

***HONOURABLE DR. JUSTICE G.RADHA RANI**

+ ELECTION PETITION No.31 of 2019

% 25.07.2023

Between:

Jalagam Venkat Rao S/o.Late Jalagam Vengal Rao,
Age:51 years, Ex-MLA, Kothagudem Assembly Constituency ,
H.No.5-23/1, Laxmidvipalli, Kothagudem, Bhadradi Kothagudem (District)
... Petitioner

And

\$ Mr. Vanama Venkateswara Rao S/o.Late Nagabhushanam,
Age:73 years, MLA, Kothagudem Assembly Constituency ,
H.No.3-3-47/1, BCM Road, Old Palvancha, Palvancha Mandal,
Bhadradi Kothagudem (District) and others.
... Respondents

! Counsel for the petitioner : Mr. Ramesh Kuthumbaka

^ Counsel for the respondent No.1 : Mr. Sharath Tadakamalla

< Gist:

> Head Note:

? Cases referred:

1. Civil Appeal No.1478 of 2015 (@ SLP(C) No.14918 of 2009
2. AIR 2020 SC 5486
3. AIR 1983 SC 355
4. AIR 1968 SC 1079
5. 1996 (7) SCC 679
6. AIR 2010 Allahabad 66
7. [161 (2009) DLT 119]
8. (2017) 2 SCC 487
9. AIR 1966 SC 735
10. AIR 1999 SC 1704
11. AIR 2002 SC 1012
12. AIR 1989 SC 1530
13. 2007(2) KHC 680
14. CIVIL APPEAL NOS.5798-5799 OF 2008
15. AIR 2017 SC 3395
16. (1993) 4 SCC 6
17. AIR 1999 SC 3381
18. AIR 1964 SC 538
19. 2007 AIR SCW 2863
20. AIR 2018 SC 1041
21. AIR 2014 SC 2069
22. 2020 (12) SCC 70
23. 2019(2) ALD 504
24. 2020 Law Suit (Manipur)
25. AIR 1999 SC 1441
26. 2013(1) ALD 733 (DB)

THE HONOURABLE Dr.JUSTICE G.RADHA RANI**ELECTION PETITION No.31 of 2019****ORDER:**

This petition is filed by the petitioner under Section 81 read with Sections 100 and 101 of the Representation of People Act, 1951 (for short, 'the R.P. Act') to declare the election of respondent No.1 as returned candidate for 117-Kothagudem Assembly Constituency as void and consequently to declare the petitioner as returned candidate for 117-Kothagudem Assembly Constituency and also to impose penalty and imprisonment against respondent No.1, for his failure to furnish information, giving false affidavit and concealing information as contemplated under Section 125A of the R.P. Act.

2. The petitioner submitted that a notification for general election to elect the legislative members to the Telangana State Legislative Assembly-2018 for 119 Assembly Constituencies was published in the Telangana Gazette No.15 on 12.11.2018 under Section 15 of the R.P. Act in single phase. In pursuance of the said notification, the petitioner contested the said election as member

set up by Telangana Rashtra Samithi, a state political party and filed his nomination paper on 14.11.2018. The respondent No.1 also contested the said election as member set up by Indian National Congress party with the alliance and support of Telugu Desam Party & Communist Party of India. Apart from the petitioner and respondent No.1, as many as 15 other candidates also contested the said election for 117-Kothagudem Assembly Constituency. As per the election schedule, polling was held on 07.12.2018 for the 117-Kothagudem Assembly Constituency, and counting was conducted on 11.12.2018 and result was also declared on the same day. The respondent No.1 was declared elected for 117-Kothagudem Assembly Constituency by the Returning Officer.

2.1. He further submitted that each of the contesting candidates should file Form-26 in the form of an affidavit along with nomination papers to the Returning Officer as per Rule 4A of the Conduct of Elections Rules, 1961 and the respondent No.1 submitted Form-26 in the form of an affidavit along with his nomination to the Returning Officer. The respondent No.1

committed acts of commissions and omissions and suppressed material facts in the Form-26 affidavit.

2.2. The petitioner gave the details of commissions and omissions in Para6 of his Election Petition as under:

A. That in Part-A(5) (ii) relating to disclosure of criminal cases, the respondent No. 1 disclosed the following cases:

- i. FIR No.47 of 2017 on the file of PS-Palvoncha Rural Police Station,
- ii. CC No.335/2014 on the file of III Additional Judicial Magistrate of First Class, Kothagudem.

and intentionally did not disclose another criminal case in CC No.263/2015 (FIR No.127, dt.20-04-2014 on the file of P.S.-Kothagudem 2 Town) on the file of II Additional Judicial Magistrate of First Class, Kothagudem, which was still pending.

