

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

Wednesday, the 29th day of March 2023 / 8th Chaithra, 1945
EL.PET. NO. 8 OF 2021

PETITIONER:

ADV.M.SWARAJ,S/O. MURALEEDHARAN NAIR,AGED 41 YEARS,SUMA NIVAS,
BHOODAN COLONY P. O., MALAPPURAM DISTRICT, PIN - 679334.

BY ADVS.M/S.P.K.VARGHESE,SRI.K.S.ARUN
KUMAR,SRI.N.K.SHYJU,SRI.P.P.BIJU,SRI.P.S.ANISHAD,
SRI.K.R.ARUN KRISHNAN,SRI.P.T.MANOJ,SANJANA RACHEL JOSE,SRI.BIJU KUMAR &
SRI. REGHU SREEDHARAN

RESPONDENTS:

1. K.BABU,S/O. KUMARAN, AGED 70 YEARS, KANNUPARAMBATH HOUSE, SANSKRIT COLLEGE ROAD, TRIPUNITHARA, ERNAKULAM DISTRICT, PIN - 682301.
2. DR. K. S. RADHAKRISHNAN, S/O. K. A. SUKUMARAN, AGED 66 YEARS, KALLUMADATHIL, HMC ROAD, SOUTH CHITTOOR P. O., ERNAKULAM DISTRICT, PIN - 682027.
3. K. P. AYAPPEN, S/O. K. M. PONNAN, AGED 46 YEARS, KAPPILY HOUSE, EDAKKUNNU, PADUVAPURAM P. O., PIN - 683576.
4. ARUN BABU P. C., S/O. CHANDRASEKHARAN, AGED 35 YEARS, NIKARTHIL, KUMBALAM P. O., KUMBALAM, ERNAKULAM DISTRICT, PIN - 682506.
5. RAJESH PAIROAD, S/O.K. K. RAMESH, AGED 44 YEARS, KALAPPURACKAL, EDAKOCHI, ERNAKULAM DISTRICT, PIN - 682010.
6. C. B. ASHOKAN, S/O. BHASKARAN T. K., AGED 57 YEARS, CHERAPURATHU VEEDU, IRUMBANAM P. O., TRIPUNITHARA, ERNAKULAM DISTRICT, PIN - 682309.

BY T.KRISHNANUNNI (SR.) ALONG WITH ADVS.M/S.C.S.AJITH
PRAKASH,SRI.T.K.DEVARAJAN,SRI.FRANKLIN ARACKAL,SRI.PAUL C.THOMAS,SRI.
BABU M.,SRI.NIDHIN RAJ VETTIKKADAN,SRI.HAARIS MOOSA & SRI.ADESH JOSHI
FOR R1
SRI.K.ANAND(SR) ALONG WITH SMT.LATHA ANAND,SRI.M.N.RADHAKRISHNA
MENON,SRI.K.R.PRAMOTH KUMAR,SRI.VISHNU S.,SRI.ROHITH MOHAN,SRI.SIDHARTH
P.S.,SRI.RADHAKRISHNA PILLAI B. & ARJUN VARMA FOR R2
SRI. ARUN K.P. FOR R4
SHRI.DEEPULAL MOHAN, SC, ELECTION COMMISSION OF INDIA,

This Election petition having come up for orders on 29.03.2023 upon perusing the Election Petition, the court on the same day passed the following:

P.T.O.

P.G. AJITHKUMAR, J.

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Dated this the 29th day of March, 2023

ORDER

This petition was filed invoking the provisions of Sections 80, 81, 83, 84, 100, 101 and 123 of the Representation of People Act, 1951 (for short "R.P.Act"). The petitioner and respondent Nos.1 to 6 were the candidates in the election to the Kerala Legislative Assembly in 081-Tripunithura Constituency in Ernakulam District held on 06.04.2021. The result was declared on 02.05.2021. Respondent No. 1 returned in the election. The petitioner seeks to declare the election void on the ground that the 1st respondent has committed corrupt practices affecting materially the result of the election.

2. The 1st respondent entered appearance and filed a preliminary objection. He contends that the election petition suffers from material defects for non-compliance of the provisions of Section 81 of the Act and Rule 212 of the Rules

of the High Court of Kerala, 1971. It is further contended that allegations leveled against the 1st respondent in the election petition do not constitute any corrupt practice within the meaning of Section 123 of the Act and therefore there is no cause of action for the petition. Accordingly, the 1st respondent seeks to reject the petition under Order VII Rule 11 of the Code of Civil Procedure, 1908. That question is considered as a preliminary question.

3. Heard the learned counsel appearing for the petitioner and also the learned Senior Counsel, appeared on instructions, for the 1st respondent. Other respondents did not choose to file any objection or turn up to make up any submission.

