

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 5TH DAY OF JANUARY, 2022

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

ELECTION PETITION NO.200001 OF 2018

BETWEEN:

SRI. D.K SIDRAM,

... PETITIONER

(BY SRI. UDAYA HOLLA, SENIOR COUNSEL,
A/W SRI. SANTHOSH S GOGI, ADVOCATE)

AND:

1. SRI. ESHWAR BHIMANNA KHANDRE,

2. SRI. PRAKASH KHANDRE,

3. SRI. VENKAT RAO BIRADAR,

4. SRI. ESHWARAPPACHAKOTE,

5. SRI. PUTARAJ,

6. SRI. UMESH,

7. SRI. BANSILAL,

8. SRI. BALAJI,

9. SRI. VALJINATH SHAPURE,

10. SRI. SHARAD,

... RESPONDENTS

(BY SRI. D N NANJUNDA REDDY, SENIOR COUNSEL A/W
SRI. DARSHAN L, ADVOCATE FOR R1;
SRI. JAYARAJ K BUKKA, ADVOCATE FOR R2;
NOTICE TO R3 TO R5, R8 & R9 ARE H/S, V.C.O DATED
09.01.2019;
R6 & R7 ARE SERVED AND UNREPRESENTED)

THIS ELECTION PETITION IS FILED UNDER SECTION 81 OF THE REPRESENTATION OF PEOPLE'S ACT 1951 AND RULE 4 OF KARNATAKA ELECTION PETITION RULES BY SRI.D.K.SIDRAM, PETITIONER/CANDIDATE BY HIS COUSELS SRI K.N.SUBBA REDDY, N. DILLI RAJAN, ASHOK S. KINAGI & MUDIT KUNDLIA, SANDEEP PATIL ADVS. FOR PETITIONER BEFORE THE ADDL. REGISTRAR GENERAL ON 28.06.2018 (THE PROCEEDINGS OF THE ADDL. REGISTRAR GENERAL IS AT PAGE NO.03 OF THE PETITION), CHALLENGING THE ELECTION OF RESPONDENT NO.1, RETURNED CANDIDATE SRI.ESHWAR BHIMANNA KHANDRE, TO THE KARNATAKA LEGISLATIVE ASSEMBLY FROM 2018. BHALKI ASSEMBLY CONSTITUENCY HELD IN THE YEAR 2018 AND THE PETITIONER PRAYING TO; i) TO SET ASIDE THE ELECTION OF THE RESPONDENT NO.1, SRI. ESHWAR KHANDRE AS MLA OF 51-BHALKI CONSTITUENCY IN THE KARNATAKA ASSEMBLY ELECTIONS, 2018 TO BE VOID AND TO SET ASIDE THE SAME BY DECLARING THE ANNEXURE A1 TO BE VOID. ii) TO DECLARE THE ELECTION PETITIONER SRI. D.K SIDRAM TO BE THE ELECTED AS MLA TO 51 BHALKI CONSTITUENCY IN THE KARNATAKA ASSEMBLY ELCTIONS, 2018. IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.,

THIS ELECTION PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

This petition lays a challenge to the election of the Respondent No.1 (hereafter 'R-1') to the Karnataka State Legislative Assembly from Bhalki constituency in Bidar

district; the petition is structured on the ground of corrupt practice and the like; after service of notice, R-1 having entered appearance through his counsel, has filed the Written Statement resisting the petition; he has also filed the subject applications for striking off the pleadings of the petitioner and for the rejection of the petition for want of cause of action; the election petitioner has filed his Objections to the same.

2. BRIEF FACTS:

(a) The process of General Elections to the Karnataka State Legislative Assembly commenced with the issuance of Calendar of Events by the ECI vide Notification dated 27.3.2018; the last date for filing of Nomination Papers was 24.4.2018; all the parties to the petition were in the fray; petitioner contested as a candidate from Bharatiya Janata Party, whereas R-1 contested as a candidate of Indian National Congress; the second respondent was a candidate from Janata Dal (S); the scrutiny of Nomination Papers was done on 25.4.2018; the list of contestants was published on 27.4.2018.

(b) The total number of registered voters in Bhalki constituency was 2,24,472; polling was held on 12.5.2018; the counting of votes was accomplished on 15.5.2018; the

total votes polled were 1,67,056; R-1 having secured 84,673 votes, emerged victorious; petitioner having scored 64,235, was the nearest rival, defeated; the votes secured by other respondents, are not much relevant to the adjudication of this case.

(c) Petitioner alleges that the election in question has been vitiated by a series of corrupt practices perpetrated by or at the instance of R-1; it is also alleged that the particulars furnished by R-1 in Form-26 affidavit were false; the pleaded corrupt practices *inter alia* comprise of: distribution of wall clocks & monies by/and at the instance of R-1; filing of false affidavit; improper acceptance of his Nomination Paper; misuse of official machinery by R-1 who happened to be a Cabinet Minister; so alleging, petitioner seeks invalidation of election of R-1 and for a declaration that he is duly elected in his stead.

(d) R-1 has filed his Written Statement on 04.01.2021 of course, with some delay; earlier he was placed *ex parte* and that bar came to be lifted levying a cost of Rs.5,00,000/-, which he has paid to the Government COVID-19 related fund, as directed; he has filed these two applications viz I.A.No.2 u/o VII Rule 11(a) of the Code for rejection of election petition for want of cause of action and

I.A.No.3 u/o VI Rule 16 of CPC, 1908 for striking out the petition averments; petitioner opposed these applications by filing his Objections.