B. That in Part-A(7)(B)(iv)(c) in Form-26 affidavit filed by the respondent No.1, in the general election for the 276/117-Kothagudem Assembly Constituency in the years 2004, 2009 and 2014, claimed the ownership of the

property bearing H.No.20-2-208, admeasuring 300 Sq.yards, situated at Indira Nagar, New Palvoncha in the general election for the 117-Kothagudem Assembly Constituency for the years 2004, 2009 and 2014. But not disclosed the said property in the Form-26 affidavit in the year 2018 general election.

A part of the said house bearing No.20-2-208, Indira Nagar, Palvoncha, to an extent of land admeasuring 151.11 Sq.yards was sold by one Smt. Vanama Anjali, W/o Sri Vanama Venkateswara Rao in favour of Smt. Nagalanchu Haritha, under a registered sale deed vide document No.1419/2018 dated 22.03.2018 registered in SRO-Kothagudem. The said sale deed and aadhar card would show that Smt.Vanama Anjali was wife of Mr. Vanama Venkateswara Rao, and it would clearly reveal/infer that Smt. Vanama Anjali was a family member/dependent of Mr. Vanama Venkateswara Rao, respondent No.1 and that the respondent No.1 did not disclose the name of Smt. Vanama Anjali, and also did not disclose the remaining extent of 150 sq.yards in premises bearing No. 20-2-208, Indira Nagar, Paloncha, in the said Form-26

Affidavit. The petitioner submitted that the above plea was taken, only to show and elicit the violation of non-disclosure of material fact of number of dependent members and their properties by the contesting candidate/respondent No.1 and that it would amount to violation of law.

- C. That in Part-A (4) of Form-26 affidavit, the respondent No.1 had shown an income of Rs.84,000/- from Hindu Undivided Family (HUF) and did not disclose the members/co-parceners of the said HUF. The respondent No.1 stated in his affidavit before the Returning Officer that he was having Hindu Undivided Family, and in the column No.4 of part-4 had shown the PAN numbers and status of Income Tax Returns of the dependants 1 to 3 as nil. From the above, it was crystal clear that the elected candidate was having other source of income along with members of HUF and intentionally did not disclose the members of the said HUF, in order to avoid the statutory Rules under the R.P. Act, and thus the nomination filed by respondent No.1 was with false information. As per the Part-B of the

affidavit, he further confirmed that he was having two PAN numbers i.e., one with individual and another with HUF. His sons were having two Engineering Colleges at Chirala & Eluru (St. Anns Engineering College in A.P.). The St.Anns Engineering College was sanctioned under the Christian Minority Society, therefore there could not be HUF and the respondent No.1 suppressed the said fact and did not mention in the said affidavit.

- D. It was submitted that in Part A(7)(B) of Form-26 affidavit, the respondent No.1 declared the immovable assets of himself and spouse. The assets shown in their respective names in the affidavits filed in the elections for the years 2004, 2009 and 2014 were not shown in the Form-26 affidavit submitted along with the nomination for the election-2018, though the revenue records would reveal the lands were still in their respective names and filed a comparative table of discrepancies of land holdings as Annexure XII.

2.3. The petitioner submitted that the respondent No.1 intentionally concealed the disclosure of the above material facts

and had given a false affidavit and that it would amount to corrupt practice and thus the election of the respondent No.1/returned candidate was liable to be declared as void and in consequence the petitioner was entitled to be declared as elected/returned candidate to the 117-Kothagudem Assembly Constituency, as he had got next highest votes to the respondent No.1.

2.4. He further submitted that the respondent No.1 contested the election in 2018 on the nomination by the Indian National Congress party and though the affidavit would disclose the criminal cases pending against him, the Indian National Congress Party who nominated him did not oblige to put up the information relating to his criminal antecedents on its website and TV channels for the reasons best known to it, the same was a violation as per Election Commission of India guidelines dated 10.10.2018, (at Para 4) issued in pursuance of the judgments of the Hon'ble Supreme Court of India. He further submitted that the Form-26 affidavit submitted by respondent No.1 would suffer from vital and substantial defects. Hence, the nomination of the respondent No.1 was improperly accepted and the result of election

of respondent No.1 as returned candidate for 117-Kothagudem Assembly Constituency was materially effected within the meaning of Section 100 (1)(d)(i) of the R.P. Act, and that non-disclosure of all the criminal cases would amount to violation of the spirit of the Constitution of India and the provisions of the R.P. Act, particularly the violation would fall within the meaning of Section 100(1)(d)(iv) of the R.P. Act and therefore the election of the respondent No.1 was void.