4. An election petition has to be presented in accordance with the provisions of Part II of the R.P.Act. Section 81 lays down the parameters for presentation of a petition. An election petition can be filed within 45 days from the date of election of the returned candidate. Apart from satisfying the requirements of Sections 81, 83 and 84 of the

Act, provisions of Rule 212 of the Rules of the High Court of Kerala also should be complied with. The allegation of the petitioner is that although the election petition was presented within 45 days, it was defective, and such defects were cured beyond the period of 45 days for which reason it is liable to be dismissed for non-compliance of the provisions of Section 83 of the Act. The defects pointed out by the 1st respondent are that sufficient number of copies of the petition were not furnished and the copies were not duly attested to be true copies. It is seen that at the time of presentation of election petition, it had the defects of discrepancy in pagination of various appendices and deficiency in number of authenticated copies. The same were cured, of course, after 15.06.2022, the last date for presentation of the petition.

5. In **M.Kamalam v. Dr.V.A.Syed Mohammed [(1978) 2 SCC 659]** the Apex Court held that if there is substantial compliance of the requirements of Section 81(3) of the Act, an election petition cannot be dismissed at the threshold invoking the provisions of Section 86(1) of the Act,

which enables the High Court to dismiss an election petition which does not comply with the provision of Sections 81 or other provisions of the Act. It was held that affixing of signatures at a wrong place of the petition for the purpose of authentication by itself is not a reason to dismiss an election petition treating it to be defective. The Apex Court in **G.M.Siddeshwar v. Prasanna Kumar [(2013) 4 SCC 776]**

held that,-

“53. The doctrine of substantial compliance as well as the doctrine of curability were followed in V.Narayanawsamy v. C.P.Thirunavukkarasu (2000) 2 SCC 294. This Court held that a defect in verification of an affidavit is not fatal to the election petition and it could be cured. Following Moidutty it was held that if the election petition falls foul of Order VI Rule 16 and Order VII Rule 11 of the CPC and does not disclose a cause of action then it has to be rejected at the threshold.

54. Somewhat more recently, in Anil Vasudev Salgoankar v. Naresh Kushali Shigaonkar (2009) 9 SCC 310 this Court reiterated this position in law and held:

“The position is well settled that an election petition can be summarily dismissed if it does not furnish the cause of action in exercise of the power under

the Code of Civil Procedure. Appropriate orders in exercise of powers under the Code can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with.”

55. 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. Integral part of an election petition.”

6. Here, the requirement of Section 81(3) of the Act is that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition. The deficiency pointed out was not with respect to the furnishing of copies as insisted on by Section 81(3) of the R.P. Act instead, 3 authenticated copies as insisted on by Rule 212 of the Rules of the High Court of Kerala. Instead of such three authenticated copies, two copies alone were furnished. That defect was later cured. Deficiency of one authenticated

copy does not amount to non-compliance of Section 81(3) of the Act. The other defects pointed out are only trivial and curable ones which at any rate do not amount to infraction of the provisions of Section 81, 82, 83 or any other provision of the Act or Rule 212 of the Rules of the High Court of Kerala. In such circumstances, I am of the view that the election petition is not liable to be rejected invoking the provision of Section 86(1) of the Act.

7. The contention of the petitioner is that election of the 1st respondent is void under Section 100(1)(b) and 100(1)(d) of the Act. Under the said provisions, if the returned candidate or the election agent or by any other person with the consent of the returned candidate or his election agent committed any corrupt practice, the High Court can declare the election of the returned candidate void.

8. The corrupt practices alleged to have been committed by the 1st respondent during the process of election are exerting of undue influence as defined in Section 123(2)(a)(ii) of the Act, and corrupt practice as defined in

Section 123(3) of the Act. For easy understanding, Section 123(2) and (3) are extracted below:-

“123. Corrupt practices.— xx xx xx

(2) Undue influence, that is to say, 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:

Provided that—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who-

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without

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intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

(3) The appeal by a candidate 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:

Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause."

9. The allegations set forth by the petitioner are corrupt practices under three distinct heads, namely;

- i) inducement on electors to vote for the 1st respondent in the name of Lord Sabarimala Ayyappa making them believe that they will become or will be rendered an object of divine or spiritual censure as enjoined in Section 123(2)(a)(ii) of the Act,
- ii) the 1st respondent, his election agent and others with their consent appealed to the electors in the constituency to vote for the 1st respondent and also to refrain from voting

for the petitioner on the ground of religion, coming under the first part of Section 123(3) of the R.P.Act, and

iii) the 1st respondent and his election agent and others with their consent used picture of Lord Ayyappa, which is a religious symbol for the furtherance of the prospectus of the election of the 1st respondent coming under the later part of Section 123(3) of the R.P.Act.