3. Having heard the learned counsel for the parties on the subject applications and having perused the case papers and also having adverted to the Rulings cited at the Bar, this Court is inclined to allow the subject applications for the following reasons:

(A) A BROAD LEGAL POSITION AS TO PLEADINGS IN AN ELECTION PETITION:

(i) It has been the consistent view of the Apex Court that, *an election petition is not an action at common law nor in equity; it is a statutory proceeding to which neither the common law nor the principles of equity apply, but only those rules which the statute makes & applies; that statute is the Representation of People Act, 1951 and the Rules promulgated thereunder; concepts familiar to common law & equity must remain strangers to election law unless they are statutorily embodied; in other words, the law of election is what the election law i.e., the Statute says vide JYOTI BASU vs. DEBI GHOSAL, AIR 1982 SC 983;* however, ordinarily, the insignificant technicalities in the matter of pleadings are liable to be ignored in adjudging

the validity of elections of the kind vide **PONNALA LAKSHMAIAH Vs. KOMMURI PRATAP REDDY (2012) 7 SCC 788.**

(ii) Petitioner in addition to seeking invalidation of election of R-1 prays for an order that he be declared as having been duly elected; sec. 83(1)(a) of the 1951 Act prescribes that an election petition shall contain a concise statement of **material facts** on which the petitioner has founded his challenge; '*material facts*' are those which taken at their face value not only will have a cause of action but also entitle the petitioner to the grant of relief which he has prayed for; in other words, all those facts which clothe the petition with a choate or complete cause of action are termed as *material facts*, in election jurisprudence; failure to plead any material fact renders the challenge to an election of the kind, bad; in this country, the law of elections to a considerable extent has grown precedent by precedent; challenge to an election, be it to the Parliament or to the State Legislatures, is treated as a serious matter; an election cannot be set at naught unless a fool proof case is made out vide **SANTOSH YADAV vs. NARENDAR SINGH, (2002) 1 SCC 160**; this is done to ensure that the Sword of Damocles is not kept

hanging over the head of victorious candidates unnecessarily and without point or purpose; added, election in a country like ours, involves huge expenditure, time & energy; a popular mandate culminating in the electoral result therefore, cannot be lightly brushed aside.

(iii) Where a challenge to an election is founded on the ground of corrupt practice, law mandates that not only *material facts* vide sec. 83(1)(a) but also the 'material particulars' vide sec. 83(1)(b) of the 1951 Act are to be pleaded; at times, there may be some overlapping between *material facts* and 'particulars',; nevertheless, difference lies between them, cannot be disputed; this difference is not like a dispute as to the very existence of the border between the two but it is only as to where the boundary line between them lies; *material facts* would mean all the fundamental facts constituting the ingredients of the particular corrupt practice alleged, which the petitioner has to substantiate in order to succeed; the proven test to identify a fact as the 'material fact' is to ask oneself whether in the absence of such a fact, relief sought for in the petition can be granted.

(iv) 'Material particulars' on the other hand are the details of the case set up by the parties which are

necessary to amplify, refine & embellish the *material facts* pleaded in the petition; they are decorative details of *material facts*; 'Particulars' serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative; the function of 'particulars' is to present as full a picture of the case brought before the court as to make the opposite party understand and to meet it; these particulars ordinarily comprise of description of names of persons associated with the commission of corrupt practice, it's ingredients, the date & place of such commission, etc., vide **UDHAV SINGH VS. MADHAV RAO SCINDIA, (1977) 1 SCC 511**; Mr.Udaya Holla, learned Sr. Advocate appearing for the petitioner is right in submitting that while the failure to plead material facts is fatal to the election petition and no amendment of the pleading could be allowed for introducing the material facts after the expiry of limitation period prescribed by law for filing the election petition, the absence of material particulars can be cured even at a later stage by an appropriate amendment vide **L.R.SHIVARAMAGOWDA Vs. T.M.CHANDRASHEKAR, (1999) 1 SCC 666.**

(v) There is yet another aspect of law so far as this petition is concerned; as already mentioned above, there are two prayers *viz* invalidation of the election of R-1 and the declaration that petitioner is duly elected; sec. 100(1)(b) of 1951 Act provides for the grant of former whereas sec. 100(1)(d) provides for the grant of latter, if the election petitioner proves the commission of corrupt practice, without anything more, the election has to be set at naught; however, if the petitioner alleges that there was improper acceptance of any nomination paper [sec.100(1)(d)(ii)] or that there was non-compliance with the provisions of the Constitution, Act or any Rules [vide sec. 100(1)(d)(iv)], he has to plead and prove that the result of election insofar as it concerns R-1 has been materially affected by such improper acceptance or non-compliance with any statutory provision.