2.5. He further submitted that the concealment or suppression of the facts of this nature would deprive the voters to make an informed and advised choice as a consequence of which it would come within the compartment to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate and would amount to corrupt practice as was held by the Hon'ble Supreme Court in **Krishnamoorthy Vs. Sivakumar & Ors**¹ and prayed to read the material papers filed as Annexure - I to XV as part and parcel of the Election Petition.

¹ Civil Appeal No.1478 of 2015 (@ SLP(C)No.14918 of 2009)

3. The respondent No.1 filed written statement denying the material allegations made by the petitioner and called for strict proof of the said allegations, in questioning the impugned election of the returned candidate and contended that the election petitioner neither made out any case as per the provisions of the R.P. Act nor set out any material facts and material particulars for constituting the cause of action in questioning the election of the returned candidate as void and prayed to dismiss the election petition in limini. He contended that the respondent No.1 had neither committed any acts of omission or commission nor suppressed any material facts in the affidavit filed in the prescribed Form-26, along with the nomination paper before the Returning Officer. He further submitted that he had no knowledge about the criminal case C.C. No.263 of 2015 on the file of II Additional Judicial Magistrate of First Class, Kothagudem (FIR No. 127 of 2014, dated 20.4.2014 on the file of PS Kothagudem) at the time of filing the nomination. Summons were served in the said case on the respondent No.1 subsequent to filing of the nomination paper. He further stated that the said case resulted in acquittal of the respondent No.1 in the month of October, 2019.

3.1. With reference to the allegations made in Paragraph No.6(b) of the Petition, he admitted that he had not disclosed the ownership of the house property bearing No.2-2-208 of 300 Sq. yards at Indira Nagar Colony, as the claim over the said property was settled and he had no right over the said property as on the date of filing the Form-26 affidavit along with nomination paper for the elections held in 2018. He stated that he had no concern with the sale of 150.11 Sq. yards of land. He denied that Smt. Vanama Anjali was his wife. He stated that Smt. Vanama Anjali was neither a family member, wife/ spouse nor dependent of respondent No.1. Hence, there was no requirement to disclose the name of Smt. Vanama Anjali in Form-26 affidavit filed before the returning officer and the respondent No.1 had not committed breach of any of the provisions of the R.P. Act, or rules framed or instructions issued thereunder.

3.2. With reference to the allegations made in Paragraph No.6(c), he submitted that he filed Income Tax Returns of his self and his spouse (HUF) and disclosed the income along with PAN numbers in Form-26 affidavit in terms of the Income Tax Returns

filed before the Income Tax authorities. He denied the allegation that he suppressed the details of income and the names of dependants and stated that the disclosure made in Form-26 was in accordance with the requirement of law.

3.3. With reference to the allegations made in paragraph 6 (d), he submitted that the properties shown in Form-26 affidavit filed for the elections held in 2004, 2009 and 2014 were on the basis of the claim of ownership rights of the properties existing at the relevant time. The properties declared in Form-26 affidavit filed along with nomination for the election held in 2018 were based on the existing position of ownership and title as on the date of filing Form-26 affidavit. Accordingly, some properties shown in Form-26 of earlier elections were not disclosed in the Form-26 affidavit for the elections held in 2018.

3.4. He further submitted that in so far as land in Survey No.122 was concerned, there was no claim of ownership over the said land as there was a dispute as on the date of filing of nomination. In view of the same, he had not shown the said

property in the Form-26 affidavit at the time of filing nomination for 2018 elections.

3.5. He further submitted that he had neither concealed any material facts in Form-26 affidavit filed along with the nomination for the elections held in the year 2018 nor committed any corrupt practice within the meaning of the provisions of R.P. Act and his election as Returned Candidate could not be declared as void. He further submitted that the political party which nominated him, complied directions and guidelines of Election Commission of India. There was no breach of any of the provisions of law in disclosing the required information as prescribed in Form-26 affidavit and the same would not materially affect the impugned election. As such, the election of respondent No.1 could not be declared as void.