10. In **Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi [(1987) Supp. SCC 93]**, it was held by the Apex Court that if the court, on examination of the pleadings in an election petition, finds that it do not make out any cause of action or that the same may tend to prejudice, embarrass or delay the fair trial of the election petition, it shall strike out that part of the pleadings, and if the court finds that there are no triable issues after striking out the unnecessary pleadings, it has to reject the election petition under Order VII Rule 11 of the Code of Civil Procedure. In **Azhar Hussain v. Rajiv Gandhi [(1986) Supp.SCC 315]**, it was held by the Apex Court that the power under Order VI Rule 16 and Order VII Rule 11 shall be exercised by courts to ensure that a litigation

which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and the sword of Damocles is not kept hanging over the respondent without a point or purpose.

11. In the light of the law laid down in the aforesaid decisions, it is to be considered whether the allegations in the petition will constitute the ingredients of the corrupt practices making sufficient cause of action so as to proceed with this election petition. For a proper understanding of the purport of the allegations, the statements spoken, written or publicised which are mentioned in the election petition are extracted below:-

Sl. No.	Parag raph No.	Statement
1	10	The contest is between lord Sabarimala Ayyappa and Swaraj, I am the person who stands with lord Sabarimala Ayyappa; unless you cast your vote in favour of me, it is as good as in defeating Lord Sabarimala Ayyappa.
2	10	Swaraj is a person who tried to destroy the solemn sanctity of Lord Sabarimala Ayyappa and the Sabarimala Temple..
3	10 & 13	Though we all Hindus Swaraj is a Hindu by his name only, but not of his breliefs.

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4	11	You are Hindu voters and believers of Lord Sabarimala Ayyappa, Mr.Swaraj is acting against the true hindu faiths, rituals and he made speeches that Lord Sabarimala Ayyappa is married and you may have heard it.
5	12	Unless you cast your vote in my favour, Lord Sabarimala Ayyappa will be defeated and this is the right opportunity to expel the election petitioner from the constituency.
6	14	The election petitioner is not a true Hindu and believer of lord Sabarimala Ayyappa by his faith's and beliefs so that Lord Ayyappa is not pleased with him.
7	14	At the moment we are in such a war in which Swaraj is such a person who is playing with our religious affairs and beliefs. He considers our Hindu community whose conscience is dead. You are requested to make use of this opportunity by casting one vote in favour of me in the name of Lord Sabarimala Ayyappa.
8	15	The election petitioner, though a Hindu in name, was not true to the religious tenets of Hinduism and thereby not a true devotee of lord Sabarimala Ayyappa, and the election petitioner is a heretic and as such the election petitioner is standing outside the pale of Hindu religion.
9	26	Ayyane kettikkuvan vannavane ayyante nattil ninnum kettukettikan. (To drive away the one who came to get Ayyan (Lord Ayyappa) married, from Ayyan's land)
10	27	Sabarimala kalapabhumiyakkiyavarkk ethire (Against those who made Sabarimala a battle zone)

12. The learned counsel appearing for the petitioner would contend that the aforesaid statements amount corrupt practices in Section 123(3A) of the R.P.Act also. But, no ground of commission of corrupt practice as defined in Section

123(3A) of the R.P.Act is urged in the Election Petition. In the absence of pleadings in that respect election petition cannot be entertained for the allegation of commission of corrupt practices as defined in Section 123(3A) of the R.P.Act.

Allegations under heads No. 1 and 2

13. The petitioner alleges that the 1st respondent, his election agent and others with their consent made public speeches and appealed to the voters that the 1st respondent is a true Hindu; whereas the petitioner is a Hindu by name only. Similarly, they made statements and appeals that the 1st respondent stood for protecting the faith of the devotees of Lord Ayyappa; whereas the petitioner acted against and denigrated the interest of the devotees of Lord Ayyappa. The further allegations are that the 1st respondent, his election agent and others with their permission, made wall writing at various places of the constituency, and distributed leaflets containing similar appeals to the electors in the constituency. The allegation of the petitioner is that those acts amounted to inducement to the electors in the constituency, who are

Hindus and devotees of Lord Ayyappa that if they do not vote for the 1st respondent, they will be rendered objects of divine displeasure. Thus the petitioner maintains that a major portion of the electors in the constituency were unduly influenced in the matter of exercise of their electoral right. Also, the aforementioned public speeches, wall writings and leaflets amounted to appeal to the electors to vote for the 1st respondent on the ground of religion.

