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Court No. - 73

Case :- ELECTION PETITION No. - 10 of 2017

Petitioner :- Anugrah Narayan Singh

Respondent :- Harsh Vardhan Bajpayee

Counsel for Petitioner :- In Person, Anugrah Narayan Singh (In Person), Ravindra Singh, Shiv Sagar Singh

Counsel for Respondent :- Manish Goyal, Amit Sharma, K. R. Singh, Mithilesh Kumar Rai, Prabath Kumar Bajpai, Ravi Shankar Prasad

Hon'ble Raj Beer Singh, J.

Order on Application Nos. 19 of 2022 and 20 of 2022 filed in Election Petition No. 10 of 2017 (Anugrah Narayan Singh v. Harsh Vardhan Bajpayee)

1. The Civil Misc. Application No. 19 of 2022 has been filed by the respondent with prayer to dismiss the election petition as infructuous, whereas, the Civil Misc. Application No. 20 of 2022 has been filed by the Petitioner raising objections against that application.

2. The facts in brief of the matter are that in the month of February, 2017 general elections were held to elect the Members of the State Legislative Assembly, U.P.. The petitioner as well as the respondent contested election from the 262 Allahabad City North constituency. The last date of nomination for this constituency was 06.02.2017. After election, as per declaration of Returning Officer, the respondent has received 89191 votes whereas the petitioner has received 54166 votes and thus, the respondent was declared elected. The petitioner filed this election petition under section 80/81 of the Representation of the People Act (*hereinafter after referred as 'R.P. Act'*) challenging the election of the respondent/returned candidate and seeking following relief:

- (A) Declare the election of respondent as Member of Legislative Assembly from 262 Allahabad City North Assembly Constituency, District Allahabad, as null and void and set aside the same.
- (B) Pass such other order or direction which the Hon'ble Court may deem fit and proper in the facts of the case.

(C) Award costs to the petitioner.

3. During pendency of the election petition, the Legislative Assembly came to be dissolved in the month of February/ March, 2022 after the term of five years was over. In view of the above-stated factual background, the respondent has filed the above-stated Civil Misc. Application No. 19 of 2022 with prayer that the election petition may be dismissed as infructuous.

4. Heard Sri Sailendra Kumar, learned Senior Advocate assisted by Sri Shiv Sagar Singh, learned counsel for the petitioner, Sri Ravi Shankar Prasad, learned Senior Advocate assisted by Sri Mithilesh Kumar, learned counsel for the respondent, Sri Manish Goel, learned Senior Advocate/AAG and perused the record.

5. Learned senior counsel for the petitioner argued that though the term of assembly is over and the Assembly has already been dissolved but as the election of the respondent was being challenged inter-alia on the ground of corrupt practice and thus, the instant election petition is still maintainable, as in case this election petition succeeds, it entails several disqualification including a bar on the respondent to contest the election for a period of six years and thus, the election petition can not be dismissed as infructuous. It was submitted that the respondent has committed corrupt practice under Section 123(2) of the R.P. Act by interfering in free exercise of electoral rights of the electors by not disclosing his liabilities and his correct educational qualification in his affidavit of nomination paper. Further, the respondent committed the corrupt practice under Section 123(4) of the R.P. Act by publishing a false statement of fact, which he believed to be false, and did not believe to be true, regarding his own personal character and conduct. It was submitted that the election of the respondent is liable to be declared void, due to improper acceptance of his nomination paper and also due to commission of corrupt practice by him.

6. Elaborating his arguments, it was submitted by learned Senior counsel for the petitioner that the respondent has also contested election of Legislative Assembly from the same constituency in the year 2007, wherein he has shown his educational qualification as B.Tech. from University of Sheffield, England passed in the year 2003 and the highest degree was shown 'Master of Finance and Control' from Delhi University in the year 2006. The respondent again contested election from the said constituency in the year 2012, wherein, same qualification and degrees were shown but while filing his nomination for election from same constituency in the year 2017, he has shown his qualification and highest degree as B.Tech. from Seferred University, England, passed in the year 2007. It was submitted that as a matter of fact, there is no university by the name of 'Seferred' in England. There is university of Sheffield in England but it awards degree of B.E. in Chemical Engineering and not the degree of B.Tech. Further, in his nomination paper in the year 2007 and 2012 he has shown that he has degree of M.B.A. from Delhi University in the year 2006, whereas in the nomination paper of 2017, he has shown his B.Tech. degree passed in the year 2007 and thus if he has passed the degree of M.B.A. from University of Delhi in the year 2006, how he can pass B.Tech. examination from said University in U.K., in the year 2007, which is a two years course. In fact, the respondent has not cleared the M.B.A. degree from University of Delhi. Further, in the year 2007 and 2012 in his affidavit of nomination paper, he has claimed that he passed B.Tech. degree in the year 2003 from Sheffield University, England but his name does not find place in Alumni of 2003 of the said University and all these facts go to show that the respondent did not obtain the alleged degree from University of Sheffield, England and he has given false information in his affidavit/nomination paper.

7. Another ground pressed by learned senior counsel is that in his nomination paper, the respondent has shown his address as 109, Rambagh, Allahabad and this property was also mentioned by him in his nomination

paper as one of the asset. There is an electricity connection in the said premises against which there were arrears of electricity dues of Rs. 3,00,050/- and that a recovery certificate was issued on 05.10.2016 and that amount was not paid till the filing of the nomination paper by the respondent but in respect of the same, the respondent has shown in his affidavit that there were no electricity dues against any of his asset. Further, the respondent has taken a housing loan from P.N.B., Civil Lines, Allahabad through account number 001200NC00801166 in respect of ½ part of house no. 2, Minoo Park House, Kydganj, Allahabad and said loan amount was shown by respondent in his affidavit of 2012 but in 2017 he has concealed the said loan amount, whereas said loan has not been paid/cleared till the date of filing of nomination paper, by the respondent. It was submitted that the respondent was under legal obligation to disclose the correct facts in his affidavit filed along with the nomination paper as it was for the information of electors to know the personal character and conduct of the candidate and thus, there was substantial defect in his nomination paper and accordingly his nomination paper was liable to be rejected.