(B) In light of the above position of law, the subject applications need to be treated keeping in view only the petition averments and the documents accompanying the petition; there are 97 paragraphs in the petition; paragraphs 3 to 11 which deal with political & social background of the petitioner are not of much relevance; paragraphs 12 to 27 deal with the **improper acceptance** of

the Nomination Papers of R-1, furnishing of false information and suppression of vital ones in Form-26 and in the affidavit accompanying the same; paragraphs 28 to 31 relate to commission of **corrupt practice** in general; paragraphs 32 to 59 specify the corrupt practices of **bribery** in terms of sec. 123(1), i.e., distribution of **wall clocks** (paragraphs 32 to 45); distribution of **monies** (paragraphs 46 to 47); mass **infiltration of voters** and issuance of **bogus Voter ID Cards** (paragraphs 48 to 54) and **distribution of hakku patraas** of the housing scheme to the voters (paragraphs 55 to 59); paragraphs 60 to 76 relate to procurement of **official assistance & misuse of official machinery** [sec. 123(7)]; paragraphs 77 to 78 mention about **failure to lodge true & correct election expenditure account** [sec. 123(6)]; paragraphs 79 to 94 plead about **non-compliance with statutory provisions** [sec. 100(1)(d)(iv)]; paragraph 95 relates to **security deposit** (sec. 117) and paragraph 96 states about the **cause of action**; lastly, paragraph 97 relates to the **limitation** period for filing the petition [sec. 81(1)]; these are the broad outlines of the Election Petition.

C. AS TO IMPROPER ACCEPTANCE OF NOMINATION PAPERS OF R-1:

(i) Learned Sr. Advocate Mr.Udaya Holla appearing for the petitioner finds fault with the acceptance of the Nomination Papers of R-1 on the ground that: he has furnished false information and suppressed vital ones in Form-26; he has not filed Income Tax Returns; he falsely claims to be not an Income Tax Assessee; as the Chairman of the Shantivardhak Educational Society, he has not shown the income received therefrom; similarly, he has shown Nil income from the Partnership Firm which runs Amar Theater; though his wife has eleven bank accounts, it is mentioned in Form-26 that she is not an Income Tax Assessee; both he & his wife are the joint owners of agricultural land in Sy.No.45/E at Bhalki and still this information is suppressed; his wife has not paid the Property Tax; lastly, he has furnished his wife's Pan Card details that are incorrect.

(ii) The above violations, Mr.Holla vehemently argues, fall foul of sec. 33(A)(1) & (2) of the 1951 Act r/w Rule 4-A of the Conduct of Election Rules, 1961 r/w sec. 125A (sec. 125A makes filing of false affidavit an offence); he passionately presses into service the decision of Apex Court in **PUCL Vs. UOI, (2003) 4 SCC 399** and submits that the basic information which the voters ought to have had, has

been clandestinely denied to them because of suppression of material information and furnishing of wrong information by R-1; he also draws attention of the court to the voters fundamental right to information u/a 19(1)(a) of the Constitution which is essential for making an "informed decision" as to which candidate they should vote or as to not voting at all (NOTA); he emphasizes the importance of 'electoral information' which needs to be made available to the voters in a functional democracy like ours; Mr.Holla contends that this aspect is a matter of trial and there being a *prima facie* triable case, the subject applications are liable to be rejected.

(iii) Learned Sr. Advocate Mr.Nanjunda Reddy appearing for R-1 rightly contends with equal vehemence that the petitioner has not produced even an iota of material to show that his client is an Income Tax-Assessee or that in the subject land bearing Sy.No.45/E, he has any vested interest; the records at Annexures-H & J mention the name of R-1 only as being the spouse of Smt.Geetha and not as a sharer therein; in fact, he has specifically stated in the affidavit accompanying the Nomination Papers that this land exclusively belongs to his spouse and further, it is so reflected in the column earmarked for

entering the spousal information; Mr.Reddy is also justified in contending that the petition lacks *material particulars* if not *material facts* such as the quantum of arrears of tax that have remained unpaid, Tax Demand Notices or the like issued by the municipal body, concerning property No.8-9-218 in Sy.Nos.53, 54 & 58 and plot Nos.B11 & B12; if material information was lacking in the affidavit of R-1, it was open to the petitioner or other respondents or any of the voters to solicit the said information or to point out any information being wrong/false, vide **KISAN SHANKAR KATHORE Vs. ARUN DATTATREY SAWANT, (2014) 14 SCC 162.**

(iv) The Apex Court at paragraph 29 of the decision in KISAN SHANKAR *supra* recognized the right of electors to know about the credentials of their candidates, as a fundamental right guaranteed u/a 19 (1)(a) of the Constitution since it flows from the concept of Democracy and that where relevant information is not disclosed in the affidavit, the Returning Officer has the power coupled with duty to direct the candidate to furnish the same; further, it is also true that if the candidate fails to furnish despite direction, his Nomination Papers can be rejected; however, this power of Returning Officer to reject the Nomination

Papers must be exercised very sparingly; in the case at hands, no such deficiency in the affidavit was pointed out by any one and much less any direction was issued by the Returning Officer to make good any such deficiency; the reply of the petitioner that he has sought for information as to the details of property of R-1 and about the taxes payable by him from the jurisdictional authorities and further that the same have not yet been furnished, would not come to his aid; similarly the mistake in the PAN Card numbers ie., furnishing 11 alpha numeric instead of 10, is not pleaded as having materially affected the result of election in question.