14. The learned counsel appearing for the petitioner, on the other hand, would submit that the aforementioned statements were communicated to the Hindu electors, most of whom are devotees of Lord Ayyappa, and the same certainly would alarm the electors of the obvious consequence of divine displeasure if they do not vote for the 1st respondent. The learned counsel further would submit that such statements, in any view of the matter, amount to appeal to the electors to vote for the 1st respondent on the basis of religion. The learned counsel places reliance on the law laid down by the Apex Court in **Shubnath Deogam v. Ram**

Narain Prasad and others [AIR 1960 SC 148], Kultar Singh v. Mukthiar Singh [AIR 1965 SC 141], Manubhai Nandlal Amersey v. Popatlal Manilal Joshi and others [(1969) 1 SCC 372], Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra [(1976) 2 SCC 17], and Kalamata Mohan Rao v. Narayana Rao Dharmana and others [(1995) 6 SCC 728] in order to substantiate his contention.

15. In **Shubnath Deogam** referred to above appeal to vote on the basis of religious ceremonies of the Adibasis was in question. Cock was the symbol of the returned candidate. He allegedly solicited votes indicating a religious belief among Adibadis that the pleasure of the deities is through the cock taking the food before it is sacrificed to the deities. The leaflet distributed was clearly invoking the wrath of the deities on the electorate in case they forget the cock, that is, forget to vote for the party of which it is the symbol. By drawing such a simile, the electors were warned that the Gods will be displeased if votes are not cast in the box of cock. The Apex

Court held that it was clearly an incitement of divine displeasure thereby compelling to vote in favour of the candidate and would come within the kind of undue influence mentioned in Section 123(2)(a)(ii) and when such a leaflet is given a large circulation, it would come within Section 123(3) of the R.P.Act.

16. In **Manubhai Nandlal Amersey** referred to above the corrupt practice alleged was with respect to the speech telling the electors that if they voted for the Congress candidate they would commit the sin of cow slaughter and urged them in the name of mother cow to take a vow not to vote for the Congress candidate with the result that several members of the audience publicly took the vow. The Apex Court held that actual effect of the speech is not material, and corrupt practice is committed if the speech is calculated to interfere with the free exercise of electoral right and to leave no choice to the electors in the matter.

17. The objectionable speech referred to the command of Sri Shankracharya. Then said that the electors should not vote for the Congress Party. But even apart from the command of Sri Shankracharya the electors are distinctly told that though there was a ban on cow slaughter in Ahmedabad, the Congress was permitting the slaughter of crores of cows elsewhere in India and was committing the sin of go-hatya and those who vote for the Congress would be partners in the sin. The dominant theme of the speech was that those who commit the sin of go-hatya would be visited with divine displeasure. Having regard to the character of the audience, the speech was calculated to interfere with the free exercise of electoral right. It was in that context the Apex Court held that the speech was held to be fallen within the mischief of Section Section 123(2)(a)(ii) of the R.P.Act.

18. In **Kultar Singh** (supra) the allegation was that appellant had made speeches asking the voters to vote for him as he was the proper representative of the Sikh Panth, whereas the respondent represented the Hindu-ridden Party,

and so, the appellant would be able to protect the Sikh religion and the Sikh language. The respondent-election petitioner contended that the speeches plainly and unambiguously invited the voters to vote for the appellant in order to prescribe the honour and prestige of the Panth and it was urged that in the context, the Panth meant the Sikh religion and since the pamphlet clearly appeals to the voters to vote for the appellant and proceeded on the assumption that the election of the appellant would uphold the honour and prestige of the Sikh religion that amounts to a corrupt practice.

19. The Constitution Bench of the Apex Court observed that a corrupt practice under Section 123 (3) of the R.P.Act can be committed by a candidate by appealing to the voters to vote for him on the ground of his religion even though his rival candidate may also belong to the same religion. An example was cited; if a Sikh candidate were to appeal to the voters to vote for him, because he was a Sikh and add that his rival candidate, though a Sikh in name, was not true to the religious tenets of Sikhism or was a heretic

and as such, outside the pale of the Sikh religion, that would amount to a corrupt practice under Section 123(3) of the R.P.Act.

20. The Constitution Bench succinctly stated the principle as, "a document must be read as a whole and its purport and effect determined a fair objective and reasonable manner. In reading such documents it would be unrealistic to ignore the fact that when election meetings, are held and appeals are made by candidates of opposing political parties, the atmosphere is usually surcharged with partisan feelings and emotions and the use of hyperboles or exaggerated language, or the adoption of metaphors, and the extravagance of expression in attaching one another, are all a part of the game; and so, when the question about the effect of speeches delivered or pamphlets distributed at election meetings is argued in the cold atmosphere of a judicial chamber, some allowance must be made and the impugned speeches or pamphlets must be construed in that light. In doing so, however, it would be unreasonable to ignore the

question as to what the effect of the said speech or pamphlet would be on the mind of the ordinary voter who attends such meetings and reads the pamphlets or hears the speeches.”