3.6. He further submitted that there was no suppression or any concealment of facts. After perusing the same, the Electorate of Kothagudem – 117 constituency exercised their franchise and elected the respondent No.1 as returned candidate. The respondent No.1 had not committed any corrupt practice in the said election.

Therefore, the said election held in accordance with the law could not be set aside by this Court at the instance of the election petitioner. The election could not be challenged on the basis of vague allegations. The petitioner was questioning the election of the returned candidate without furnishing material facts and particulars. There was no cause of action for questioning the election of respondent No.1. As such, the reliefs claimed by petitioner could not be granted and prayed to dismiss the election petition.

4. The respondents 17 to 20 were deleted from the array of respondents as per the orders in I.A.Nos.2 and 3 of 2019 dated 25.10.2019. Though vakalaths were filed for some other respondents, no counters were filed by them and none of them contested the matter other than respondent No.1.

5. Basing on the pleadings, this Court framed the issues as follows:

- 1) Whether the non-disclosure of assets i.e., agricultural property and house property, which were earlier disclosed by the Returned Candidate viz., Sri Vanama Venkateswara Rao during the Elections held in the years

2004, 2009 and 2014, in the present Form-26 affidavit dated 14.11.2018 filed by the Returned Candidate in the Elections held in the year 2018, amounts to suppression of material fact and whether the same amounts to corrupt practice?

- 2) Whether the Returned Candidate had knowledge about the pendency of crime No. 127 of 2014 of Kothagudem II-Town Police Station and C.C. No.263/2015 on the file of II Additional Judicial Magistrate of First Class, Kothagudem and whether the non-disclosure of the same amounts to suppression of material fact?
- 3) Whether a mere reference of Smt. Anjali as the wife of the Returned Candidate in the sale deed No.1419/2018 dated 22.03.2018 and her Aadhar Card, can be construed her as a family member of the Returned Candidate?
- 4) Whether the information provided by the Returned Candidate in Form-26 affidavit dated 14.11.2018 is sufficient and complete and non-disclosure of essential particulars in Form-26 affidavit filed along with the nomination form to contest the elections for the Kothagudem Assembly Constituency amounts to corrupt practice?
- 5) Whether the adult members of the HUF family can be termed as the dependants of the Returned Candidate or not and whether the non-disclosure of the said adult family members in the Form-26 affidavit dated 14.11.2018 amounts to suppression of material fact?

- 6) Whether the Returned Candidate has suppressed information relating to his immovable assets, liabilities and dues in Form-26 affidavit dated 14.11.2018?
- 7) Whether there are sufficient pleadings in the present Election Petition to set aside the Election of the Returned Candidate, if not, whether the Election of the Returned Candidate can be set aside in the absence of pleadings of material facts and particulars?
- 8) Whether the petitioner is entitled to be declared as elected Returned Candidate from 12.12.2018 of Kothagudem Assembly Constituency?
- 9) To what relief?

6. During the course of arguments in I.A.No.1 of 2021 in this Election Petition, the petitioner had orally withdrawn the pleadings mentioned at Para 6(a) (related to criminal cases) and para 6(d) (related to Hindu Undivided Family i.e., HUF) and had also orally withdrawn the allegations framed in issue Nos. 2 and 5 on 24.11.2021 which were recorded at the time of arguments in I.A.No.1 of 2021.

7. The petitioner examined himself as PW.1. He got examined the R.D.O., Kothagudem as PW.2, the Tahsildar,

Palvoncha as PW.3, the Mandal Agricultural Officer, Palvoncha as PW.4, the Sub-Registrar, Kothagudem as PW.5, the Municipal Commissioner, Palvoncha as PW.6 and the Inspector of Police, Chikkadpally Traffic P.S. as PW.7. Exs.P1 to P23 were marked on behalf of the petitioner. The respondent No.1 got examined his brother's wife as RW.1 and got marked Exs.B1 to B15 on his behalf.

8. Heard Sri Ramesh Kuthumbaka, the learned counsel for the petitioner as well as Sri Sharath Tadakamalla, the learned counsel for the respondent No.1.

