been already pleaded, and the pleadings alleged to be lacking in various paragraphs of the election petition, are not material facts, sufficient enough to dismiss the election petition at the threshold. The source of information is not mandatory as per Rule 94 A of the Conduct of Election Rules, 1961. As an abundant caution, the election petitioner has mentioned the source of information also in the election petition, and it has been referred in the affidavit also. The definite case of the election petitioner is that the 1st respondent misrepresented herself as a Professor knowing fully well that she was not a Professor, and she solicited votes from the electors by misrepresenting herself as a Professor to induce the voters, and thereby interfered with the free exercise of the electoral rights of the electors.

22. It is the specific case of the election petitioner that Annexure-N notice, containing false statements, in relation to the personal character and conduct of the election petitioner, was published by Sri.K.R.Jojo with the consent of the 1st respondent, thereby she committed corrupt practice as envisaged under Section 123(4) of the RP Act. According to him, his pleadings contain all the material facts and material particulars

that constitute a complete cause of action and also the ingredients of the corrupt practice under Section 123(4) of the RP Act. Consent can be proved by circumstantial evidence, and therefore, the averment that the pleadings in the election petition are not sufficient to prove the consent is not sustainable. The election petition has been filed in compliance of Section 83 of the RP Act, and it contains all material facts and material particulars to sustain the election petition. It discloses a cause of action and is not liable to be dismissed at the threshold. The grounds raised in the election petition are legally sustainable. Nothing prevails either in law, or on facts, warranting dismissal of the election petition *in limine*. It is not a fit case to invoke Order VII Rule 11 of CPC so as to reject the election petition.

23. On 23.03.2022, the election petitioner filed I.A.No.3 of 2022, to amend the election petition to incorporate the fact that the University of Calicut by order dated 18.01.2022, approved the decision taken by the Syndicate in the Resolution dated 30.12.2021, whereby retired and relieved teachers could be designated as Professors with retrospective effect. Copy of the order dated 18.01.2022 was produced as Annexure-I(a) to establish the fact that during the relevant time, 1st respondent was not a Professor, if at all she was designated as a

Professor with retrospective effect on the strength of Annexure-I(a). There is another prayer to incorporate the names of witnesses who happened to see the 1st respondent persuading electors at Kattoor Grama Panchayat bus stand to vote for her, misrepresenting herself as a Professor. The date and time of some other incidents narrated in the election petition, the names of persons who witnessed such incidents and the source of such information etc. are requested to be incorporated by way of the amendment.

24. The 1st respondent filed objection to that amendment application also, contending that, in the preliminary objection itself she had pointed out the defects in the election petition such as, lack of pleadings regarding material facts to raise a cause of action for consideration of this Court. Now the attempt of the election petitioner is to introduce new material facts by way of the proposed amendment which cannot be permitted at all. It was her case in the preliminary objection that the election petition is liable to be dismissed at the threshold due to insufficiency of pleadings. Lack of pleadings as to the source of information in respect of averments in paragraph 6 is a material defect which cannot be cured. The pleadings are insufficient to show that there was consent of this respondent for printing and publishing Annexure-N

notice. So no cause of action can be raised on the basis of consent of this respondent. The proposed amendment is only an afterthought, which substantially changes the character of the election petition, and therefore, it cannot be allowed. Annexure-I(a) is not in any way connected to the result of the election in question, and subsequent acts or events cannot be treated as a corrupt practice under the RP Act. Annexure-I(a) has no relevance, as it is only a subsequent development which cannot be looked into, for the purpose of this election petition. The pleadings in paragraph 2 of the amendment application cannot be incorporated, since it will have the effect of supplementing material facts to the election petition. Incorporating necessary pleadings regarding consent of the respondent is impermissible after a long delay. According to the 1st respondent, if the amendment is allowed, it will cause substantial prejudice and irreparable injury to her. So she prayed for dismissal of the amendment application.

25. At present, the question posed before this Court is, whether the election petition is filed in compliance of the mandatory requirements under Section 83 of the RP Act, and whether it contains all necessary material facts and particulars disclosing a cause of action to be tried before this Court, and if not, whether the election petition is liable to be rejected invoking Order VII Rule 11 of CPC.

26. Heard learned Senior Counsel Sri.S.Sreekumar appearing for the election petitioner and learned Senior Counsel Sri.P.V.Surendranath appearing for the 1st respondent.

27. The main grounds, on which the election petitioner is assailing the election of the 1st respondent to the 15th Kerala Legislative Assembly Election held on 06.04.2021, are under Sections 123(2), 123(4) and Section 127-A of the RP Act. Firstly the 1st respondent, who was not a designated Professor, misrepresented herself as a Professor, knowing fully well that she was not a Professor, and induced the electors of 070 Irinjalakuda Assembly Constituency to vote for her depicting herself as an academician and exerted undue influence, causing interference with the free exercise of electoral right of the electors of that Constituency, which according to the election petitioner, is a corrupt practice envisaged under Section 123(2) of the RP Act.

28. Secondly the 1st respondent prepared Annexure-N notice calculated to prejudice the prospects of the election petitioner, throwing aspersions against his personal character and conduct, and entrusted the same for publication with Mr.K.R Jojo who was a worker of CPI(M) and an active participant in the election campaign of the 1st respondent.