(v) The law (sec.33-A of 1951 Act) requires that the information furnished by the candidate in the form of affidavit shall be displayed in a conspicuous place in the office of jurisdictional Returning Officer for the knowledge of electors including the candidates; it is nobody's case that this statutory duty was not discharged by the Returning Officer and therefore, the electors had no opportunity to acquire relevant information relating to the candidate; there is a presumption in law that the statutory functionaries duly discharge their official duties in regular course; such a presumption readily avails to R-1; the fact

remains that neither the Returning Officer nor any electors have found the information furnished by R-1 as being insufficient or incorrect; this apart, how the alleged non-furnishing of the so called material information or the furnishing of alleged false information to the electors, has materially affected the electoral prospects of the petitioner or of any other candidate, is also not pleaded, such a plea being legally essential in view of the fact that there were plural candidates in the electoral fray; the Apex Court in **MAIREMBAM PRITHVIRAJ VS. PUKHREM SHARATCHANDRA SINGH, (2017) 2 SCC 487**, at paragraph 26 has observed as under:

“ Mere finding that there has been an improper acceptance of the nomination is sufficient for a declaration that the election is void under section 100(1)(d). There has to be further pleading and proof that the result of the election of R-1 was materially affected. But, there would be no necessity of any proof in the event of the nomination of a R-1 being declared as having been improperly accepted, especially in a case where there are only two candidates in the fray...”

D. AS TO CORRUPT PRACTICES ALLEGEDLY PERPETRATED BY R-1:

(i) In paragraphs 28 to 45 of the petition, there are averments that R-1 has misused official machinery, utilized services of ASHA workers, distributed wall clocks

bearing his name & photograph, handed money & goodies to the voters; he has distributed bogus ID Cards, issued Hakku Patraas to the voters and has incurred election expenditure in excess of statutory ceiling limit; learned Sr. Adv. Mr. Holla contends that all these acts amount to corrupt practices including bribery; *per contra* learned Sr. Adv. Mr. Reddy appearing for R-1 contends that if an election petitioner alleges corrupt practice, he in addition to pleading material facts as required u/s.83(1)(a) has to also furnish material particulars such as the names of parties/persons who are alleged to have committed such corrupt practice, the nature of corrupt practice, and date & place of commission of such corrupt practice; in the absence of such material particulars R-1 will not have full picture of cause of action with such further information in detail to understand the case of other side and to meet it effectively; in support of his contention he banks upon the decision of the Apex Court in **SAMANT N. BALKRISHNA & ANOTHER vs. GEORGE FERNANDEZ & OTHERS**, (1969) 3 SCC 238.

(ii) Petitioner enlists several corrupt practices allegedly committed by R-1, as already mentioned above; there are averments in the petition that: to induce voters,

he distributed money and thousands of wall clocks bearing his name, designation & photo; one advocate by name Mr. Suresh Biradar having seen him distribute the same, lodged a police complaint on 01.05.2018; the vehement contention of Mr. Nanjunda Reddy, that the petition has been structured taking 23.04.2018 as the date on which the nomination papers were filed and therefore, R-1 was yet to become a candidate in the eye of law [Sec.79(b)] when he had allegedly distributed the goodies may not be correct since his client had already filed the same on 20.04.2018 as rightly pointed out by Mr.Holla; therefore, this contention cannot be sustained; Mr.Reddy's reliance on the decision of Apex Court in **MOHON RAWALE VS. DAMODAR TATYABA (1994) 2 SCC 392** which states that a person becomes the candidate after the filing of nomination papers, also would not come to his rescue; similarly, the vehement contention of Mr.Reddy that the 'elements of bargain' in distributing money & goodies to the people is lacking, cannot be accepted; this distribution was made when the elections were at the horizon, it was made in places that were comprised in the constituencies and that the R-1 happened to be a Minister averdly hailing from a political background, raise a strong presumption that the said distribution was for securing the votes; courts cannot

keep their common sense in cold storage in construing the pleadings of parties.

(iii) The above having been said, there is another aspect that comes to the rescue of R-1; true it is, petition contains averments as to distribution of money, wall clocks and such other goodies to the people of constituency in question; however, no material particulars of the persons to whom money & goodies were distributed, are stated in the petition even by way of samples; it is understandable that the recipients allegedly being in thousands, the names & addresses of all of them cannot possibly be known and therefore, obviously be furnished; however, the material particulars of at least one recipient from amongst the thousands, ought to have been mentioned in the petition; this was necessary for ascertaining whether such recipients were the registered voters at all and they were given the goodies by way of bargain; no explanation is offered by the petitioner for not averring this, either; the time & place when & where such bribes were allegedly given, are also lacking in the petition; bald averments of the kind, in a matter like this, would not come to the aid of petitioner.

(iv) Petitioner at paragraph Nos. 46 & 47 has averred that certain persons namely, Sri. Shivasharanappa, Sri. Shivaji Rao & Sri. Praveen Hanumashetty had organized distribution of money near Devi Colony in Bhalki and in various other villages on 10, 11 & 12th of May, 2018; that these incidents were videographed by a BJP worker Mr. Dileep in the camera of his mobile phone bearing No. +91-9480491479; and that all this was done with intent to bribe the voters; added to this, these averments in the petition again lack the 'particulars' such as, the name & address of the persons to whom monies were handed and whether these recipients were the voters at all; this apart, whether the persons who had organized these money/goodies distribution events had the consent of R-1 or of his election agents, is also not averred; it is relevant to reproduce the observations of the Apex Court in **SURENDRA SINGH vs. HARDAYAL SINGH, (1985) 1 SCC 91** at paragraph 37, as to what consent in matters like this would mean:

"...Consent is the life line to link up the candidate with the action of the other person which may amount to corrupt practice and unless it is specifically pleaded and clearly proved-in view of the fact that all ingredients have to be proved beyond reasonable doubt-the appellant

cannot be charged for the action of Gurdial Singh and his group”.