8. It was further argued that during campaign in the election, the respondent got printed pamphlets and hand bills in which he mentioned his name as Er. Harsh Vardhan Bajpayee and he posed himself as a qualified Engineer and as referred above, he did not disclose his educational qualifications correctly and thus, it amounts to corrupt practice of undue influence.

9. It was next argued by learned senior counsel that a candidate is required to disclose facts about his educational qualification and government dues in the affidavit so that before casting their votes, the electors of the constituency would know about educational qualification as well as liabilities and personal character of candidate. The respondent has deliberately, in full knowledge of the facts, concealed and suppressed the truth and did not provide full and correct facts about his educational

qualification and government dues and thereby he published incorrect and false statement of facts about his personal character and conduct which favourably prejudiced the prospects of his election and thus, he committed corrupt practice as defined under Section 123(4) of R.P. Act.

10. Referring to the provisions of Section 123 of R.P. Act and facts of the matter, learned senior counsel submitted that as there is a case to show that the respondent has committed corrupt practice within the meaning of section 123(2) and 123(4) of RP Act and thus this election petition must be proceeded further, as the respondent may entails several disqualifications including a bar for contesting an election for a period of six years. In support of his contentions, learned senior counsel has referred following case laws:-

- (a) Shaligram Shrivastava v. Naresh Singh Patel, SCC 2 (2003), 176
- (b) People's Union For Civil Liberties (PUCL) and Anr. v. Union of India And Anr., SCC 4 (2003) 399
- (c) Mairembam Prithviraj alias Prithviraj Singh v. Pukhrem Sharatchandra Singh, SCC 2 (2017) 887
- (d) Kisan Shankar Kathore v. Arun Dattatray Sawant And Ors., SCC 14 (2014) 162
- (e) Resurgence India v. Election Commission of India And Anr., SCC 14 (2014) 189
- (f) Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy And Ors., SCC 14 (2018) 1
- (g) Sheodan Singh v. Mohan Lal Gautam, AIR 1969 SC 1024
- (h) Loknath Padhan v. Birendra Kumar Sahu, AIR 1974 SC 505
- (i) P.H. Pandian v. P Veldurai, SCC 2013 (14) 685
- (j) Dhartipakar Madan Lal Agarwal v. Shri Rajiv Gandhi, AIR 1987 SC 1577
- (k) Prem Pal Singh v. Satya Pal Singh Baghel And 10 Ors., [Election petition no. 12 of 2017, decided on 03.03.2020]
- (l) Bhikaji Keshao Joshi And Anr. v. Brijlal Nandlal Biyani And Ors., AIR 1955 SC 610

11. Sri Ravi Shankar Prasad, learned senior Advocate for the respondent as well as Sri Manish Goel, learned senior Advocate/ Additional Advocate General have argued that the petitioner is challenging the election of respondent to the State Legislative Assembly, Uttar Pradesh, wherein the respondent was elected as Member of State Assembly in the month of

February / March 2017 and after its full term, that the said assembly has already been dissolved and thereafter fresh election to elect the members of State Assembly have already been held in the month of February/ March, 2022 and thus, the instant election petition has become infructuous, as the relief claimed by the petitioner cannot be granted. It was submitted that in the election petition, the petitioner has made averments regarding corrupt practice, allegedly committed by the respondent, but there is absolutely no material to substantiate the said averments and that no case of corrupt practice is made out. Learned senior counsel submitted that even if in the affidavit of respondent there was some incorrect information regarding educational qualifications of the respondent/returned candidate on the points like name of University or the year, in which he has passed the degree, it can hardly be fall within the purview of corrupt practices. Mere inaccuracy in the name of University like 'Seferred University', or inconsistency regarding the year, in which he has passed the said B.Tech degree cannot be considered as a material concealment or false information. The claim of petitioner that the respondent/returned candidate did not pass the degree of B.Tech. is not supported by any credible material. Merely because in list of alumni of the year 2003 of Sheffield University (U.K.) the name of respondent/returned candidate does not find place, it can hardly be sufficient to controvert the information furnished by respondent/returned candidate. Similarly the contention of learned senior counsel for the petitioner that the respondent did not pass M.B.A. from Delhi University is also not supported by any cogent and unimpeachable document. Further, in his affidavit, filed in support of his nomination paper in the year 2017, the respondent/returned candidate has not mentioned his M.B.A. degree. It was submitted that even if there was some inaccuracy or incorrect information regarding educational qualification of respondent/returned candidate in the affidavit filed along with the nomination paper, the said act may be punishable under Section 125-A of R.P. Act but it cannot be a basis to contend that it is a corrupt practice. Regarding the case of petitioner that there were electricity dues against the

electricity connection of premises no. 109, Rambagh, Allahabad, it was submitted that there is nothing to show that the said arrears were against the respondent/returned candidate. No such document could be brought on record that the said electricity connection was in the name of respondent or that the alleged recovery certificate was issued against the respondent/returned candidate. It was submitted that by learned senior counsel that in the similar way, there is no material to support the averments that the respondent/returned candidate has concealed the fact of housing loan availed by him. It was submitted that even if the allegations made by the petitioner are taken as such, no case of corrupt practice is made out. In support of his contentions, learned senior counsel has referred following case laws:-

- (a) Podipireddy Atchuta Desai v. Chinnam Joga Rao & Ors., 1987 (Supp) SCC 42
- (b) State of U.P. And Ors v. Netrapal Singh And Ors., 2004(4) SCC 748
- (c) Dhartiakar v. Rajiv Gandhi, AIR 1987 SC 1577
- (d) Suresh Seth v. Commr. Indore Municipal Corpn., 2005 (13) SCC 287
- (e) P.H. Pandian v. P. Veldurai, 2013(14) SCC 685
- (f) Kashi Nath Mishra v. Vikdramaditya Pandey, 1998 (8) SCC 735
- (g) Mundrika Singh Yadav v. Shiv Bachan Yadav, 2005 (12) SCC 211
- (h) C.M. Arunugam v. S. Raj Gopal, 1976 (1) SCC 863
- (i) Prem Pal Singh And Ors. v. Rakesh Babu, Manu/UP 0569/2020, decided 03.03.2020
- (j) Chandra Mohan Shukla v. Anil Dhirubhai Ambani And Ors., 2010 (10) ADJ 63
- (k) Union of India v. Association for Democratic Reforms And Anr., AIR 2002 SC 2112
- (l) Peoples Union for Civil Liberties (PUCL) v. Union of India, AIR 2003 SC 2363
- (m) Kuldeep Nayar And Ors. v. Union of India And Ors., 2006(7) SCC 1

12. I have considered rival submissions and perused the record as well as case laws referred by learned counsel for the parties.