Sri.K.R.Jojo printed and published the notice in thousands, with the consent of the 1st respondent, and circulated it among the electors of Irinjalakuda Assembly Constituency without showing the name and address of the printing press and thereby committed corrupt practice envisaged under Section 123(4) read with Section 127-A of the RP Act.

29. In the preliminary objection, the 1st respondent is challenging the maintainability of the election petition itself, as it does not disclose any cause of action to be tried by this Court, for lack of material facts and particulars regarding the so called corrupt practices, and non-disclosure as to the source of information.

30. Section 83 of the RP Act, 1951, delineates the contents of an election petition. It reads as follows:

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

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

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

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908)

for the verification of pleadings:

[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.]

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

31. The section mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. There are umpteen number of decisions by the Apex Court, whereby it is settled that, material facts required to be stated are those facts which can be considered as materials supporting the allegations made. Those materials would afford a basis for the allegations made in the election petition, and would constitute the cause of action as understood in the Code of Civil Procedure. The expression ‘cause of action’ has been compendiously defined to mean, every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of Court. Omission of a single material fact leads to an incomplete cause of action, and the statement of claim becomes bad. The function of the party is to present as full, a picture of the cause of action, with such further information in detail, as to make the opposite party

understand the case, he will have to meet {**Samant N. Balkrishna and Another v. George Fernandez and Others** [(1969) 3 SCC 238] and **Hari Shanker Jain v. Sonia Gandhi** [(2001) 8 SCC 233]}.

32. Learned counsel for the 1st respondent contended that when the election petition is lacking in material facts and particulars so as to constitute a cause of action, omission of even a single material fact will lead to incomplete cause of action and that be so, the election petition is not liable to be tried by this Court, and it deserves to be rejected at the threshold under Order VII Rule 11 CPC.

33. In **H.D.Revanna v. G.Puttaswamy Gouda and others** [AIR 1999 SC 768] and **T.Phungzathang vs. Hangkhanlian and others** [2001 (8) SCC 358], the Apex Court was pleased to observe that there are only two circumstances under which an election petition could be dismissed *in limine*.

1. Non compliance of Sections 81, 82 and 117 of the RP ACT.

and

2. Non compliance of Section 83, only when the matter falls within the scope of Order VI Rule 16 or Order VII Rule 11 of

the Code of the Civil Procedure.

34. The object of both the provisions is to ensure that, meaningless litigation which is otherwise bound to prove abortive should not be permitted to occupy the judicial time of the Courts.

35. Right to contest election or to question the election, by means of an election petition, is neither common law nor fundamental rights; instead it is a statutory right regulated by the statutory provisions of the RP Act, 1951. Outside the statutory provisions, there is no right to dispute an election. The RP Act is a complete and self contained code, within which, any rights claimed in relation to an election or an election dispute must be found. The provisions of the Civil Procedure Code are applicable to the extent as permissible by Section 87 of the RP Act.

36. In **Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi** [1987 Suppl. SCC 93], the Apex Court observed in Paragraph No.8 as follows:

"8. The first question which falls for our determination is whether the High Court had jurisdiction to strike out pleadings under Order VI Rule 16 of the Code of Civil Procedure and to reject the election petition under Order VII Rule 11 of the Code at the preliminary stage, even though no written statement had been filed by the respondent. Section 80 provides that no

election is to be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act before the High Court. Section 81 provides that an election petition may be presented on one or more of the grounds specified in Section 100 by an elector or by a candidate questioning the election of a returned candidate. Section 83 provides that an election petition shall contain a concise statement of material facts on which the petitioner relies and he shall set forth full particulars of any corrupt practice that he may allege including full statement 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. Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Sections 81 and 82 or Section 117. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, Order VI Rule 16 and Order VI Rule 17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Sections 81, 83, 86 and 87 of the Act, it is apparent that those paragraphs of a petition which do not disclose any cause of action, are liable to be struck off under Order VI Rule 16, as the Court is empowered at any stage of the

proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the Court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the Court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI Rule 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the proceedings, the Court need not wait for the filing of the written statement, instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the Court finds that no triable issues remain to be considered, it has power to reject the election petition under Order VII Rule 11.”

37. As we have already seen, the election petitioner is alleging corrupt practices against the 1st respondent under Sections 123(2) and 123(4) read with Section 127-A of the RP Act. According to him, the 1st respondent misrepresented herself as a Professor, though she was not a designated Professor. The second limb of corrupt practice alleged is that she prepared Annexure-N notice with false statements relating to the

personal character and conduct of the election petitioner, and handed over it to Sri.K.R.Jojo, who was a CPI(M) worker, and a close associate in her election campaign, and with her consent he printed, published and circulated thousands of such notices calculated to prejudice the prospects of the election petitioner. Moreover, in Annexure-N notice, the name of the press where it was printed was not mentioned, violating Section 127-A of the RP Act.

38. The 1st respondent contended that she filed her nomination, showing her name as R.Bindu and the Returning Officer accepted her nomination. Thereafter, she made Annexure-C request to the Returning Officer to show her name in the Ballot paper as Prof.R.Bindu as permitted under the Proviso to Rule 8(2) of the Conduct of Election Rules, 1961. She made such a request as she was popularly known as Prof.R.Bindu. Moreover, two other candidates were also contesting in that election, by name Bindu, and they are respondents 4 and 5 in this election petition.