It is not the case of petitioner that these distributors were the election agents of R-1, either; the averments as to corrupt practices in general and bribery in particular, must have these specific particulars; the true significance of a proposition of law can be appreciated by contemplating the consequences of its opposite; the rule of pleadings in election disputes, requiring averment of material facts & particulars if relaxed, no electoral victory even of scrupulous candidates, be it to the Parliament or to the State Legislatures, would be safe; a large chunk of peoples representatives may have to be in the Court corridors to face unworthy challenge to their elections and this would have adverse impact on the public interest inasmuch as, they eventually have to concentrate more on the legal battles to which they are dragged into, than on the welfare of their electoral constituencies; that is how the rule requiring the averment of material facts & particulars, finds its justification in the realm of election law.

E. AS TO MASS INFILTRATION OF VOTERS FROM ACADEMIC INSTITUTIONS:

(i) At paragraphs 48 to 54 of the petition it is averred that the R-1 has committed corrupted practice of creating voters and infiltrating them into the voters list, by fabricating their bogus identification cards and that this he has done by misusing the official machinery; petition also states about registering the students & employees of educational institutions run by the SVE Society which is headed by him as chairman; the panchayat & municipal officers at his instance have facilitated all this and strangely names of thousands of students have gained entry to the Electors List, despite there being no application for their registration as voters; the petition names one Mr.Basavaraj Chhalakapure, BLO of Booth No.5, who has actively perpetrated all this; learned Sr. Adv. Mr. Holla takes through the court to the petition papers and argues that there is a *prima facie* case for trial and therefore the subject applications need to be rejected; however Sr.Adv. Mr.Reddy appearing for the R-1 contends that dispute of the kind cannot be gone into in an Election Petition; even otherwise these allegations do not constitute corrupt practices.

(ii) Sec.123 of the Act enumerates several corrupt practices; in the absence of a specific plea as to a third

person doing certain acts with the consent of the candidate or of his election agent, the cause of action cannot be said to be choate under this provision; there is no plea that Basaravaj Chalkapure had the consent of either R-1 or his election agent; if the allegation is to be considered as rendering assistance by Chalkapure which is a corrupt practice u/s.123(7), the petitioner ought to have pleaded that R-1 has either obtained or procured the assistance of the said Basavaraj Chalkapure; the petitioner has also not pleaded as to the manner, measure and mode of assistance allegedly rendered by the said Basavaraj Chalkapure and how such assistance has furthered the prospects of election of the R-1; one can contemplate the undesirable consequences of taking cognizance of the acts that may arguably amount to corrupt practices, without the consent or concurrence of the candidate or of his election agent; as already mentioned above, what a stranger does during the election process cannot be attributed to the candidate or his election agent; consent cannot be construed from what has been pleaded in the petition, when the Apex Court in **Surendra Singh** *supra* specifically stated: “... consent is the life line to link up the candidate with the action of the other person which may amount to corrupt practice ...”.

(iii) Mr. Reddy is right in contending that Sec.21 of R.P.Act, 1950 r/w the provisions of the Registration of Electors Rules, 1960 provides an inbuilt mechanism for the preparation & revision of Electoral Rolls; these rolls are prepared in the prescribed form for each of the electoral constituencies, by reference to the qualifying date; they come into force immediately upon their final publication; Section 22 provides for amendment, transposition or deletion of entries in the Electoral Rolls; this is done only by the Electoral Registration Officer subject to general or special directions of the ECI vide **AMRUT LAL BAWEJA vs. E.C.I. AIR 2010 (NOC) 82 (P & H)**; Section 23 provides for the inclusion of names in the Electoral Rolls; aggrieved persons can prefer an appeal u/s.24 before the Competent Authority and within the prescribed period; all this ordinarily happens before the commencement of election process; in any event Electoral Roll gets frozen as on the last date for the filing of nomination papers; thereafter it becomes untouchable; the validity or correctness of the Electoral Roll ordinarily cannot be gone into in an election petition vide **KUNWAR NRIPENDRA BAHADUR SINGH vs. JAI RAM VERMA, (1977) 4 SCC 154**; it is pertinent to see the following observation of the Apex Court at paragraph 25:

“This Court has consistently taken the view that the finality of the electoral roll cannot be challenged in an election petition even if certain irregularities had taken place in the preparatory work of the electoral roll or if subsequent disqualification had taken place and the electoral roll had on that score not been corrected before the last hour of making nominations. After that deadline the electoral roll of a constituency cannot be interfered with and no one can go behind the entries except for the purpose of considering disqualification under section 16 of the 1950 Act”.