9. Learned counsel for the petitioner contended that there was no specific denial in the written statement filed by respondent No.1 about the allegation of non-disclosure of his wife's ownership over the land in Sy.No.992/2 to an extent of Ac.8-37 gts.. As per the well settled position of law under Order VIII Rule 5 of the Code of Civil Procedure (for short, 'the C.P.C.') where a written statement was filed without specific denial, it has to be considered as admitted, as per the Doctrine of Non-Traversal. The respondent No.1 (for short, 'R1') disclosed the house property bearing

H.No.20-2-208 to an extent of 300 Sq.Yds, situated at Indira Nagar, New Palvoncha, Palvoncha Municipality as his self acquired property, in his election affidavits in the years 2004, 2009 and 2014 (Exs.P3, P4 and P5 respectively). A part of the said house, to an extent of land 151.11 square yards (out of 300 sq. yds.) was sold by Smt. Vanama Anjali in favour of Smt. Nagalanchu Haritha, through Ex.P14. Therefore, the remaining land to an extent of 148.89 square yards was retained by them. While selling the above said house property, Smt. Vanama Anjali had shown and declared herself as wife of R1. The balance property i.e., 148.89 square yards ought to have been shown by the R1 in Ex.P2 (Form-26 affidavit, dated 14.11.2018). But R1 knowing fully well, did not disclose the ownership in respect of the said house to an extent of 148.89 square yards. The R1 admitted in his written statement that the claim over the said property was settled, but had not disclosed in his written statement as to how it was settled and what kind of settlement took place.

9.1. The respondent No.1's wife, Smt. Vanama Padmavati along with her two sons had purchased house properties bearing

H.No.5-8-76 (Schedule-A) and H.No.5-8-82 & 83 (Schedule-B), situated at Kothagudem Municipality from Indian Overseas Bank vide registered sale deed Doc.No.990/2005, through Ex. P16. The R1's wife was having 1/3rd share in the said property but R1 disclosed only H.No.5-8-76 (Schedule-A) in his Form-26 affidavit, 2018 as commercial building, but had not disclosed H.No.5-8-82 & 83 (Schedule-B). As per the evidence of the Sub-Registrar, there was no change in the ownership of the "B-Schedule" property i.e., H.No.5-8-82 and 83.

9.2. The R1 was the pattedar of the agricultural land to an extent of Ac.1-33 gts. in Sy.No.122, Palvoncha Village, since 2004. The said property (ancestral property) was disclosed by the R1 in his earlier Form-26 affidavits, in the years 2004 and 2009. In the written statement, R1 stated that there was a dispute in respect of the land in Sy.No.122, as such, he had not shown the said property in Form-26 affidavit. But the evidence of PWs.3 and 4 would establish that there was no dispute with respect to the said land. As such, the R1 had filed false/misleading written statement before this Court.

9.3. He further contended that the R1 had not disclosed his liabilities. The R1's wife Smt. Vanama Padamavathi was having 1/3rd share in the commercial building in H.No.5-8-76, Kothagudem. As on 14.11.2018, there were arrears of Rs.23,948/-, pending to Northern Power Distribution Company of Telangana Limited. The said dues were not shown in his Form-26 affidavit. Likewise, the R1 had not shown that the Innova vehicle owned by his wife Smt. Vanama Padmavati bearing No.TS-04 EH 0999 was having due of Rs.135/- for violation of Traffic Rules (traffic challan), within the jurisdiction of Chikkadapally Traffic Police Station. Similarly, R1 had failed to show the water charge dues payable to the Palvoncha Municipality for an amount of Rs.3120/- as on 31.03.2018. He further contended that R1 had disclosed in Form-26 affidavit that he was the Pattedar of land in Sy.No.10/Bavi Koyya at Palvoncha Village to an extent of Ac.0-13 gts.. But as per Dharani - Portal Search, the extent of the said land was to an extent of Ac.0.18 gts., but not Ac.0.13 gts. The nature of land was also classified as house-sites (non-agriculture land), but

R1 filed wrong information and misled by filing false affidavit by showing the same as agricultural land.

9.4. He further submitted that R1 being a party to the proceedings had not entered into witness box and failed to face the cross-examination. As such, an adverse inference had to be drawn against him, as per Section 114 of the Indian Evidence Act. The R1 had chosen to examine RW1, his brother's wife to project that the agricultural land in Sy.No.122/2 Samstan to an extent of Ac.1-33 gts. did not belong to him and that he voluntarily left the said land to her in the year 2011. But there were several self-contradictions in the evidence of RW.1 in her chief affidavit deposition and in her cross examination. As such, her entire evidence was liable to be thrown out. It was uncertain as to where the chief affidavit of RW.1 was signed and before whom. The mentioning of the place of attestation/notarisation was absent after signature of the deponent/RW.1. It was not clear as to where she signed the affidavit either at Hyderabad, Palvoncha or Kothagudem.