39. Rule 8(2) of the Conduct of Election Rules, 1961, reads as follows:

"8. List of validly nominated candidates.—(1) The list of validly nominated candidates referred to in sub-section (8) of Section 36 shall be in Form 4.

(2) The name of every such candidate shall be shown in the said list as it appears in his nomination paper:

Provided that if a candidate considers that his name is incorrectly spelt or is otherwise incorrectly shown in his nomination paper or is different from the name by which he is popularly known, he may, at any time before the list of contesting candidates is prepared, furnish in writing to the returning officer the proper form and spelling of his name and the returning officer shall, on being satisfied as to the genuineness of the request, make the necessary correction or alteration in the list in Form 4 and adopt that form and spelling in the list of contesting candidates.”

40. According to the 1st respondent, since the Proviso to Rule 8(2) of the Conduct of Election Rules, permitted her to correct her name, by which she was popularly known, she made Annexure-C request, and it was allowed by the Returning Officer, on being satisfied as to the genuineness of the request. The Returning Officer is expected to make necessary enquiry as to find out the genuineness of the request, before allowing such change of name. As per Rule 10(1) of the Conduct of Election Rules, the Returning Officer will publish the list of candidates in Form 7A, after expiry of the period for withdrawal of candidature, under Section 38 of the RP Act. The list of contesting candidates in Form 7A shall be duly published by the Returning Officer. Once the list of

contesting candidates is published by the Returning Officer, a candidate can do election campaign only in that name and he cannot change the name different from the name shown in the list of candidates approved by the Returning Officer. Since in Annexure-D list of contesting candidates in Form 7A, her name was shown as Prof.R.Bindu, she was supposed to do election campaign only in that name, and so there was nothing wrong in printing notices or pamphlets and publishing the same showing her name as Prof.R.Bindu. No corrupt practice was involved in doing so. Moreover, she was an Associate Professor in Sree Kerala Varma College, Thrissur, having Ph.D. Degree. Even according to the election petitioner, she was the HOD of the English Department in Sree Kerala Varma College, Thrissur. She never claimed that she was a designated Professor at that time. Learned counsel for the 1st respondent would submit that in common parlance, there is no difference between Associate Professor and Professor and so, students or common man may address an Associate Professor also as a Professor. Moreover, the 1st respondent had contested Municipal Election in the year 2000 and 2005, and she became the Mayor of Thrissur Corporation in the year 2005. Since then, she was popularly known among the public as Prof.R.Bindu and that is why, she preferred Annexure-C application before the Returning Officer to show her name as

Prof.R.Bindu. As we have seen, the Proviso to Rule 8(2) of the Conduct of Election Rules permits a candidate to show his/her name, by which he/she was popularly known. Popularly known does not mean that it must have been his/her real name with actual qualifications. The only requirement is that the candidate should have been popularly known by that name and the Returning Officer must have satisfied of the genuineness of the request.

41. The election petitioner is relying on Annexures-H and I to show that after the 1st respondent was elected, her name was included in the Council of Ministers as Prof.R.Bindu, but subsequently her name was changed into Dr.R.Bindu, to substantiate his case that, she was not a Professor at the time of election. Though the election petitioner is alleging that the 1st respondent misrepresented herself as Prof.R.Bindu, knowing fully well that she was not a designated Professor, he has no case that she was not qualified to become a Professor. The fact that she was a Ph.D. holder, is never disputed by the election petitioner. She was a member of Senate of Calicut University, member of Syndicate of Calicut University, member of Academic Council of Calicut University, member of PG Board of Studies of Calicut University and also member of Advisory Board of Higher Education Council, as stated in her preliminary objection.

While functioning as Head of the Department of English at Sree Kerala Varma College, Thrissur, she was functioning as Vice-Principal of that College and she became the Principal-in-charge of that College. She was the Associate Professor serving the College for 26 years. None of these statements are disputed by the election petitioner. According to her, for the reasons aforesaid, she was popularly known as Prof.R.Bindu and the entire visual and print media publishing news about her, addressed her as Prof.R.Bindu. The Returning Officer also was satisfied with the genuineness of her request made in Annexure-C, and that is why, in the list of candidates and Ballot paper, her name was shown as Prof.R.Bindu.

42. The 1st respondent contended that since she was popularly known as Prof.R.Bindu, the Returning Officer permitted to change her name in the list of candidates as 'Prof.R.Bindu' and that be the case, there was no cause of action for the election petitioner to file this election petition alleging corrupt practice against her. He has no case that the decision taken by the Returning Officer was illegal or without satisfying the genuineness of the request. He never challenged the decision of the Returning Officer before any authority. She conducted election campaign in the name 'Prof.R.Bindu' as her name was shown like that, in the list of candidates and Ballot paper. So, there is no question of any undue

influence or any other influence on the electors, as she was supposed to act only as per the decision taken by the Returning Officer.