Thus, whether the names of ineligible persons gained entry to the Electoral Roll and at whose instance all that happened would pale into insignificance;

(iv) The above apart, there is yet another aspect to the matter: petition also lacks material facts and particulars as to when “mass infiltration of voters” was perpetrated; this question assumes importance in view of the definition of “candidate” given u/s.79(b) of the 1951 Act as interpreted by the Apex Court in **MOHAN RAWALE** *supra* to the effect that all sub-sections of Sec.123 refer to the acts of the “candidate” or his election agent or any other person with their consent and that the definition completely excludes the acts done by a person upto the date he is nominated as a candidate; for the ground of a kind to arguably avail for the invalidation of an election,

the petition has to state specifically at least the dates, if not anything else as to when the so called mass infiltration of voters was accomplished; in the absence of specific date being mentioned in the petition, it cannot be assumed that all that was done only after the R-1 had filed the nomination papers; it is relevant to quote what the Apex Court said in **SUBASH DESAI vs. SHARAD J. RAO, (1994) SUPPL 2 SCC 446 :**

“Section 86 vests power in the High Court to dismiss an election petition which has not been properly presented as required by section 81; or where there has been non-compliance of section 82 i.e. non-joinder of the necessary parties to the election petition; or for non-compliance of Section II 7 i.e. non-deposit of the required amount as security for the costs of the election petition. Section 86 does not contemplate dismissal of the election petition for non-compliance of the requirement of Section 83 of the Act. But Section 83 enjoins that an election petition shall contain concise statement of material facts, and shall set forth full particulars of any corrupt practice that the petitioner alleges, which should be verified and supported by affidavit, so far the allegations of corrupt practices are concerned. This provision is not only procedural, but has an object behind it; so that a person declared to have been elected, is not dragged to court to defend and support the validity of his election, on allegations of corrupt practice which are not precise and details whereof have not been supported by a proper affidavit. Apart from that, unless the material facts and full particulars of the corrupt practices

are set forth properly in the election petition, the person whose election is challenged, is bound to be prejudiced in defending himself of the charges, which have been levelled against him. In view of the repeated pronouncements of this Court, that the charge of corrupt practice is quasi-criminal in nature, the person challenging an election on the ground of corrupt practice, cannot take liberty of making any vague or reckless allegation, without taking the responsibility about the correctness thereof. Before the court proceeds to investigate such allegations, the court must be satisfied, that the material facts have been stated along with the full particulars of the corrupt practice, alleged by the petitioner, which have been duly supported by an affidavit. In cases where the court finds that neither material facts have been stated, nor full particulars of the corrupt practice, as required by section 83, have been furnished in the election petition, the election petition can be dismissed, not under section 86 but under the provisions of the Code of Civil Procedure, which are applicable, read with section 83(1) of the Act, saying that it does not disclose a cause of action”.

F. AS TO DISTRIBUTION OF HAKKU PATRAAS BY THE R-1 & HIS SPOUSE:

(i) Petition averments at paragraph 55 to 59 are to the effect that: R-1 being the Minister has distributed huge number of Hakku Patras (3000) under various schemes after the commencement of the election process and more particularly after he had become candidate on the of filing of Nomination Papers; this was done in gross violation of Model Code of Conduct which had become effective from

27.03.2018; he and his wife distributed these Hakku Patraas on 28.03.2018 in a public function organized in front of his residence to bribe the voters; petitioner also mentions about this incident being videographed by the Suvarna T.V.Channel; learned Sr. Advocate Mr. Holla vehemently argues that the act of R-1 & his spouse in distributing the Hakku Patras amounts to electoral bribery and therefore, election needs to be voided.

(ii) There is a lot of force in the contention of Mr. Reddy appearing for the R-1 that as on 28.03.2018 when the Hakku Patras are said to have been distributed, his client was not a candidate, the Nomination Papers having been filed long thereafter, i.e., 20.04.2018; as already mentioned above, a person attains the status of a "candidate" under Section 79(b) of the Act only after the filing of Nomination Paper and not before; thus, what all a person does in his previous *avataar* i.e., before he became a candidate, is irrelevant; secondly, the alleged violation of Model Code of Conduct per se is not a corrupt practice unless, it is specifically linked to any one of the corrupt practices specified in Section 123 of the Act; this apart, whether the recipients of the Hakku Patras were the voters at all is not pleaded nor the material particulars of at least

one such voter is stated in the petition; ideally speaking, when the elections are at the horizon, the potential candidates are not supposed to do something that gives an impression of “vote garnering” may be ethically true; but that is not the position of law as clarified by the Apex Court in de **MOHAN RAWALE** *supra* ; it hardly needs to be stated, ordinarily the District In-charge Ministers participate in the distribution of Hakku Patraas and the like; this cannot be found fault with more particularly when such things are done before the filing of Nomination Papers.

G. AS TO MISUSE OF GOVERNMENT MACHINERY AND INVOLVING OF ASHA WORKERS (KAARYAKARTAAS) FOR SECURING VOTES:

(i) The petition at paragraph 60 to 66 & 67 to 76 mention about the misuse of Government Machinery and invoking of the assistance from the Asha Kaaryakartaas; petitioner contends that these kaaryakartaas were roped in by the Returning Officer and the Deputy Commissioner of the Bidar District, at the instance of the R-1; Section 123(7) prohibits procuring, abating/attempting procurement of services of officers by a candidate or his agent for the furtherance of the electoral prospects of the R-1; petition mentions about the assistance rendered by

the Chief Officer, Executive Officer & Computer Operator of TMC, Bhalki; it is also alleged that the office bearers of co-operative sugar factory and its employees were taken for the campaigning of the candidature of R-1; it is further alleged in the petition that the employees of Engineering, Polytechnic & PU colleges run by him were also drawn to his election work; names of these officials & employees are mentioned in paragraph nos. 67 to 74.