21. In the light of the said principles, the Apex Court considered the impact of the speeches in question. It was held that Panth might mean the Sikh religion and the followers of the Panth would be the persons who follow the path prescribed by the Sikh Gurus and as such, would signify the Sikh community. Panthic is an adjective which means, of the Panth or belonging to the Panth, and so, prima facie, the glory or prestige of the Panth may mean the glory or prestige of the Sikh religion.

22. The Apex Court considered, what the word 'Panth' used in pamphlet in the abstract mean and also, what does the word "Panth" mean in the context of the pamphlet, the distribution of which is alleged to constitute corrupt practice. The word "Panth" occurs in six places in this pamphlet. The word "Panth" used firstly and secondly were conceived to be used to mean the Sikh religion. But the use of the word "Panth" in the next sentence, was not possibly meaning the

Sikh religion. The word "Panth" used in the remaining places in the palmet were held not possibly not to mean the Sikh religion. It was observed that the third sentence made it still clearer that the Panth and the Akali Dal party are treated as synonymous in this portion because it says "every Sikh vote should go to the representatives of the Akali Dal", and that could be reconciled with the previous sentence only on the basis that in the minds of those who drafted the impugned poster, the Akali Dal Party and the Panth are the same. Then the poster says that the prayer made in the poster if accepted, will once again preserve the honour of the Panth; the words "once again" was indicative of the triumph which the Akali Dal Party achieved at the earlier Gurdwara Elections, and accordingly, the Apex Court held that the Panth in that context must mean the Akali Dal Party.

23. The Constitution Bench observed that political issues which form the subject matter of controversies at election meetings may indirectly and incidentally introduce considerations of language or religion, but in deciding the

question as to whether corrupt practice has been committed under Section 123(3), care must be taken to consider the impugned speech or appeal carefully and always in the light of the relevant political controversy. The Apex Court accordingly held in **Kultar Singh** that the impugned poster would not attract the provisions of Section 123(3) of the R.P.Act.

24. **Ziyouddin Burhanuddin Bukhari** (supra) the appeal by the appellant therein to the electors was to vote for him and not for Chagla on the ground that he alone stood for all that was Muslim whereas, Chagla represented all that was against Muslim religion and belief so that Chagla could not be a true Muslim at all. The object of such appeals being to further the chances of election of Bukhari and to prejudicially affect the prospects of the election of Chagla; it was held that the appellant, Bukhari, had attempted to promote feelings of enmity and hatred between Muslims and Hindus on grounds of religion and community.

25. The Apex Court in paragraph 46 of that judgment held that what is relevant in such a case is what is professed or put forward by a candidate as a ground for preferring him over another and not the motive or reality behind the profession which may or may not be very secular or mundane. It is the professed or ostensible ground that matters. If that ground is religion which is put on the same footing as race, caste, or language as an objectionable ground for seeking votes, it is not permissible. On the other hand if support is sought on a ground distinguishable from those falling in the prohibited categories, it will not be struck by Section 123 of the R.P.Act. By applying the said principle the Apex Court proceeded to hold that the appellant wanted votes for himself on the grounds that he staunchly adhered to what he believed to be Muslim religion as contrasted with Chagla who did not, and that amounted guilt of the corrupt practice defined by the provisions of Sections 123(2), 123(3) and 123(3A) of the Act.

26. **Kalamata Mohan Rao** (supra) is a case where the objection taken out was concerning posters pasted on the walls at several places in the constituency which depicted the Telugu Desam Party Supremo N.T.Rama Rao in the role of Lord Krishna worshiped by the Hindus as an incarnation blowing a conch shell, with a sloka from Bhagwad Gita written at the top of the poster and below the photograph of N.T. Rama Rao his clarion call to the voters to defeat the deceitful Congress which had sold away the nation.

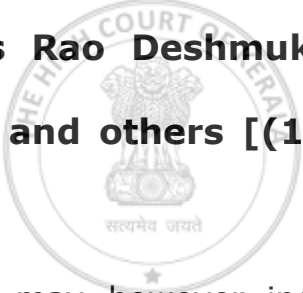
27. The Apex Court held that the contents of that poster unambiguously amount to an appeal on the ground of the religion of the candidate of the Telugu Desam Party, the appellant. Describing that the clear meaning of the contents of the poster was that N.T. Rama Rao was an incarnation of God worshiped by the Hindus who is seeking votes for his candidate, held that publicising of the posters amounted to corrupt practice under Section 123(3) of the R.P. Act.