43. How the use of the word "Prof." influenced or interfered with the free exercise of electoral right of the electors of 070 Irinjalakuda Constituent Assembly, is not detailed by the election petitioner in the election petition. Since she was a Ph.D. holder, working as Head of the Department of English in Sree Kerala Varma College, Thrissur, functioning as Vice-Principal with all qualifications to become a designated Professor, the use of her popular name as 'Prof.R.Bindu', might not have exerted any undue influence on the electors, as alleged by the election petitioner. As already stated even the election petitioner has no case that the 1st respondent was not qualified to become a designated Professor. He has no case that the 1st respondent made any false claim about her educational qualifications. If it was a contest in which professorship was an essential qualification, then ofcourse using the prefix 'Prof.' without being a designated Professor, can be said to be a misrepresentation. Using the name, 'Prof.R.Bindu' as she was popularly known by that name, and it was approved by the Returning Officer, on being satisfied of the request, one cannot say that, there was corrupt practice of undue influence in doing election campaign using that name. Since two other

candidates by name 'Bindu' were contesting in that election, it might have been all the more necessary for the 1st respondent to distinguish her name, before the electors, using her popular name.

44. A Division Bench of the Apex Court, while hearing Civil Appeal (Diary) No.31469 of 2022 (**Anugrah Narayan Singh v. Harsh Vardhan Bajpayee**) as reported in Live Law dated 20.02.2023, was pleased to observe that in India no one votes on the basis of educational qualification and therefore providing false information regarding educational qualification of an election candidate cannot be termed as a corrupt practice within the meaning of Section 123(2) and Section 123(4) of the RP Act.

45. In the case on hand, the educational qualification of the 1st respondent is not in question. The only dispute is that she was not a designated Professor at the time of election, but her name was shown as Prof.R.Bindu. In fact both Associate Professors and Professors are doing more or less the same duty of teaching and research, in Universities or Colleges. Both may have same professional degrees, and the difference may be only in their rank and functions, depending on the duties such as research work, administrative work, teaching etc. They are teaching

faculty in general, with different grades, subject to their teaching experience. As far as students or general public is concerned, it makes no difference with respect to Associate Professors or Professors, as both of them are teaching faculties. So this Court cannot find fault with Annexure-C request, made on the ground that she was popularly known as Professor, though she was only an Associate Professor.

46. Learned counsel for the election petitioner contended that Annexure-C request will not show that, the 1st respondent was popularly known as Prof.R.Bindu. But the election petitioner has no case that the request was made for any other reason such as 'the name is incorrectly spelt or is otherwise incorrectly shown' as stated in the Proviso to Rule 8(2) of the Conduct of Election Rules. So what remains is that, there was difference from the name by which she was popularly known, though it was not specifically stated in Annexure-C request. The Returning Officer, on being satisfied of that request, allowed the same, and in Annexure-D list of contesting candidates and Ballot paper, her name was shown as 'Prof.R.Bindu'.

47. In paragraph 6(d) of the election petition, the election petitioner has pleaded that the name 'Prof.R.Bindu' unduly influenced the electors of

the Irinjalakuda Constituency. It has been stated that she made door to door campaign describing her as a Professor and persuaded the electors to vote for her, saying that only a Professor like her can alleviate the grievances of the electors of 070 Irinjalakuda Assembly Constituency, which she claimed to be an educational hub with many educational institutions. The material facts necessary to prove that corrupt practice is lacking in the election petition, and so, it is liable to be struck off and the election petition itself is liable to be rejected for want of cause of action.

48. The averments of undue influence are absolutely vague and the election petitioner has not stated, to whom the 1st respondent stated that she was a Professor, and only a Professor can alleviate the grievances of the electors etc., and where it was stated and when it was stated. Moreover, the affidavit filed along with the election petition does not disclose the source of information in respect of the averments made in paragraph 6. It is a material defect which cannot be cured and it is fatal to the election petition. There is no averment as to whom, the 1st respondent distributed Annexure-E to G notices. Necessary material facts and particulars are not there with respect to the pleadings in paragraph 6(g). The place where the election petitioner happened to see the posters, wall-writings, banners etc. will not find a place in the election

petition. Regarding the march led by the 1st respondent to the bus stand and its details are not stated in the election petition. When the election petitioner is alleging corrupt practice of undue influence, he is duty bound to plead and prove the allegations of corrupt practice beyond reasonable doubt. He has to plead all necessary facts and particulars regarding each and every event/incident/instance of corrupt practice.

49. Though the election petitioner contended in paragraph 13 of the counter filed by him to the preliminary objection that the election petition has been filed in compliance with Section 83 of the RP Act and it contains all the necessary material facts and material particulars to sustain the election petition, he filed I.A.No.3 of 2022 on 23.03.2022 for amending the election petition, for incorporating certain additional facts such as the source of information, name of witnesses etc., with respect to the incidents of corrupt practice alleged in the petition. That itself will show that the election petition was not containing the necessary material facts and particulars. Moreover, in the amendment application, he wanted to introduce Annexure-I(a), which is true copy of the order of Calicut University dated 18.01.2022, by which, the decision taken by the Syndicate on 30.12.2021, to designate retired and relieved teachers as Professors with retrospective effect, was approved. That was with a view

to substantiate his case that as on the date of election, the 1st respondent was not a designated Professor. Even the 1st respondent has no case that she was a designated Professor as on the date of election. Her case is only that she was popularly known as Prof.R.Bindu. At the same time, petitioner has no quarrel with the fact that the 1st respondent was an Associate Professor and HOD of the English Department in Sree Kerala Varma College, Thrissur.