13. Before proceeding further it would be pertinent to mention that the election of the respondent is being challenged by the petitioner on the following grounds:-

- A. Because the result of the election, insofar as it concerns the returned candidate, has been materially affected by improper acceptance of nomination paper of respondent in non-compliance of the provisions of Section 33 of the Act.
- B. Because the respondent committed corrupt practice under Section 123(2) of the said Act by interfering in free exercise of the electoral rights of the electors by not disclosing his liabilities as well as correct educational qualification in his affidavit of nomination paper.
- C. Because the respondent committed the corrupt practice under Section 123(4) of the said Act by publishing a false statement of fact, which he believed to be false, and did not believe to be true, regarding his own personal character and conduct, such statement being a statement reasonably calculated to prejudice the prospects of the respondent's own election.
- D. Because the election of the respondent is void, and is liable to be declared void, due to improper acceptance of his nomination paper and also due to commission of corrupt practice by him, as defined under Sections 123(2) and 123(4) of the said Act."

14. In case of **Sheodhan Singh v. Mohan Lal** (supra) Hon'ble Apex Court held that the decision of the question whether corrupt practice was committed by the respondent or not, would not be academic and the court would have to decide the same and thus, where allegations of corrupt practices are involved the petition can not be dismissed as infructuous. In case of **Loknath Padhan v. Birendra Kumar Sahu** (supra), Hon'ble Apex Court observed that a Court should not undertake to decide an issue, unless it is a living issue between the parties and pointed out that if an issue is purely academic in that its decision one way or the other would have no impact on the position of the parties, it would be waste of public time and indeed not proper exercise of authority for the Court to engage itself in deciding it. It was held that an academic question, the answer to which cannot affect the position of one party or the other or which has no bearing on some right or liability in controversy between the parties, will be unnecessary and inexpedient to be decided and the Court would properly decline to decide. With reference to the election dispute before it in that case involving alleged disqualification of the returned candidate due to subsistence of five Government contracts with the Government of Orissa, the Apex Court held that even if it is found that the candidate was so disqualified, it would have no factual consequence, as invalidation of election after dissolution of the House would be meaningless and ineffectual and as it would have no consequences operating in future, as it is the only facts existing on the date

of nomination that would have relevance. However, Hon'ble Apex Court distinguished the cases in which allegations of corrupt practices are involved in view of Section 8-A of RP Act under which a person found guilty of corrupt practices by an order under Section 99 R.P. Act will incur electoral disqualification up to six years from the date of the order in that regard. It was observed by the Hon'ble Apex Court that the position might be different if the allegation against the respondent were of corrupt practice. If the respondent is found guilty of corrupt practice during the election, not only his election would be declared void, but he would also incur certain electoral disqualifications. Section 8A R.P. Act provides that a person found guilty of a corrupt practice by an order under Section 99 R.P. Act shall be disqualified for a period of six years from the date on which, that order takes effect. The purity of elections is of utmost importance in a democratic set up and the law, has, therefore, taken serious note of corrupt practice in elections and laid down a disqualification for a period of six years on an order being made by the High Court recording a finding of corrupt practice at the time of disposing of the election petition. It is, therefore, obvious that when a corrupt practice is charged against the respondent in an election petition, the trial of the election petition must proceed to its logical end but the principle was held by the Apex Court to be not applicable to disqualification, which has no other consequence than that of making the particular election void and which does not entail any electoral disqualification for the future. In that case, in view of the dissolution of the Legislative Assembly, the Apex Court considered the question of disqualification to be purely academic and dismissed the appeal against the decision in the election petition as futile. In case of **PremPal Singh Vs Vs Satyapal Singh** (supra), this Court has reiterated the position that an academic question, the answer to which cannot affect the position of one party or the other or which has no bearing on some right or liability in controversy between the parties, will be unnecessary and inexpedient to be decided and the Court must decline to decide the same. However, the cases in which allegations of corrupt practices

are involved in view of Section 8-A of RP Act under which a person found guilty of corrupt practices by an order under Section 99 will incur electoral disqualification, the trial of an election petition must proceed to its logical end.

15. In case of **Sohan Lal Vs Asha Ram and Ors (1981) 1 SCC 106**, the Apex Court disposed of an election appeal without adjudication due to dissolution of the Assembly, fresh elections having taken place and a fresh House coming into existence notwithstanding any substantial grievance for the election petitioner, as the subsequent events rendered the litigation wholly unreal making it waste of the Court's time to consider the issues.

16. In **Podipireddy Atchuta Desai vs. Chinnam Joga Rao and others** (supra), the Apex Court has held as under:-

"The question raised in this election appeal are of some importance. We also see the force of the submissions urged on behalf of the appellant. All the same, having regard to the fact that fresh elections have already taken place and the appeal has become redundant in that sense, we will be undertaking a futile exercise if we examine the validity or otherwise of the view taken by the High Court in dismissing the election petition. Under the circumstances without expressing any views, one way or the other, on the validity or otherwise of the decision of the High Court, we direct that this appeal shall stand disposed of with no order as to costs."