28. The learned Senior Counsel appearing for the 1st respondent would submit that the statements extracted in the

tabular column above, even if it is proved to have been made or publicized by the 1st respondent or on his behest, the same would not amount to any corrupt practice. The learned Senior Counsel would submit that entry of women between a particular age group was a burning social issue in the State of Kerala during the relevant period, following the decision of the Apex Court in **Indian Young Lawyers Association vs The State Of Kerala [(2019) 11 SCC 1]**. It is pointed out that the said decision was later decided to be reviewed by the Apex Court. In **Kantaru Rajeevaru v. Indian Young Lawyers Association through its General Secretary and others [2020 (2) SCC 1]** the Apex Court directed that the review petitions, as well as the writ petitions, would remain pending until the determination of the questions indicated therein by a Larger Bench. Therefore, during the successive elections; be it to the Parliament, Assembly, or Local Bodies, the said issue was spiralled into a point of political controversy and being a social issue connected to the larger interest of the devotees of Lord Ayyappa, every political party made

allegations and counter allegations touching that issue. Highlighting those aspects, the learned Senior Counsel submitted that those statements alleged to have been made by the 1st respondent would only be his policy statements on that subject and do not constitute any appeal on the basis of religion or an inducement to the electors to vote in the name of religion.

29. In **Dr.Das Rao Deshmukh v. Kamal Kishore Nanasaheb Kadam and others [(1995) 5 SCC 123]** the Apex Court held,-



“16. xx xx xx We may, however, indicate that speeches delivered in the election meeting by leaders of political parties should be appreciated dispassionately by keeping in mind the context in which such speeches were made. This Court has indicated a note of caution that in election speeches appeals are made by candidate of opposing political parties often in an atmosphere surcharged with partisan feelings and emotions. Use of hyperboles or exaggerated language or adoption of metaphors and extravagance of expression in attacking one party or a candidate are very common and court should consider the real thrust of the speech without labouring to dissect one or two sentences of the speech,

to decide whether the speech was really intended to generate improper passions on the score of religion, caste, community etc. In deciding whether a party or his collaborators had indulged in corrupt practice regard must be had to the substance of the matter rather than mere form or phraseology.”

30. In **S.Harcharan Singh v. S.Sajjan Singh and others [(1985) 1 SCC 370]**, it was held,-

“43. These questions should be very broadly decided. It would not be an appeal to religion if a candidate is put up by saying 'vote for him' because he is a good Sikh or he is a good Christian or he is a good Muslim, but it would be an appeal to religion if it is publicised that not to vote for him would be against Sikh religion or against Christian religion or against Hindu religion or to vote for the other candidate would be an act against a particular religion. It is the total effect of such an appeal that has to be borne in mind in deciding whether there was an appeal to religion as such or not. In each case, therefore, the substance of the matter has to be judged.”

31. The Three Judge Bench of the Apex Court took the view that the paramount and basic purpose underlying Section 123(3) of the Act is the concept of secular democracy. Section 123 (3) was enacted so as to eliminate

from the electoral process appeals to divisive factors such as religion, caste, etc. which give vent to irrational passions. Consequently, the section must be so construed as to suppress the mischief and advance the remedy. It was further held that a line has to be drawn by the court between what is permissible and what is prohibited, after taking into account the facts and circumstances of each case interpreted in the context of these factors. The court should attach importance to the effect and impact of the acts complained of and always keep in mind the paramount purpose of Section 123(3) of the R.P. Act.

32. The question therefore to be considered in this case is whether the statements made by the 1st respondent, election agent and others with their consent publicized through various modes like speeches, personal requests, wall writings and leaflets, which are extracted in the tabular column above, if true, would amount to undue influence by inducement to vote or an appeal to vote in the name of religion.

33. The purport of the allegations are to the effect that the 1st respondent solicited votes for him since he opposes entry of women of particular age group to Sabarimala and the petitioner supports the entry. While appealing for vote in that context Hindu religion was mentioned. None of the statements extracted in the tabular column, by applying the aforesaid principles of law, would distinctly amount an appeal in the name of Hindu religion.

34. A similar question was considered by this Court in the order dated 07.01.2020 in E.P.No.1 of 2019, (**K.N.Balagopal v. N.K.Premachadran**) and the order dated 06.11.2019 in E.P.No.2 of 2019 (**Anandagopan K. v. Anto Antony**). In those Election Petitions also the allegation was that the returned candidate made statements that the LDF candidate, who lost the election, supported the entry of women into Sabarimala Temple, that she had actively aided women to enter the Sabarimala Temple and success of that candidate would be against the interest of the Hindu devotees of the Sabarimala Temple. This Court after referring to the

principle laid down by the Apex Court in various decisions held that such statements would not constitute a corrupt practice under the provisions of Section 123(2)(a)(ii) of the Act.