50. The Apex Court in **C.P.John v. Babu M. Palissery and others** [2014 (10) SCC 547] held that when the election petition is taken up for consideration, the Court which deals with such an election petition, should be in a position to know in exactitude, as to what is the corrupt practice alleged as against the parties, without giving any room for doubt as to the nature of such allegation, the parties involved, the date, time and the place, etc., so that the party against whom such allegation is made is in a position to explain or defend any such allegation without giving scope for any speculation. In that context, both Sections 83(1)(a) and 83(1)(b) and the Proviso play a very key role, since the election petitioner cannot simply raise an allegation of corrupt practice and get away with it, inasmuch as the affidavit to be filed in respect of corrupt practice should specifically support the facts pleaded, as well as, the

material particulars furnished.

51. Paragraph 20 of that judgment reads as follows:

20. Therefore, a conspectus reading of Section 83(1)(a) read along with its proviso of the Act, as well as, Rule 94-A and Form 25 of the Rules makes the legal position clear that in the filing of an election petition challenging the successful election of a candidate, the election petitioner should take extra care and leave no room for doubt while making any allegation of corrupt practice indulged in by the successful candidate and that he cannot be later on heard to state that the allegations were generally spoken to or as discussed sporadically and on that basis the petition came to be filed. In other words, unless and until the election petitioner comes forward with a definite plea of his case that the allegation of corrupt practice is supported by legally acceptable material evidence without an iota of doubt as to such allegation, the election petition cannot be entertained and will have to be rejected at the threshold. It will be relevant to state that since the successful candidate in an election has got the support of the majority of the voters who cast their votes in his favour, the success gained by a candidate in a public election cannot be allowed to be called in question, by any unsuccessful candidate by making frivolous or baseless allegations and thereby unnecessarily drag the successful candidate to the court proceedings and make waste of his precious time, which would have otherwise been devoted for the welfare of the members of his constituency. Therefore, while deciding the issue raised, we wish to keep in mind the above lofty ideas, with which the

provisions contained in Section 83(1) read along with Section 86 came to be incorporated while deciding this appeal.”

52. Therefore, the legal position is clear, that in the filing of an election petition challenging the successful election of a candidate, the election petitioner should take extra care and shall not leave any room for doubt, while making any allegation of corrupt practice. Unless and until the election petitioner comes forward with a definite plea of his case, supported by legally acceptable material evidence, to prove the allegations of corrupt practice without an iota of doubt, the election petition cannot be entertained and will have to be rejected at the threshold.

53. The Apex Court in **Ram Sukh v. Dinesh Agarwal** [2009 KHC 5191], held that it is mandatory that all material facts are set out in an election petition and it is also trite that, if material facts are not stated in the petition, the same is liable to be dismissed on that ground alone.

54. The next question is whether the election petitioner had set out material facts in his petition. The phrase “material facts” has neither been defined in the Act nor in the Code and therefore it has been understood by the Courts in general terms, to mean the entire bundle of

facts which would constitute a complete cause of action. In other words material facts are facts upon which the plaintiff's cause of action or defendant's defence depends (**Mahadeorao Sukaji Shivankar v. Ramaratan Bapu**, [(2004) 7 SCC 181]). Broadly speaking, all primary or basic facts which are all necessary, either to prove the cause of action by the plaintiff, or defence by the defendant, are the material facts. Material facts are facts which if established, would give the petitioner the relief asked for. But again, what could be said to be material facts would depend upon the facts of each case, and no rule of universal application can be laid down.

55. In **Jagan Nath v. Jaswant Singh and others** [1954 SCR 892] it was held by the Apex Court that the statutory requirement of election law must be strictly observed and that the election contest is not an action at law or a suit in equity, but is purely a statutory proceeding unknown to the common law and the Court possess no common law power. It is also well settled that the success of a candidate who has won at an election should not be lightly interfered with, and any petition seeking such interference must strictly conform to the requirements of the law. Nevertheless it is also to be borne in mind that one of the essentials of the election law is to safeguard the purity of the election

process, and therefore the Courts must callously ensure that, people do not get elected by flagrant breaches of that law or by indulging in corrupt practices as enumerated in the Act.

56. It is well settled that in an election petition, for proving an allegation of corrupt practice, the standard of proof is like that in a criminal case. In other words the allegation must be proved beyond reasonable doubt, and if two views are possible, then the benefit of doubt should go to the elected candidate {**Manmohan Kaliya v. Yash** [1984 (3) SCC 499]}.

57. In **Ram Sharan Yadav v. Thakur Muneshwar Nath Singh** [(1984) 4 SCC 649], the Apex Court held that the charge of a corrupt practice is in the nature of a criminal charge, which if proved, entails a very heavy penalty in the form of disqualification. Therefore, a very cautious approach must be made in order to prove the charge of undue influence levelled by the defeated candidate. It is for the party who sets up the plea of "undue influence" to prove it to the hilt beyond reasonable doubt, and the manner of proof should be the same, as for an offence in a criminal case.