17. In **Kashi Nath Mishra vs. Vikramaditya Pandey and others**, (supra) an appeal was filed before the Apex Court from the Election Petition No.4 of 1991 filed under Section 81 of Representation of the People Act, 1951. The appellant had challenged the election of the second respondent to the U.P. Legislative Assembly from the 227 Ballia Assembly Constituency in District Ballia. That petition was dismissed. The term of the assembly has expired by efflux of time and thereafter, another election has been held and another Assembly constituted. Under these circumstances, the appeal was dismissed having become infructuous. Similar was the decision of another three-Judge Bench of the Apex Court in **Romesh v. Ramesh K. Rana and others (2000) 9 Supreme Court Cases 265**, wherein the request was for recount of votes without any allegations of commission of any corrupt practice and in the meanwhile the Assembly itself was dissolved. The Apex Court considered

that nothing further survives for consideration and dismissed the election appeal.

18. In the case of **Dhartipakar Vs Rajiv Gandhi** (supra), wherein the allegation with regard to corrupt practice was raised, Hon'ble Supreme Court observed that since allegation was with regard to corrupt practice and the matter is stale and academic but it may be heard. It was observed that "in fact, during the course of hearing the appellant himself stated before us more than once, that it would now every difficult for him to produce evidence to substantiate the allegations of corrupt practice but nonetheless he insisted for the appeal being heard on merit. Though the matter is stale and academic yet having regard to the present state of law, we had to hear the appeal at length." It was further observed by the Hon'ble Apex Court as under:

"The aforesaid allegations do not amount to any corrupt practice as contemplated by Section 123 of the Act. At best these allegations raise a grievance that the Presiding Officers did not perform their duties in accordance with law in as much as they failed in their duty to remove the posters and other propaganda material from the polling booth and the hand which was the election symbol of Rajiv Gandhi and the same was displayed within 100 meters of the polling booth in violation of the rules. The allegations do not make out any charge of corrupt practice. If at all the allegations could be a ground under Section 100(1)(d)(iv) of the Act for setting aside election on the ground of its being materially affected but no such plea was raised. Paragraphs 54 to 58 do not deal with any corrupt practice. The above scanning of the election petition would show that the appellant failed to plead complete details of corrupt practice which could constitute a cause of action as contemplated by Section 100 of the Act and he further failed to give the material facts and other details of the alleged corrupt practices. The allegations relating to corrupt practice, even if assumed to be true as stated in the various paragraphs of the election petition do not constitute any corrupt practice."

From above referred case it is clear that the when the term of disputed election has expired and thereafter fresh election have taken place and if the allegations made by the petitioner do not amount to any corrupt practice as contemplated by Section 123 of the Act, the petition could be dismissed. It was observed that at best these allegations raise a grievance that the Presiding Officers did not perform their duties in accordance with law. In the said case Apex Court had dismissed the appeal holding that the appellant

cannot be permitted to waste the court time with permission to amend the appeal.

19. In **Mundrika Singh Yadav vs. Shiv Bachan Yadav and others** ((2005) 12 SCC 211), an election petition under Sections 80 and 80-A of the Representation of the People Act, 1951 filed by the appellant was dismissed by the High Court. In the above said election petition, the appellant had sought for the relief of recount of ballot papers. The High Court on trial found a case in that regard having not been made out. The election to the Bihar State Assembly forming subject-matter of the election petition was held in the year 2000. The term of the Legislative Assembly was over. Fresh elections were being held. Under these circumstances, the Apex Court has held that no relief could be allowed to the appellant in this appeal even if this appeal is allowed. The appeal was rendered infructuous and was dismissed accordingly.

20. Thus, it clearly emerges from the above referred cases that the well settled practice is that a Court should not undertake to decide an issue, unless it is a living issue between the parties. If an issue is purely academic in that its decision one way or the other would have no impact on the position of the parties, it would be waste of public time and indeed not proper exercise of authority for the Court to engage itself in deciding it. However, the Hon'ble Apex Court has distinguished the cases in which allegations of corrupt practices are involved in view of Section 8-A of RP Act under which a person found guilty of corrupt practices by an order under Section 99 will incur electoral disqualification up to six years from the date of the order in that regard. In such a case the trial of an election petition must reach to its logical end but that principle was also held by the Hon'ble Apex Court to be not applicable to disqualification, which has no other consequence than that of making the particular election void and which does not entail any electoral disqualification for the future. In that case, in view of the dissolution of the Legislative Assembly, the question of disqualification to be purely academic

and the decision in the election petition would be futile. Thus, in cases where the allegations of corrupt practices are involved in view of Section 8-A of RP Act under which a person found guilty of corrupt practices by an order under Section 99 will incur electoral disqualification for future up like bar to contest election for six years from the date of the order, the election petition may proceed further despite the fact that the term of the returned candidate, for which he was elected, is over and the Assembly has been dissolved and fresh election have also been held.

21. Coming to the facts of the present case, it may be mentioned that so far the ground 'A' mentioned in the election petition to the effect that the election of the returned candidate, has been materially affected by improper acceptance of nomination paper of respondent in non-compliance of the provisions of Section 33 of the R. P. Act, is concerned, on dissolution of the Assembly, the relief sought on ground of improper acceptance of nomination paper has been rendered infructuous, Thus, that aspect needs no consideration.

22. Now the matter is to be examined only regarding the grounds mentioned in petition as 'B' and 'C' and the question is whether the allegations made in the petition would constitute a case of corrupt practice. It is well settled that charge of corrupt practice is in the nature of a criminal charge and has got to be proved beyond doubt and it must be backed by unimpeachable and incontrovertible documentary evidence. The Court must look for serious assurance, unlaying circumstances or unimpeachable documents to uphold the charges of corrupt practices. The pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law (vide *Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi* (1987) Supp. SCC 93 and *Kona Prabhakara Rao v. M. Seshagiri Rao* (1982) 1 SCC 442). The allegations in the election petition should not be vague, general in nature or lacking of materials or frivolous or vexatious. In this connection a reference

may also be made to the case of case of Pradip Buragohain Versus Pranati Phukan (2010) 11 SCC 108, where the Hon'ble Apex Court has reiterated the law regarding corrupt practice.