35. As pointed out above, in order to decide whether the statements made by the returned candidate, his election agent or others with their consent are violative of the provisions of Section 123(a)(ii) or 123(3) of the R.P. Act, regard must be had to the substance of the matter, rather than the phraseology. The context as mentioned herein before that entry of women between a particular age group to Sabarimala was then a burning social issue in the State of Kerala is a relevant consideration while deciding the question. In substance, the statements which were the subject matter in Election Petitions No.1 and 2 of 2019 and those which are the subject matter in this case are similar. I do not find any reason to deviate from the finding rendered by this Court in the Election Petitions No.1 and 2 of 2019.

36. Here, the speeches, personal requests, wall writings and leaflets containing the statements which have been extracted in tabular column are the reasons canvassed for holding that the 1st respondent has committed corrupt practice under two heads, namely inducing the electors to vote for him saying that they will otherwise be rendered objects of divine displeasure and also appeal to vote on the ground of religion. At this stage, the requirement is to consider, if those statements were proved to have been made by the 1st respondent, his election agent or any other person with their consent would amount to a corrupt practice.

37. In the light of the principles of law laid down by the Apex Court in **Dr.Das Rao Deshmukh [(1995) 5 SCC 123]**, **S.Harcharan Singh [(1985) 1 SCC 370]**, **Abhiram Singh [(2017) 2 SCC 629]** and **Kultar Singh [AIR 1965 SC 141]**, which are referred to above, the aforesaid statements allegedly made by the 1st respondent are to be considered in the social milieu existed during the relevant period. If so

considered, such statements can only be an appeal to vote for the 1st respondent since he supports one view of the issue and not to vote for the petitioner since he supports the other view. On a reading in that perspective, it is clear that those statements did not contain any element of undue influence or can never be termed as an appeal on the basis of religion. Similarly, the statement that the petitioner was not a true Hindu, unlike the 1st respondent, in the light of the law laid down in **Kultar Singh** (supra) and also the controversy in connection with entry of women of particular age to Sabarimla Temple, no element of appeal to vote in the name of religion can be attached to it.


38. Hence, I hold that the statements extracted in tabular column above, even if proved to have been made or publicised by the 1st respondent, his election agent or any other person with their consent would not amount to commission of a corrupt practice as defined in Section 123 (2) (a)(ii) or 123(3) of R.P.Act.

Allegations under heads No. 3

39. The third contentions of the petitioner is that the 1st respondent used religious symbol for the furtherance of the prospects of his election coming within the sweep of Section 123(3) of the R.P.Act. The allegations with respect to that contention contain in paragraph Nos.16 to 21 of the election petition are that the 1st respondent, his election agent and others with their knowledge and consent allegedly issued Annexures I to III slips depicted with the picture of Lord Ayyappa containing an appeal to vote for the 1st respondent, to the electors in the constituency. The slips are filled in with the booth number, serial number, house number, name, age, polling station, etc. of the elector. A few electors to whom such slips were issued have been made mention of in the said paragraphs in the election petition. Annexures I to III are similarly printed formats. Annexure I and its English translation at Annexure I(a) are reproduced below:

Election Petition No.8 of 2021

നിങ്ങളുടെ വോട്ട് അയ്യപ്പൻ



കെ.ബാബുവിനെ വിജയിപ്പിക്കുക

നമ്മുടെ കീഴെ കൈപ്പത്തി

ബൂത്ത് നമ്പർ... 69 ക്രമനമ്പർ... 843

വീട്ട് നമ്പർ

പേര്... സജിൻ രാജ് വയസ്സ് 34

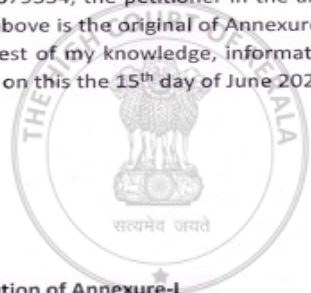
വീട്ടുപേര്... ഉതലിത്താഴത്ത്

പോളിങ്ങ് സ്റ്റേഷൻ... Govt. UPS, ചൂരക്കാട്

VERIFICATION

I, Adv.M.Swaraj, S/o Muraleedharan Nair, aged 41 years, Suma Nivas, Bhoodan Colony (PO), Malappuram District, Pin – 679334, the petitioner in the above election petition do hereby declare and verify that the above is the original of Annexure- I in the election petition and it is true and correct to the best of my knowledge, information and belief and is signed and verified by me at Ernakulam on this the 15th day of June 2021


Advocate




Adv.M.Swaraj
Petitioner

True and correct English translation of Annexure-I

YOUR VOTE FOR AYYAPPAN | Booth Number.....69.....Serial Number.....843.....

| House Number.....

| Name.....Sajilraj.....Age.....34.....

| House Name.....Uthalithazath.....