58. In **V. Narayanaswamy v. C.P. Thirunavukkarasu**, [(2000)

2 SCC 294] the Apex Court held that, exercise of undue influence is also deemed to be a corrupt practice. Under Sub-Section (2) of Section 123, undue influence means any direct or indirect interference or attempt to interfere, on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right. Material facts and material particulars certainly connote two different things. Material facts are those facts which constitute the cause of action. In a petition based on the allegation of corrupt practices, the cause of action cannot be equated with the cause of action as is normally understood, because of the consequences that follow in a petition based on the allegations of corrupt practices. An election petition seeking a challenge to the election of a candidate on the allegation of corrupt practices is a serious matter; if proved not only does the candidate suffer ignominy, he also suffers disqualification from standing for election, for a period that may extend to six years.

59. In the case on hand, the election petitioner could not bring out a cause of action from the facts and particulars pleaded in the petition. Annexure-E to G notices and pamphlets were published showing the name of the 1st respondent as 'Prof.R.Bindu' as permitted by the Returning Officer under the Proviso to Rule 8(2) of the Conduct of

Election Rules. How the use of the prefix "Prof." to the name of the 1st respondent in the notices and pamphlets unduly influenced the electors of Irinjalakuda Constituency, is stated in a vague manner without disclosing the date, time and place of that incident. In an election petition, the allegations of corrupt practice of a serious nature should not be stated in a vague manner without giving the details, in its exactitude. In the absence of such disclosure, it cannot be said that the election petition and the affidavit are in conformity with the mandatory provisions of Section 83 of the RP Act. Failure to plead material facts is fatal to the election petition.

60. A relief not founded on the pleadings should not be granted as a general rule. As laid down by the Apex Court in **Ram Sewak Yadav v. Hussain Kamil Kidwai** [(1964) 6 SCR 238], there can be no dispute to the settled legal proposition that, no party should be permitted to travel beyond its pleadings, and the parties are bound to make all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised, and they may have an opportunity of placing the relevant evidence before the Court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and

denied by the other party. Therefore, it is neither desirable nor permissible for a Court to frame an issue, not arising on the pleadings.

61. So obviously, when the plea was not sufficient to raise the issue, no evidence can be let in, in the absence of any pleading on that issue. In **K.C.Madhava Kurup v. K.Muraleedharan** [(1990) 2 KLT 112], a Single Bench of this Court held that pleadings which are vague are liable to be struck off under Order VI Rule 16 CPC. The election petitioner should not be permitted to have a fishing expedition or a roving enquiry without the requisite pleadings. Where the Court finds that neither the material facts nor the full particulars are stated in the election petition, the petition can be dismissed for not disclosing the cause of action. An election petition can be dismissed summarily, if it does not disclose any cause of action as it was held by a Single Bench of this Court in **Abraham Kuriakose v. P.T.Thomas** [(1991) 2 KLT 650]. An election petition alleging corrupt practice is liable to be dismissed, if there is omission to state material facts or to give full particulars as it was held by the Apex Court in **Subhash Desai v. Sarad J. Rao** [1994 Supp. (2) SCC 446]. Omission of a single material fact leads to incomplete cause of action, and the statement of claims becomes bad as it was held by the Apex Court in **Samant N. Balkrishna and Another v. George**

Fernandez and Others [(1969) 3 SCC 238].

62. As far as the corrupt practice of undue influence alleged against the 1st respondent under Section 123(2) of the RP Act is concerned, the election petitioner failed to bring out any cause of action, and he failed to place the material facts and material particulars to substantiate the corrupt practices alleged.

63. Now coming to the corrupt practice alleged under Section 123(4) of the RP Act, the Apex Court in **B.R.Rao v. N.G.Ranga** [1970 (3) SCC 576] held that *'to constitute a corrupt practice under Section 123(4) four conditions are required to be fulfilled—(1) that there should be publication of a statement of fact relating to the personal character or conduct of the candidate; (2) that the statement should be false; (3) that the person making it should either believe it to be false or should not believe it to be true and that the statement was reasonably calculated to prejudice the prospects of that candidate's election; and (4) that it was published by the candidate or his election agent or by any other person with the consent of a candidate or his election agent. If the publication is by a person other than the candidate or his election agent, the consent of the candidate or his election agent must be established before the charge*

is held proved.'

64. Regarding the publication of Annexure-N notice, the election petitioner would say that the 1st respondent prepared that notice and entrusted the same to Sri.K.R.Jojo and he printed, published and circulated the same among the electors of 070 Irinjalakuda Assembly Constituency. According to him, publication of Annexure-N notice by Sri.K.R.Jojo was with the consent of the 1st respondent, and it was full of false statements regarding the personal character and conduct of the election petitioner, calculated to prejudice the prospects of his election and so, corrupt practice under Section 123(4) of the RP Act is attracted.

65. Regarding the allegation under Section 123(4) of the RP Act also, it is not pleaded where the 1st respondent prepared that notice, at what place the same was handed over to Sri.K.R.Jojo or the details of circulation of that notice. The persons who distributed Annexure-N notice, to whom it was distributed, when and where it was distributed, the names of witnesses who had seen such distribution etc. are not specifically pleaded in the election petition. The place of discussion between the 1st respondent and Sri.K.R.Jojo also will not find a place in the election petition, except a vague statement that during the election

campaign of the 1st respondent in Aloor Grama Panchayat, they discussed the plans to overcome the defeat and the 1st respondent prepared the notice and handed it over to Sri.K.R.Jojo.