23. Keeping the aforesaid position of law in view, in the instant case it may be seen that the first charge regarding alleged corrupt practice against the respondent is that by not disclosing his liabilities as well as correct educational qualification in his affidavit of nomination, he has interfered in free exercise of the electoral rights of the electors. Regarding the alleged liabilities, it was alleged that there were arrears of electricity dues of Rs. 3,00,050/- against the electricity connection installed in the premises of the respondent and a recovery certificate was also issued on 05.10.2016 against that connection and that amount was not paid till the filing of nomination paper by the respondent but in his affidavit of nomination the respondent has stated that there were no electricity dues against him. It would be pertinent to mention that there are no such averment that the said electricity connection is in the name of the respondent or that the alleged recovery certificate was issued against the respondent. Merely because the said electricity connection is installed in the property owned by the respondent, it would not be sufficient to show that the respondent has concealed the alleged liability. No such document could be shown that recovery certificate was issued against the respondent. It was further alleged that the respondent has taken a housing loan from P.N.B., Civil Lines, Allahabad through account number 001200NC00801166 in respect of ½ part of house no. 2, Mintoo Park House, Kydganj, Allahabad and said loan amount was shown by respondent in his affidavit of nomination in the year 2012 but in nomination in question in the year 2017 he has concealed the said loan amount, whereas said loan has not been paid/cleared till the date of filing of nomination paper by the respondent. In this connection it would be pertinent to mention that no such incontrovertible document of the Bank could be brought on record to show that the alleged loan has not been paid till the date of nomination. Merely a

vague statement has been made that the respondent has not cleared his loan. Here it would be pertinent to mention that in case of Kisan Shankar Kathore (supra), Hon'ble Apex Court held as under

“Insofar as non-disclosure of the electricity dues is concerned, in the given facts of the case, we are of the opinion that it may not be a serious lapse. No doubt, the dues were outstanding, at the same time, there was a bona fide dispute about the outstanding dues in respect of the first electricity meter. It would have been better on the part of the appellant to give the information along with a note about the dispute, as suggested by the High Court, we still feel that when the appellant nurtured belief in a bona fide manner that because of the said dispute he is not to give the information about the outstanding amount, as it had not become 'payable', this should not be treated as a material lapse. Likewise, as far as the second electricity meter is concerned, it was in the premises which was rented out to the tenants and the dues were payable by the tenants in the first instance. Again, in such circumstances, one can bona fide believe that the tenants would pay the outstanding amount. No doubt, if the tenants do not pay the amount the liability would have been that of the owner, i.e. the appellant. However, at the time of filing the nomination, the appellant could not presume that the tenants would not pay the amount and, therefore, it had become his liability. Same is the position with regard to non-payment of a sum of Rs.1,783/- as outstanding municipal dues, where there was a genuine dispute as to revaluation and reassessment for the purpose of assessing the taxes was yet to be undertaken. Having said so, we may clarify that it would depend in the facts and circumstances of each case as to whether such a non-disclosure would amount to material lapse or not. We are, thus, clarifying that our aforesaid observation in the facts of the present case should not be treated as having general application.

In the above referred case the returned candidate has not disclosed his several assets and dues and one of them was regarding concealment of electricity dues. Hon'ble Apex Court has clarified that it would depend in the facts and circumstances of each case as to whether such a non-disclosure would amount to material lapse or not. In the present case there is no documentary evidence that the said electricity connection was in the name of the respondent or that the alleged recovery certificate was issued against the applicant. Further, in the above refereed case no issue of corrupt practice was involved. There is no such finding that concealment of electricity dues would amount to corrupt practice contemplated under section 123 of the R.P. Act. Even on the premises of the said case law the allegation regarding non-disclosure of electricity dues and loan amount would not amount to corrupt practice. It would be relevant to mention here that in case of **Kuldip Nayar V UOI** (supra), Hon'ble Apex has referred case of Union of India V Assn.

for Democratic Reforms (2002) 5 SCC 294, wherein it was held that holding of any asset (immoveable or moveable) or any educational qualification is not the eligibility criteria to contest election. Considering the said legal position and peculiar facts and circumstances of the case, the said allegations, regarding concealment of electricity dues or housing loan, made by the petitioner can hardly be termed as corrupt practice within the meaning of section 123 of the R.P. Act

24. So far the allegations regarding false information about the educational qualification in the affidavit the respondent, filed along with nomination form is concerned, it was alleged that earlier the respondent has contested election of Legislative Assembly from the same constituency in the year 2007, wherein he has shown his educational qualification as B.Tech. from University of Sheffield, England passed in the year 2003 and the highest degree was shown 'Master of Finance and Control' from Delhi University in the year 2006. The respondent again contested election from the said Assembly constituency in the year 2012, wherein same educational qualifications and degrees were shown but while filing his nomination for election from same constituency in the year 2017, the respondent has shown his qualification and highest degree as B.Tech. from Seferred University, England, passed in the year 2007, whereas there is no university by the name of 'Seferred' in England. It was stated that there is university of Sheffield in England, which awards degree of B.E. in Chemical Engineering and not the degree of B.Tech. Further, in his nomination paper in the year 2007 and 2012 he has mentioned that he has degree of M.B.A. from Delhi University passed in the year 2006, whereas in the nomination paper of 2017 he has shown his B.Tech. degree in the year 2007 and thus if he has passed the degree of M.B.A. from University of Delhi in the year 2006, he can not pass B.Tech. examination from England in the year 2007, which is a two years course. It was submitted that in fact, the respondent has not cleared the alleged M.B.A. degree from University of Delhi. Further, in the year 2007 and 2012 in his

affidavit/nomination paper, he has claimed that he passed B.Tech. degree in the year 2003 from Sheffield University, England but his name has not been shown in the Alumni of 2003 of the said University and all these facts go to show that respondent did not obtain the alleged degree of B.Tech from University of Sheffield, England and he has given false information in his affidavit/nomination paper. It was submitted that respondent was under legal obligation to disclose correct facts in his affidavit filed along with nomination form as it was for the information of electors to know personal character and conduct of the candidate and thus there was substantial defect in his nomination paper.