9.5. RW.1 produced some private documents which were marked as Ex.B13 receipts. The petitioner filed an application under R.T.I. Act before PW.4 (Mandal Agricultural Officer), to furnish the details of payment made under Raithu Bandhu Scheme to the R1 for the agricultural land in Sy.No.122/2 Samstan, Palvoncha Village and Mandal and the PW.4 furnished the details of the money disbursement under the Raithu Bandhu Scheme in Exs.P7 and P8. On knowing the fact of Exs.P7 & P8, and also after dismissal of I.A. filed by him vide I.A.No.1/2021 order dated 14.03.2022, as an afterthought, the R1 in collusion with RW.1 transferred some amount with two cheques and also created fake documents and got marked them as Exs.P13, P14 and P15.

9.6. The R1 filed I.A No.1/2021 on 12.03.2021 to strike off the pleadings. The said I.A.No.1/2021 was dismissed on 14.03.2022. While dismissing the said I.A., the Court gave a caution/indication to the R1 to file any piece of paper to support his version as to how he had relinquished/lost rights over the said agricultural land. In spite of the said caution/indication, the R1 failed to file any piece of paper or led any evidence to support his

version during the trial. From the inaction of the R1, the Court could come to a conclusion that the R1 had not lost rights over land in Sy.No.122/2/ Samstan to an extent of Ac.1-33 Guntas. All the public documents i.e., revenue records/bank transactions and evidence of public officials i.e., PWs.3 and 4 would establish that the R1 was the pattedar and possessor of the agricultural land in Sy.No.122/2/Samstan. The R1, being the owner of the said land was receiving the government monetary assistance under Raithu Bandu Scheme for the land till date, but suppressed/not disclosed his ownership over the said land in his Form-26 Affidavit which would amount to suppression of material fact and corrupt practice. He relied upon various judgments of the Hon'ble Apex Court and of the various High Courts in support of his contentions.

10. Learned counsel for the respondent No.1 on the other hand contended that Exs.P6 to P13 and P15 to P20 were marked subject to objection, as no leave was obtained for taking them on record and most of the said documents were brought into existence after filing the election petition. The required pleadings in respect of the said exhibits were absent. Unless material particulars and

material facts were pleaded, election petition could not be entertained. Heavy burden would lie on the election petitioner to prove each and every material fact. To prove his case, the election petitioner intended to examine nine witnesses including Smt. Vanama Padmavathi as PW.8 and Smt. Vanama Anjali as PW.9. But, however the election petitioner chose not to summon the said two witnesses. When a specific issue was framed and the witnesses sought to be examined were dropped, the allegations would not have legs to stand. There was no specific pleading in the election petition with regard to the land in Sy.No.122 admeasuring Ac.1-33 gts. Mere mentioning of the same in the annexure was having no authenticity.

10.1. The R1 did not claim the land in Sy.No.122 admeasuring Ac. 1-33 gts. even in the affidavits for the years 2014 and 2018, the person who had claimed the same had been examined as RW.1 and she clearly stated that it was settled in her name and that she was also receiving the Raithu Bandhu from R1. The same itself would show that R1 had no title, claim or interest over the land in Sy.No.122 to an extent Ac.1-33 gts.. The entries in revenue records would not confer title and the person who had

claim had to take steps to have it changed to his/her name. The fact that even in 2014 election it was not claimed would demonstrate the fact that the R1 had no subsisting interest. The election petitioner must allege and prove that R1 claimed successively till date, then only the burden would shift on R1. There was no specific pleading even with regard to the land in Sy.No.992/2 to an extent of Ac.8-37 gts.. The election petitioner took reference to a sheet of paper appended in the material papers that there was non-disclosure of the said property. The custodian of the dharani portal was revenue authorities. The said portal was launched after filing of the election petition.

10.2. PW.3 (Tahslidar) stated that Smt. Padmavathi was the pattedar. But in the cross examination, he admitted that in the pahanies in respect of the said land for the years 2015-16, 2016-17, 2017-18, there were discrepancies regarding pattedar and possessory columns. He also admitted that there was no record for the year 2018-19 and that he did not know when the name of Smt. Padmavathi was recorded in the revenue records. He admitted that there was some dispute for the year 2018-19 and an inter-change in pattedar column had taken place. The same would clearly

demonstrate that there was dispute over the land, therefore it was not declared. The entry in the revenue record was made only in the year 2019 after the dispute was resolved. Therefore, there was no gain saying that the non-disclosure of the same was deliberate and intentional.