66. It is true that Annexures-J, K and L news papers will show the name of Sri.K.R.Jojo attending the election campaign of the 1st respondent along with so many other persons. Learned counsel for the election petitioner argued that proof of express consent is not necessary, and inference of such consent can be raised from the circumstances. There is nothing to show that Sri.K.R.Jojo was the election agent of the 1st respondent, and even the election petitioner has not advanced such a plea. So the most important factor is that, whether Sri.K.R.Jojo, who is stated to be the author of Annexure-N notice, printed and published that notice with the consent of the 1st respondent. As already stated the material facts with respect to the discussion, preparation of Annexure-N notice by the 1st respondent, entrustment of that notice to Sri.K.R.Jojo, the printing and publishing undertaken by Sri.K.R.Jojo with the consent of the 1st respondent and its circulation among the electors are not pleaded with exactitude, to make out a cause of action. Consent is the lifeline to link up the candidate with the action of the other person which may amount to corrupt practice. Unless it is specifically pleaded and clearly

proved beyond reasonable doubt, the candidate cannot be charged for the action of others, as held by the Apex Court in **Surinder Singh v. Hardial Singh**, [(1985) 1 SCC 91].

67. Learned counsel for the 1st respondent contended that the contents of Annexure-N notice was not directly making any aspersions against the personal character or conduct of the election petitioner, and if the innuendo meaning of that notice was to that effect, it might have been specifically pleaded by the election petitioner. But learned counsel for the election petitioner contended that when the allegations were made directly degrading the election petitioner in front of the electors, making specific allegations against his personal character and conduct, there was no innuendo meaning to be pleaded in the election petition. It is true that Annexure-N notice was making degrading allegations against the personal character and conduct of the election petitioner. But here the question is whether the 1st respondent prepared the same, and handed it over to Sri.K.R.Jojo, who printed and published the same among the electors of the Irinjalakuda Constituency with the consent of the 1st respondent. As we have seen, the material facts regarding preparation of that notice, handing over of that notice, etc., specifying the place and time are not pleaded in the election petition with exactitude. Moreover,

who distributed those notices, to whom it was distributed, where it was distributed etc. are not stated in the election petition, which are material facts as far as the corrupt practice alleged under Section 123(4) of the RP Act is concerned. The source of information as to the allegations pleaded in paragraph 7 also is lacking in the election petition. The importance of disclosing such source is to give the other side, notice of the same and also to give an opportunity to the other side to test the veracity and genuineness of the source of information.

68. Even if Annexure-N notice was printed and published by Sri.K.R.Jojo, there is nothing to show that it was prepared by the 1st respondent, and printed and published by Sri.K.R.Jojo with the consent of the 1st respondent. The election petitioner cannot let in evidence regarding the allegations of corrupt practice which are not pleaded by him with exactitude.

69. Regarding I.A.No.3 of 2022 filed by the election petitioner for amending the election petition, the first part is with respect to the decision of Calicut University based on the Syndicate decision to designate retired and relieved teachers as Professors with retrospective effect. Annexure-I(a) produced by the election petitioner is dated

18.01.2022. We are on the election petition alleging corrupt practices in the 15th Kerala Legislative Assembly Election held on 06.04.2021. The subsequent decision by the University to designate retired and relieved teachers, as Professors has nothing to do with this election petition.

70. The other part of the amendment petition is for incorporating the names of witnesses, who witnessed the corrupt practice done by the 1st respondent and Sri.K.R.Jojo with her consent, and the date and time of such corrupt practices. Since those are material facts and particulars to bring out the cause of action, it cannot be incorporated by way of an amendment in an election petition alleging corrupt practices. Those facts were necessary to make the cause of action complete, and since the election petitioner failed to plead the same, no cause of action is disclosed. Hence the election petition is liable to be rejected under Order VII Rule 11 CPC. Under that circumstance, the application for amendment filed by the election petitioner is liable to be dismissed.

71. To sum up, showing the name of the 1st respondent as 'Prof.R.Bindu' in Annexures-E to G notice, pamphlet etc., and doing election campaign also in that name will not amount to corrupt practice as envisaged under Section 123(2) of the RP Act, as the Returning Officer

corrected her name as Prof.R.Bindu in the list of contesting candidates and Ballot paper, as per the Proviso to Rule 8(2) of the Conduct of Election Rules, 1961, on being satisfied as to the genuineness of her request in Annexure-C, as she was popularly known as Prof.R.Bindu. There is nothing to show that Sri.K.R.Jojo printed, published and circulated Annexure-N notice with the consent of the 1st respondent. Material facts, material particulars and the source of information regarding the corrupt practices alleged against the 1st respondent are not pleaded with exactitude, to formulate an issue sufficient to be tried before this Court. Moreover, the pleadings are not sufficient to disclose a cause of action for the election petitioner. So the election petition is liable to be rejected under Order VII Rule 11 of CPC.

72. The subsequent events, which have no connection with the disputed election, need not be incorporated by way of amendment as it has nothing to do with the election petition. The material facts, particulars, source of information etc. which ought to have been pleaded in the election petition to prove the alleged corrupt practices cannot be introduced for the first time in the election petition by way of an amendment. So I.A.No.3 of 2022 is liable to be dismissed.