(ii) Learned Sr. Advocate Mr. Reddy is justified in contending that there is not even a whisper about the R-1 obtaining or consenting to obtain the assistance from the officials of the Government & the TMC or the employees of the Colleges or of the Cooperative Society; nor it is the specific case of petitioner that the procurement of their services was done by the election agent or by someone with agent's consent; if the officials & employees whose particulars are mentioned in paragraph nos. 67 to 75 have arguably done some acts on their own, that would not constitute corrupt practice; it is open to the ECI to draw employees of the Government, educational institutions and the like for the election work; unless it is pleaded as provided u/s 123(7)(h) that the employees of educational institutions, cooperative society, sugar factory or the like

were so drawn, they would not fall within the class of persons specified in Section 123(7) of the Act and therefore, what arguably they did does not blemish the electoral results.

(iii) Mr. Reddy is also right in contending that the petition lacks in material particulars as to what acts the persons named in paragraph nos. 67 to 75 have done and how the same promoted the electoral prospects of his client; place, date & time of their acts are also not specifically stated; the Apex Court in **HARDWARI LAL VS. KANWAL SINGH**, (1972) 1 SCC 214 at paragraph 18 has observed as under:

“...The type of assistance, the manner of assistance, the time of assistance, the person from whom assistance is sought are all to be set out in the petition about the actual and the specific assistance with which the appellant can be charged in violation of the provisions of the Act. Nor is there any statement in the election petition describing the manner in which the prospects of the election were furthered and the way in which the assistance was rendered. The allegations against the appellant were in relation to six persons. Therefore, it was essential and imperative for the election petitioner to set out with exactitude and precision the type of assistance as also the manner in which assistance was obtained or procured from each person. The time, the date and the place of the

assistance were also required to be set out in the particulars. Thus it had to be alleged as the material facts as to what assistance the appellant obtained or procured or abetted or attempted to obtain or procure from which person and how the assistance furthered the prospects of the appellant's election. If all the four variants and ingredients were to be charged against the appellant these had to be set out as statements of material facts in relation to each person."

H. AS TO FAILURE TO FILE PROPER ELECTION EXPENSES:

(i) Petition paragraphs 77 & 78 aver that: the R-1 has committed electoral corrupt practice by filing false election expenditure; he has stated in Schedule 2 to his affidavit accompanying the Nomination Papers that his political party has spent only Rs.1.8 lakh towards the gathering of twenty thousand people on 3.5.2018; for such a huge gathering, the amount said to have been spent is only a peanut and it is not correctly stated; the affidavit accompanying the Nomination Papers does not bear the seal of attesting authority ie., Magistrate of First Class; learned Sr. Adv. Mr. Holla appearing for the petitioner submits that the truthfulness of these allegations can be ascertained only after the trial and therefore the subject applications are liable to be rejected; per contra, learned Sr. Adv. Mr. Reddy appearing for the R-1 submits that these aspects can be gone into even at the pre-trial stage

taking the petition averments with their face value and that even if that is done the same lacks the requirement of furnishing material facts & particulars and therefore the averment concerning this ground needs to be struck off.

(ii) Section 77(1) deals with maintenance of account of election expenditure; Explanation I to sub-section (1) provides for excluding certain expenditures made by the political party from which a person enters the electoral fray; sub-section (3) prohibits making of expenditure in excess of what is prescribed by rule; Rule 90 of the Conduct of Election Rules, 1961 fixes Rs.28 lac as the maximum expenditure that can be incurred by a candidate; Rule 86 sets out the particulars to be contained in the account of election expenses; Sec.123(6) states that incurring of excess expenditure is a corrupt practice; merely by stating that the R-1 has incurred excess expenditure is only a bald averment; petitioner should have broadly given the relevant particulars as to how much excess expenditure is incurred and how he has arrived at such an excess figure; assuming that 20,000 people had gathered on 03.05.2018 as averred in the petition, how the size of that gathering would result into enhanced

expenditure, is not forthcoming from the petition or the documents accompanying it.

(iii) The other averment that the petitioner has not maintained the true & correct statement of accounts of expenditure would not advance his case any further; he states that certain expenditure is not included; however even the particulars of that also are lacking; what one needs to notice is that it is only the violation of Sec.77(3) which is a corrupt practice in terms of Sec.123(6) of the Act and not the violation of sub-sections (1) & (2) of Sec.77; Mr. Reddy is more than justified in pointing out that there is no specific plea in the petition to the effect that his client has either incurred or authorized expenditure in contravention of Sec.77(3); he is also correct in further pointing out that there is no plea as to how much amount was roughly spent on account of the meeting and that if that amount is included, the expenditure incurred by the R-1 would exceed the ceiling limit; similarly, no significance can be attached to the arguable lapse in the matter of the affidavit being required to be sworn to before the Judicial Magistrate First Class, more particularly when the same is apparently notarized.