10.3. The property bearing H.No.20-2-208 was shown in earlier election years, since R1 claimed ownership but had not shown in 2018 election year since Smt. Vanama Anjali claimed better title over the R1 and sold a portion of 151 sq yards out of 300 sq yards, therefore R1 did not claim any right, title or interest over the entire extent of 300 sq yards. PW.1 in his cross examination admitted that the name of the R1 was not reflected in any of the boundaries to the portion of the land admeasuring 151 Sq. yards sold by Vanama Anjali. The same would demonstrate that the R1 had no claim over the remaining portion of the said property to declare the same as his property. Mere claim by a person as to her/his status would not bring the other into relation. Relationship had to be established. The fact that the election petitioner having shown Smt. Vanama Anjali as a witness and dropped her name from the list of witnesses would leave no room

to conclude that the election petitioner had no cause. The contention of the petitioner that R1 did not enter into witness box therefore adverse inference had to be drawn was incorrect. When the burden of proof was on the election petitioner to prove the allegation, he must lead evidence which was cogent, reliable and satisfactory. The standard of proof required was not of preponderance of probability, but proof beyond reasonable doubt. Merely because the R1 did not enter the witness box, no adverse inference could be drawn unless the election petitioner discharges his burden. The learned counsel further contended that there was typographical error in showing the 1/3rd share of Smt. Padmavathi in House property Nos.5-8-82 and 83. Instead of showing it as H.No., the same was typed as Sy.No., which the petitioner was taking advantage.

10.4. He further contended that the petitioner had obtained documents after filing the election petition to prove that the power consumption charges had not been paid and there were arrears to a tune of Rs.23,948/- as on 14.11.2018. It was required to be shown that on a particular date the demand was made and it fell due before the date of Ex.P2 on 14.11.2018. The Sub-Registrar

examined as PW.5 admitted that a registered lease deed was presented in his office and the same was executed by two sons and wife of R1 in favour of ICICI Bank Ltd. Therefore, it goes without saying that dues were to be paid by the lessee only and nothing could be attributed to R1. The concerned department official was shown as a witness, but however he was not examined.

10.5. With regard to the traffic challan, the learned counsel for the R1 contended that merely because it came to the notice of the election petitioner, he could not introduce the same at the time of trial without leave of the court. The evidence of PW.7 would disclose that he did not possess any record as to when the demand under challan Ex.P18 was served on the wife of R1. It would only demonstrate that the election petitioner made allegations without proper material and proof. He further contended that with regard to the allegation made that there was a due of Rs.3,150/- with regard to the property tax on H.No.14-1-91, the PW.5, SRO admitted that the gift deed dated 18.11.2010 marked as Ex.P7 was registered in their office. As per the said document, H.No. 14-1-91 was gifted by R1 to his sons way back in 2010. The sons of RW.1

also executed another gift deed No.1964 of 2016, dated 02.05.2016 under Ex.B8, to their sister Smt. Adika Vijaya Lakshmi.

10.6. From the said two documents it was clear that as on the date of Ex.P2, the property got transferred. PW.6 the Municipal commissioner also admitted that in 2011, the sons of R1 filed application for permission for construction and they had come to know about change of ownership. The facts would reveal the allegation of non-disclosure as false.

10.7. With regard to the contention that the extent of land called Bhavi Koyya was shown as 0-13 guntas in Ex.P2, learned counsel for the R1 contended that PW.3 the Tahsildhar in his cross examination stated that he could not say from the record that the claim of R1 was only 0-13 gts.. The election petitioner failed to establish as to how the disclosure of land as agricultural land when the same was non-agricultural land would materially affect the election.

10.8. PW.1 in his cross examination admitted that in his own declarations marked as Exs.B3 and B4, there were variations in the extent of his lands. In 2014 declaration, he claimed Ac. 5-14

gts., while in the year 2018, it was shown as Ac. 4-14 gts.. It would demonstrate that the petitioner was a wrong doer and he was seeking to unseat the R1, the returned candidate on unsustainable grounds without pleading material facts and material particulars. There was no justification for the election petitioner to bring on record the documents obtained by him after filing the election petition and even otherwise they would not establish the case of the election petitioner and prayed to dismiss the petition.