25. It may be stated that the error in spelling of Sheffield University is hardly a matter of consideration. Similarly the error or inconsistency regarding the issue whether the respondent passed the degree of B. Tech in the year 2003 or 2007 would not be a material concealment unless and until it is shown that the respondent does not hold the said degree of B. Tech. from that University at all. In this connection only it was alleged that Sheffield University does not awards degree of B. Tech., rather it awards the degree of B.E. and that the name of respondent has not been shown in the list of Alumni of the said University. These allegations are hardly sufficient to doubt the degree of B. Tech., which the respondent claims to hold and mentioned in the affidavit filed along with nomination form. No authoritative document issued by the said university or any other unimpeachable document was filed to show that the respondent did not pass the alleged degree from that university.

26. There is no doubt in preposition that every candidate has to disclose the relevant information in his affidavit. In **Resurgence India v. Election Commission of India and Anr.** (supra), the Apex Court held that every candidate is obligated to file an affidavit with relevant information with regard to their criminal antecedents, assets and liabilities and educational qualification. The fundamental right under Article 19 (1) (a) of the voter was

reiterated in the said judgment and it was held that filing of affidavit with blank particulars would render the affidavit as nugatory. Similarly in **Kisan Shankar Kathore v. Arun Dattatray Sawant** (supra), the Hon'ble Apex Court considered the question as to whether it was incumbent upon the Appellant to have disclose the information sought for in the nomination form and whether the non- disclosure thereof render the nomination invalid and void. It was observed as under:

“When the information is given by a candidate in the affidavit filed along with the nomination paper and objections are raised thereto questioning the correctness of the information or alleging that there is non-disclosure of certain important information, it may not be possible for the returning officer at that time to conduct a detailed examination. Summary enquiry may not suffice. Present case is itself an example which loudly demonstrates this. At the same time, it would not be possible for the Returning Officer to reject the nomination for want of verification about the allegations made by the objector. In such a case, when ultimately it is proved that it was a case of non-disclosure and either the affidavit was false or it did not contain complete information leading to suppression, it can be held at that stage that the nomination was improperly accepted. Ms. Meenakshi Arora, learned senior counsel appearing for the Election Commission, right argued that such an enquiry can be only at a later stage and the appropriate stage would be in an election petition as in the instant case, when the election is challenged. The grounds stated in Section 36(2) are those which can be examined there and then and on that basis the Returning Officer would be in a position to reject the nomination. Likewise, where the blanks are left in an affidavit, nomination can be rejected there and then. In other cases where detailed enquiry is needed, it would depend upon the outcome thereof, in an election petition, as to whether the nomination was properly accepted or it was a case of improper acceptance. Once it is found that it was a case of improper acceptance, as there was misinformation or suppression of material information, one can state that question of rejection in such a case was only deferred to a later date.”

In the said case there were several concealments and non-disclosure about assets and liabilities of the returned candidate and his nomination was improperly accepted by the Returning officer and thus his election was set aside by the High Court on the grounds contemplated in section 100(1)(d) of R.P. Act and appeal was dismissed by the Apex Court. However in the instant case the relief sought on ground of improper acceptance of nomination papers has already been rendered as infructuous. Further, in view of attending facts and circumstances of the case it appears that the alleged inaccuracy or inconsistency in the affidavit regarding educational qualification of the respondent / returned candidate were not of substantial

character. As observed earlier, the petitioner has not filed any such authoritative document of said the University or any other unimpeachable document, which could show that the respondent did not pass the alleged degree of B. Tech.. In view of these facts and circumstances the defects in disclosure, alleged by the petitioner, can not be considered to be of substantial character, so as to be termed as a corrupt practice within the meaning of Section 123 of the Representation of People Act.

27. In case of **Bhikaji Keshao Joshi** (supra), the election petition, having inter-alia allegations of corrupt practice, was dismissed by the Tribunal on technical grounds including the infirmity in verification of pleadings but in appeal, the Hon'ble Apex Court referred back the case to the Tribunal for due enquiry and it was observed as under:

“Having regard to the nature of the alleged disqualification, which is substantially to the effect that the returned candidate had interest in contracts with the Government at the relevant dates, it was very necessary that the matters should have been cleared up in the enquiry before the Election Tribunal. It is not in the interest of purity of elections that such allegations of disqualification should be completely ignored without enquiry and it appears rather surprising that the Tribunal should have ignored them and exercised its power to dismiss the petition. However reluctant we might be to interfere in a matter like this after the lapse of three years and four months and with only an year and eight months before the general elections, we feel constrained to send this matter back for due enquiry. But before doing so and in view of the delay and other circumstances that have already happened, we, in exercise of the powers which the Tribunal in the normal course might itself have exercised, direct the striking out of all the items of alleged corrupt practices set out in Schedule A excepting the one covered by paragraph I of item 1”

In the above referred case the petition was dismissed on technical grounds and the term of the returned candidate as member of Assembly was still subsisting and thus, the issue between the parties was quite alive.

28. Here it would be pertinent to mention that in case of **Peoples Union for Civil Liberties V UOI** (supra), the Apex Court held as under:

“The last item left for discussion is about educational qualifications. In my view, the disclosure of information regarding educational qualifications of a candidate is not an essential component of the right to information flowing from Article 19(1)(a). By not providing for disclosure of educational qualifications, it cannot be said that the Parliament violated the guarantee of Article 19(1)(a). Consistent with the principle of adult suffrage, the Constitution has not prescribed any educational qualification for being Member of the House of the People or Legislative Assembly. That apart, I am inclined to think that the information relating to educational qualifications of contesting candidates does not serve any useful purpose in the present context and scenario. It is a well known fact that barring a few

exceptions, most of the candidates elected to Parliament or the State Legislatures are fairly educated even if they are not Graduates or Post-Graduates. To think of illiterate candidates is based on a factually incorrect assumption. To say that well educated persons such as those having graduate and postgraduate qualifications will be able to serve the people better and conduct themselves in a better way inside and outside the House is nothing but overlooking the stark realities. The experience and events in public life and the Legislatures have demonstrated that the dividing line between the well educated and less educated from the point of view of his/her calibre and culture is rather thin. Much depends on the character of the individual, the sense of devotion to duty and the sense of concern to the welfare of the people. These characteristics are not the monopoly of well educated persons. I do not think that it is necessary to supply information to the voter to facilitate him to indulge in an infructuous exercise of comparing the educational qualifications of the candidates. It may be that certain candidates having exceptionally high qualifications in specialized field may prove useful to the society, but it is natural to expect that such candidates would voluntarily come forward with an account of their own academic and other talents as a part of their election programme. Viewed from any angle, the information regarding educational qualifications is not a vital and useful piece of information to the voter, in ultimate analysis. At any rate, two views are reasonably possible. Therefore, it is not possible to hold that the Parliament should have necessarily made the provision for disclosure of information regarding educational qualifications of the candidates”.

From the above referred case it appears that the information regarding educational qualifications of a candidate is not a vital and useful piece of information to the voter, in ultimate analysis. Considering the ratio of the said case law, it cannot be said that any inconsistency or error in the affidavit of a candidate regarding his educational qualification would amount to corrupt practice.

29. In case of **Mairembam Prithviraj** (supra), Hon'ble Apex Court held that every voter has a fundamental right to know about the educational qualification of a candidate. It is also clear from the provisions of the Act, Rules and Form 26 that there is a duty cast on the candidates to give correct information about their educational qualifications. In that case it was not in dispute that the Appellant did not study MBA in the Mysore University. It was the case of the Appellant that reference to MBA from Mysore University was a clerical error. It was contended by the Appellant that he always thought of doing MBA by correspondence course from Mysore University but actually he did not do the course. The Appellant contested election to the same constituency in 2008 and in the affidavit filed by him in Form 26 he declared that he passed MBA from Mysore University in 2004. It was held that the false declaration relating to his educational qualification cannot be

stated to be not of a substantial character. It is no more *res integra* that every candidate has to disclose his educational qualification to subserve the right to information of the voter. It was held that having made a false declaration relating to his educational qualification, the Appellant cannot be permitted to contend that the declaration is not of a substantial character. However, in the instant case, as observed earlier, the petitioner could not produce any such cogent material or unimpeachable document that the respondent does not hold alleged B.Tech. degree or that the respondent did not pass the said degree at all. Further, in the instant matter the material question is whether a case of corrupt practice is made out against the respondent and the issue of corrupt practice was not discussed in that case. As held in case of Pradip Burgohain (*supra*) the onus of proof of the allegations made in the election petition is undoubtedly on the person who assails an election. A charge of corrupt practice is in the nature of a criminal charge and the pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law but in the instant case the petitioner could not produce any such unimpeachable document, which could show that the respondent did not pass the alleged degree. Further, even in the case of **Mairembam Prithviraj** (*supra*), no such preposition was laid down that the defect in disclosure of information regarding education of the candidate would amount to corrupt practice.

30. In case of **Kisan Shankar Kathore** (*supra*) the election of the returned candidate was successfully challenged on the ground of non-disclosure of material information. The appeal filed by the returned candidate was dismissed by the Court by observing as follows:

“Once it is found that it was a case of improper acceptance, as there was misinformation or suppression of material information, one can state that question of rejection in such a case was only deferred to a later date. When the Court gives such a finding, which would have resulted in rejection, the effect would be same, namely, such a candidate was not entitled to contest and the election is void.”

However, in the present case, as discussed above, due to dissolution of the Assembly, the relief of declaration of election as void, has become infructuous and thus can not be granted. The issue whether any incorrect or false information regarding education of candidate would amount to corrupt practice was not discussed in the said case. Thus, the above referred case also does not help the petitioner.

31. Learned Senior Counsel for the petitioner has also referred case of **Shaligram Shrivastava** (supra), wherein the nomination of one of the candidate was rejected on ground of non-submission of the required declaration and it was held by the Hon'ble Apex Court since such information is necessary and relevant for the purpose of scrutiny of the nomination paper under Section 36(2), in the light of Section 8 of the Act, it can well be furnished on a format provided to the candidate by the Returning Officer and it becomes his duty to furnish such information so that a Returning Officer may discharge its statutory duty to scrutinize the nomination paper effectively, properly and in consonance with the provisions of law. In that case the candidate had failed to furnish such information as sought on the proforma given to him and had also failed to be present personally or through his representative at the time of scrutiny and thereby the statutory duty/power of Returning Officer for holding proper scrutiny of nomination paper was rendered nugatory and thus, upholding the rejection of nomination of said candidate, appeal was dismissed. However, in that case too, no issue relating to corrupt practice was involved. Thus, said case has no relevance for deciding the issue involved in the present case.

32. In the instant case, as discussed above, the question for consideration is whether a case of corrupt practice is made out, as for other purposes the petition has been rendered infructuous. None of the case law relied by learned Senior counsel for the petitioner addresses the issue that any incorrect or even the false information in the affidavit regarding education of the candidate would fall within the ambit of 'corrupt practice'. As stated

earlier, the petitioner also could not show any such unimpeachable and incontrovertible document that the respondent does not hold the alleged degree of B.Tech. at all. Considering the ratio of law laid down by the Hon'ble Supreme Court in case of Peoples Union for Civil Liberties V UOI (supra) as well as Kuldip Nayar (supra), the anomalies regarding educational qualification shown in affidavit of respondent or to say even false information regarding education of the respondent, can hardly be termed as 'corrupt practice' within the meaning of sub section (2) or (4) of section 123 R.P. Act. Further, for the sake of argument even if it is assumed that the respondent does not hold the degree of MBA, which was shown by him in his affidavit filed in nomination of election to the said constituency in the year 2012, it can not be a ground hold that it would constitute a corrupt practice in respect of next election in the year 2017. In his affidavit filed along with his nomination form for election in the year 2017, the respondent has not mentioned the degree of M.B.A. Some false information regarding education of the respondent in his nomination form in some earlier election, can not be a ground to hold that respondent committed corrupt practice in the subsequent election.