Make victory of K.Babu | Polling Station. Govt. UPS, Choorakkadu

OUR SYMBOL
HAND

VERIFICATION

I, Adv.M.Swaraj, S/o Muraleedharan Nair, aged 41 years, Suma Nivas, Bhoodan Colony (PO), Malappuram District, Pin – 679334, the petitioner in the above election petition do hereby declare and verify that the above is the true and correct English translation of Annexure- I and marked as Annexure- I(a) in the election petition and it is true and correct to the best of my knowledge, information and belief and is signed and verified by me at Ernakulam on this the 15th day of June 2021


Advocate


Adv.M.Swaraj
Petitioner

40. Annexures I, II and III are depicted with picture of Lord Ayyappa with an inscription that "Your vote is for Ayyappa" and an appeal "to vote for the 1st respondent". A picture of a Deity certainly is a religious symbol. In **Kantaru Rajeevaru** (supra), the Apex Court after referring to the principle laid down in the **Commissioner, Hindu Religious Endowments, Madras v. Shri.Lakshmindra Thritha Swaminar of Sri Shirur Mutt [1954] SCR 1005** and **S.P.Mittal v. Union of India [(1983) 1 SCC 51]** held that devotees of Lord Ayyappa do not constitute a separate religious denomination, but Hindus in common. It would show that picture of the deity Lord Ayyappa is a Hindu religious symbol.

41. A Constitution Bench of the Apex Court in **Ramanbhai Ashabhai Patel v. Dabhi Ajithkumar Fulsinji [AIR 1965 SC 669]** considered the question, what is a religious symbol. Question there was as to whether the election symbol 'star' prefixed with the word 'dhruva' would amount to a religious symbol or rather would it give a

religious impetus thereby an appeal to the voters in the name of religion. It was observed that the use of the symbol in question is of such a nature that it stir up religious sentiments, if it to be a transgress into the provisions of Section 123(3) of the R.P.Act. From the said observations, it is quite clear that a picture of a deity certainly is a religious symbol.

42. A perusal of Annexures I, II and III would convey a message that the 1st respondent appeals to vote on the basis of religious symbol appeared therein. If such slips were actually distributed to the Hindu voters, who are devotees of Lord Ayappa, in the constituency, that may amount to use of religious symbol for the furtherance of the prospects of the election of the 1st respondent. In that view of the matter, the pleadings in the election petition relating to use of Annexures I to III by distributing them to Hindu voters in he constituency, who are devotees of Lord Ayyappa, *prima facie* constitutes corrupt practice coming under Section 123(3) of the R.P.Act. Therefore, the Election Petition with respect to the

said aspect is liable to be tried.

43. In the light of the discussion made above,

1) the election petition on the basis of the allegations contained in paragraph Nos.10 to 14 and 20 to 28 of the Election Petition that-

i) the 1st respondent committed corrupt practice since he, his election agent and other persons with his consent or his election agent induced the electors to vote for him and not to vote for the petitioner by publicising the messages that unless they do so, they will be rendered objects of divine displeasure coming within the meaning of Section 123(2)(a)(ii) of the R.P.Act, or

ii) appealed to the electors to vote for him and refrain from voting to the petitioner on the ground of religion coming within the purview of Section 123(3) of the R.P.Act,

do not make out a cause of action. Therefore, the Election Petition as regards the said allegations is rejected under the provisions of Order VII, Rule 11 of the Code, and

2) The averments in paragraph Nos.16 to 21 of the Election Petition that the 1st respondent, his election agent and other persons with the consent of the 1st respondent and his election agent, used Hindu religious symbol by

distribution of Annexures I to III and similar slips to electors, for the furtherance of the prospects of election of the 1st respondent and for prejudicially affecting the election of the petitioner, made out sufficient cause of action for a trial on the Election Petition in order to decide whether election of the 1st respondent as a member of the Legislative Assembly from Thripunithura Legislative Assembly constituency in the election held on 06.04.2021 is null and void. The Election Petition will be proceeded with in respect of the said aspect alone.

Respondents are granted three weeks to file objections/
further objections, if any.

Sd/-

P.G. AJITHKUMAR, JUDGE

dkr