(iv) Mr. Reddy, learned Sr. Advocate appearing for the R-1 places heavy reliance and in the opinion of this court rightly on what the Apex Court observed in **L.R.SHIVARAMAGOWDA**, *supra*; paragraph 18 of the decision being relevant is reproduced below:

“We shall now proceed to the second limb of the argument of the appellant's counsel. The High Court has held that the appellant had not maintained true and correct account of expenditure incurred or authorized and the same amounted to corrupt practice. 'Corrupt practices' have been set out in Section 123 of the Act. According to the first respondent, the appellant is guilty of a corrupt practice described in sub-section (6) of Section 123. Under that sub-section the incurring or authorizing of expenditure in contravention of Section 77 of the Act is a corrupt practice. Section 77 provides that every candidate at an election shall keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent and that the accounts shall contain such particulars as may be prescribed. Rule 86 of the Conduct of Election Rules, 1961 sets out the particulars to be contained in the account of election expenses. Sub-sections (1) & (2) of Section 77 deal only with the maintenance of account. Sub-section (3) of Section 77 provides that the total of the election expenses referred to in sub-section (1) shall not exceed such amount as may be prescribed. Rule 90 of the Conduct of Election Rules prescribes the maximum limit for any Assembly Constituency: In order to declare an election to be void, the grounds were set out in Section 100 of the Act. Sub-Section (1)(b) of Section 100 relates to any corrupt practice committed by a R-1 or his election agent or by any other person with the consent of a R-1 or his election

agent. In order to bring a matter within the scope of sub-section (1)(b), the corrupt practice has to be one defined in Section 123. What is referred to in sub-section (6) of Section 123 as corrupt practice is only the incurring or authorizing of expenditure in contravention of Section 77. Sub-section (6) of Section 123 does not take into its fold, the failure to maintain true and correct accounts. The language of sub-section (6) is so clear that the corrupt practice defined therein can relate only to sub-section 3 of Section 77 i.e. the incurring or authorizing of expenditure in excess of the amount prescribed. It cannot by any stretch of imagination be said that non-compliance with Section 77 (1)&(2) would also fall within the scope of Section 123 (6). Consequently, it cannot fall under Section 100 (1) (b). The attempt here by the first respondent is to bring it within Section 100(1)(d) (iv). The essential requirement under that sub-section is that the result of the election insofar as it concerns that R-1 has been materially affected. It is needless to point out that failure on the part of the R-1 to maintain accounts as required by Section 77 (1) & (2) will in no case affect, and much less materially, the result of the election”.

I. AS TO VIOLATION OF SEC.100(1)(D)(IV) OF THE ACT:

(i) Petitioner in paragraphs 79 to 94 of the petition avers: Rules 49(S), 49(E), 49(U), 49(V) of the Conduct of Election Rules, 1961 have been violated by the Presiding Officers to favour the R-1; the said officers have not recorded the total number of votes polled in Form 17C Part-I and in respect of 72 Polling Stations this Form is missing; the contents of Form 17C Part-I do not tally with those of Form 20 in

respect of 23 Polling Stations; in the last one hour of polling 30,000 electors have voted and this raises suspicion about the bogus voting; the Electronic Voting Machines have been sealed without recording the total number of votes polled; there was a long delay of about 17 hours in transporting the EVMs; the authorities have used this time to tamper the EVMs with intent to favour the R-1; petitioner argues that all this has materially affected the electoral prospects of the R-1.

(ii) Mr. Reddy who represents the R-1 submits and rightly that where a huge population participates in the election process, some minor lapses are bound to happen; this Court also takes cognizance of the fact that most of the personnel deployed for the election work are drawn by the ECI from the Government & other public bodies on deputation or the like; although such personnel undergo crash course training, at times errors do occur in the discharge of election related duties such as making of entries in the records; such mistakes cannot be blown out of proportion for inventing a ground for the voiding the election itself, which is otherwise conducted freely & fairly; after all the arguable discrepancy in terms of Entries in Form 17C Part II and Form 20 in respect of 23 Polling

Station as reflected in paragraph 85 of the petition accounts for only 87 votes whereas the victory margin of votes of the R-1 is more than 21,000; therefore, the arguable lapse even otherwise pales into insignificance, more particularly when the blame cannot be laid at the threshold of the R-1 at all.

(iii) The vehement submission of learned Sr. Adv. Mr. Holla that the “abnormally high polling” during the last one hour and enormous delay brooked in transporting the EVMs raise a strong suspicion as to bogus voting and tampering of the EVMs to favour the R-1 is bit difficult to countenance; ordinarily in the General Elections, the rural masses throng the polling stations at the fag end, is a matter of judicial cognizance; the Election Commission of India since long has issued several Orders regulating such a scenario; however such incidents that *per se* does not raise any suspicion; after all it is said “the sea of suspicion has no shore” ;the allegation of tampering of EVMs cannot be lavishly made especially when in terms of decision of the Apex Court in **DR.SUBRAMANIAN SWAMY vs. ELECTION COMMISSION OF INDIA, (2013) 10 SCC 500**, the ECI has adopted VVPAT to the EVMs and thereby, rendered them nearly untamperable; in fact, an amendment has been

effected to the Conduct of Election Rules, 1961 w.e.f. 14.8.2013 enabling the Commission to accomplish the direction in the case and accordingly, all necessary precautions have been taken.

In view of the above, the applications in I.A.Nos.2 & 3/2021 filed by the R-1 having been favoured, the petition averments at paras 12 to 94 are struck off and consequently, the petition in E.P.No.200001/2018 is rejected.

Costs made easy.

**Sd/-
JUDGE**

cbc/bsv/snb