33. Another ground taken in the petition is that during campaign in the election, the respondent got printed pamphlets and hand bills, in which he mentioned his name as Er. Harsh Vardhan Bajpayee and he posed himself as qualified Engineer, where as he did not hold degree in Engineering and thus, it amounts to corrupt practice of undue influence. It was submitted that in the constituency in question most of the electors are well educated and comprise a numbers of doctors, engineers, professors and advocates etc and the voters want to elect a well educated person to represent them and thus, incorrect disclosure of educational qualification and non-disclosure of government dues would constitute corrupt practice of undue influence.

34. As observed earlier, the petitioner could not show any such unimpeachable and incontrovertible document that the respondent did not

pass the said degree of B. Tech. from the alleged University and that the inaccuracy or inconsistency regarding the educational qualification of respondent in his affidavit are not of substantial character. Further, the allegations made by the petitioner are vague and general. No specific details have been mentioned that when and where and in what manner the respondent represented himself as an educated Engineer or that the electors have voted in his favour due to that reason and thereby respondent employed corrupt practice of undue influence. Only general averments have been made that during campaigning in the election, the respondent got printed pamphlets and hand bills mentioning himself as Engineer and that as the most of the electors in the constituency are well educated and comprise a numbers of doctors, engineers, professors and advocates etc and thus, the false representation of the respondent as Engineer acted favourably to him and adversely prejudiced the prospects of the petitioner. In the absence of any specific averments, the said allegation appears hypothetical. As stated earlier, the allegations of corrupt practice are in the nature of criminal charge and there should be no any vagueness in the allegations so that the returned candidate may know the case he has to meet. If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving inquiry. The pleadings of the election petitioner in his petition should be precise and clear containing all necessary details and particulars as required by law (*Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi* (1987) Supp. SCC 93 and *Kona Prabhakara Rao v. M. Seshagiri Rao* (1982) 1 SCC 442). In the case in hand, neither there is any such incontrovertible and unimpeachable document, which could show that the respondent did not hold the alleged degree in Engineering/technology nor there are specific allegations that how alleged incorrect and false statement of facts favourably prejudiced the prospects of his election. Considering all these facts of the matter, the inaccuracy or concealment regarding educational qualification of the

respondent did not amount to unduly influencing the voters, as the defect in disclosure was not of substantial character that could have materially prejudiced the prospects of the election, for it to be termed as a corrupt practice within the meaning of Section 123 of the Representation of People Act.

35. Learned Senior counsel for both the parties have referred the decision of the Hon'ble Supreme Court in the case of *P.H.Pandian v. P.Veldurai and another*, (*supra*), where an appeal under Section 116-A of the R.P. Act of 1951 was filed questioning the judgment made in the election petition, it was observed by the Hon'ble Supreme Court that though fresh elections have since been held to Tamil Nadu Legislative Assembly and to an extent the appeal has been rendered infructuous, the manner in which the election petition was dealt with by the High Court causes concern and necessitates. In the said case, Hon'ble Apex Court made reference to some salient facts but it was observed that it is settled practice of Supreme Court not to pronounce upon matters which are only of an academic interest. Once the charge of corrupt practice fails, rest of the appeal would be rendered infructuous because fresh elections have already taken place and the old assembly is no longer in existence. It was further observed that even if the appellant therein was to succeed on the issue that the returned candidate had a subsisting contract with the Panchayat Union and the State Government and was, therefore, disqualified to be chosen for the seat under Section 9-A of the Act of 1951, it would only be of an academic interest. It was observed that appeal for all intent and purposes has been rendered infructuous and thus, appeal was disposed of. It is apparent that this case law hardly supports the case of petitioner.

36. After considering all relevant facts of the matter and the law applicable thereto it clearly emerges that the averments contained in the election petition do not amount to any corrupt practice and at the most the same relate to irregularities and illegalities alleged to have been committed by the

respondent, which would at best be relevant if there was further allegation that it materially affected the result of the election. The averments contained in paras 32 to 38 and 40 to 46 containing narration of facts about corrupt practice do not make out any corrupt practice so as require any further adjudication on merits of the matter. These allegations even if assumed to be true do not make out any case of commission of corrupt practice as enshrined in sub-section (2) or (4) of section 123 of R. P. Act. From the law laid down in case of **Dhartipakar Vs Rajiv Gandhi** (supra) it is clear that if the allegations made by the petitioner do not amount to any corrupt practice as contemplated by Section 123 of the R.P. Act and the period for which the respondent was elected is already over and fresh elections have taken place, the petition could be dismissed.

37. It may be pointed out that the petitioner has sought the relief to declare the election of respondent as Member of Legislative Assembly from 262 Allahabad City North Assembly Constituency, District Allahabad, as null and void and set aside the same. The term of the Assembly, for which the respondent was elected, is already over and the Assembly has been dissolved by efflux of time and that fresh Legislative Assembly has been constituted. Though allegations of corrupt practice were levelled against the respondent but the same are not supported by material facts and unimpeachable documents, apart from the fact that the said allegations do not amount to corrupt practice as contemplated by section 123 of the R.P. Act. In view of these facts the relief claimed by the petitioner has been rendered infructuous. As observed earlier, it is the consistent view of the Hon'ble Supreme Court that the time of the Court is precious one and academic exercise is not warranted unless still some relief may be granted to petitioner may be followed. Therefore, this Court finds that there is no impediment or obstacle in dismissing the election petition, as the prayer itself has become infructuous. In view of the aforesaid discussion and in the light of the settled law of the Hon'ble Supreme Court, this Court is of the considered view that

nothing further survives in this matter. Accordingly, the election petition is liable to be dismissed as having been rendered infructuous.

38. In view of aforesaid, the application No. 19 of 2022 filed by the respondent is allowed and the objections/application No. 20 of 2022 filed by the petitioner stand rejected. The election petition is dismissed as infructuous. No order as to costs.

Order Date :- 12.09.2022

Anand