In the result, the election petition is rejected under Order VII Rule 11 of CPC, and I.A.No.3 of 2022 also stands dismissed.

The Registry is directed to forward the substance of the decision to the Election Commission of India and the Speaker (Chairman) of the Kerala Legislative Assembly, forthwith, and immediately thereafter shall send an authenticated copy of the decision to the Election Commission of India, as envisaged under Section 103 of the RP Act, for publication in the Official Gazette of the State of Kerala, as mandated under Section 106 of the RP Act.

Sd/-

**SOPHY THOMAS
JUDGE**

DSV/smp

APPENDIX OF EL.PET. 6/2021

PETITIONER'S ANNEXURES :

- Annexure A** A TRUE COPY OF THE FINAL RESULT SHEET PREPARED ON FORM 20 SHOWING THE TOTAL NUMBER OF VOTES SECURED BY ALL THE CANDIDATES AND NOTA.
- Annexure B** A TRUE COPY OF THE GAZETTE PUBLICATION DATED 04.05.2021 WITH THE NOTIFICATION OF THE ELECTION COMMISSION OF INDIA DATED 03.05.2021 AND SCHEDULE OF THE NAMES OF MEMBERS ELECTED TO THE KERALA LEGISLATIVE ASSEMBLY.
- Annexure C** THE REQUEST OF THE 1st RESPONDENT DATED 20.03.2021 BEFORE THE RETURNING OFFICER,070-IRINJALAKUDA ASSEMBLY CONSTITUENCY OBTAINED UNDER THE RIGHT TO INFORMATION ACT.
- Annexure-C1** ENGLISH TRANSLATION OF ANNEXURE-C.
- Annexure D** LIST OF CANDIDATES DATED 22.032021 PREPARED AND PUBLISHED BY THE RETURNING OFFICER,070-IRINJALAKUDA ASSEMBLY CONSTITUENCY OBTAINED UNDER THE RIGHT TO INFORMATION ACT.
- Annexure E** NOTICE/PAMPHLET SOLICITING VOTES OF THE 1st RESPONDENT BY DESCRIBING HER AS A PROFESSOR.
- Annexure E1** ENGLISH TRANSLATION OF ANNEXURE-E NOTICE/PAMPHLET.
- Annexure F** NOTICE/PAMPHLET SOLICITING VOTES FOR THE 1st RESPONDENT BY DESCRIBING HER AS A

PROFESSOR.

- Annexure F1** ENGLISH TRANSLATION OF ANNEXURE-F
NOTICE/PAMPHLET.
- Annexure G** NOTICE/PAMPHLET SOLICITING VOTES FOR THE
1st RESPONDENT BY DESCRIBING HER AS A
PROFESSOR.
- Annexure G1** ENGLISH TRANSLATION OF ANNEXURE-G
NOTICE/PAMPHLET.
- Annexure H** TRUE COPY OF THE GOVERNMENT NOTIFICATION
NO.POL.5/43/2021-GAD DATED 20.05.2021.
- Annexure I** TRUE COPY OF THE GOVERNMENT NOTIFICATION
NO.POI.5/43/2021-GAD DATED 08.06.2021.
- Annexure J** DESHABHIMANI NEWSPAPER DATED 24.03.2021
SHOWING THE PRESENCE OF SHRI.K.R.JOJO
WITH 1st RESPONDENT FOR ELECTION
CAMPAIGN.
- Annexure J1** ENGLISH TRANSLATION OF THE RELEVANT NEWS
ITEM IN ANNEXURE-J.
- Annexure K** MALAYALA MANORAMA NEWSPAPER DATED
30.03.2021 WITH A NEWS ITEM EVIDENCING
THE ACTIVE PARTICIPATION OF SRI.K.R.JOJO
IN THE ELECTION CAMPAIGN OF THE 1st
RESPONDENT.
- Annexure K1** ENGLISH TRANSLATION OF THE RELEVANT NEWS
ITEM IN ANNEXURE-K.
- Annexure L** MATHRUBHUMI NEWSPAPER DATED 30.03.2021
WITH A NEWS ITEM EVIDENCING THE ACTIVE
PARTICIPATION OF SRI.K.R.JOJO IN THE
ELECTION CAMPAIGN OF THE 1st RESPONDENT.

Annexure L1	ENGLISH TRANSLATION OF THE RELEVANT NEWS ITEM IN ANNEXURE-L.
Annexure M	DESHABHIMANI NEWSPAPER DATED 05.04.2021 SHOWING THE PRESENCE OF SHRI.K.R.JOJO WITH THE 1st RESPONDENT FOR ELECTION CAMPAIGN.
Annexure M1	ENGLISH TRANSLATION OF THE RELEVANT NEWS ITEM IN ANNEXURE-M
Annexure N	NOTICE WITH THE CAPTION "ജനങ്ങളുടെ വിശ്വസിക്കുകയ്ക്കലിലെ ജോസഫ്" PRINTED AND PUBLISHED BY SRI.K.R.JOJO WITH THE CONSENT OF THE 1st RESPONDENT.
Annexure N1	ENGLISH TRANSLATION OF ANNEXURE-N NOTICE
Annexure O	ORIGINAL RECEIPT NO.07/06/2021 DATED 15.06.2021.
RESPONDENTS' ANNEXURES :	NIL