11. This petition is filed by the petitioner to declare the election of respondent No.1 as null and void under Section 100(1)(d)(iv) of the R.P. Act, as the respondent No.1 failed to comply with the Form-26 affidavit prescribed by Rule 4A of the Conduct of Elections Rules, 1961. Hence, it is considered fit to extract Section 100 of the R.P. Act which reads as follows:

100. Grounds for declaring election to be void:-

**[(1) Subject to the provisions of sub-section
(2) if [the High Court] is of opinion:**

- a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the

- Government of Union Territories Act, 1963 (20 of 1963)]; or
- b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
 - c) that any nomination has been improperly rejected; or
 - d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—**
 - i. by the improper acceptance or any nomination, or
 - ii. by any corrupt practice committed in the interests of the returned candidate [by an agent other than his election agent], or
 - iii. by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
 - iv. **by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, [the High Court] shall declare the election of the returned candidate to be void.]**

[(2)] If in the opinion of [the High Court], a returned candidate has been guilty by an agent other than his election agent, of any corrupt practice but [the High Court] is satisfied—

- a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and [without the

- consent], of the candidate or his election agent;
- b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt 10[***] practices at the election; and
 - c) that in all other respects the election was free from any corrupt 11[***] practice on the part of the candidate or any of his agents, then 12[the High Court] may decide that the election of the returned candidate is not void.

12. The Rule 4A of the Conduct of Elections Rules, 1961 deals with the Form of affidavit to be filed at the time of delivering nomination paper. As per the said rule,

“The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under subsection (1) of Section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26.”

13. Form-26 affidavit had to be filed by the candidate along with nomination papers before the Returning Officer for election. Every candidate need to give the details as prescribed in the said Form pertaining to the criminal cases pending against them, the cases resulted in conviction, details of his assets (movable and immovable) of his self, his spouse or of his

dependents, the details of liabilities/dues to public financial institutions and Government, details of his profession, occupation, source of income, contracts with appropriate government and any public company or companies and his educational qualification as prescribed in part-A as well as part-B. The verification affidavit would need to be signed by him declaring that the contents of the affidavit were true and correct and no part of it was false and nothing material had been concealed therefrom.

14. The contention of the learned counsel for the petitioner was that the R1 knowing fully well had not disclosed all the assets and liabilities/dues in his Form-26 affidavit, not only about his self but also of his spouse and his dependants. Though the learned counsel for the petitioner contented in his pleadings in para 6(a) about non-disclosure of criminal cases and in para 6(c) about the non-disclosure of the names of the members/co-parceners of Hindu Undivided Family Property (HUF), during the course of his arguments in I.A.No.1 of 2021 in E.P.No.31 of 2019, learned counsel for the petitioner had orally withdrawn pleadings mentioned at para 6(a) (related to criminal cases) and para 6(d) (related to HUF i.e., Hindu Undivided Family) and had also

withdrawn the allegations framed in issue Nos. 2 and 5. As such, the issues to be decided are now confined to issue Nos. 1, 3, 4, 6, 7, 8 and 9 as framed by this Court on 06.04.2023.

15. Learned counsel for the respondent No.1 contended that the documents under Exs.P6 to P13 and Exs.P15 to P20 were marked subject to objection as no leave was obtained for taking them on record and most of the documents had come into existence after filing the election petition and the required pleadings in respect of the said exhibits were absent. Unless material particulars and material facts were pleaded, election petition could not be entertained. Hence, it is considered fit to answer this contention first prior to answering other issues. Issue No.7 partly covers this contention.

15(a). Learned counsel for the respondent No.1 contended that no application was filed by the petitioner for receiving the documents under Order VII, Rule 14 of C.P.C.. The document which ought to have been produced by the petitioner before the Court along with the plaint, but was not produced at that time, shall not be received in evidence without the leave of the Court. The

Commissioner appointed to record the evidence summoned the official witnesses to produce the documents and the petitioner got marked the said documents even though they had objected for the same. A party could not be permitted to bring in additional documents reference of which was not available in the pleadings. The burden to prove heavily lie on the petitioner in election petitions to prove the election mal-practices. Therefore, the documents marked as Exs.P6 to P14 and Exs.P17 to P23 could not be looked into under any circumstances, as they could not form part of the pleadings.

15(b). Learned counsel for the petitioner on the other hand contended that as per the procedure, the exhibits ought to have been filed along with the election petition within 45 days from the date of announcement of results, but the same was not possible, since all the documents were not in the possession of the petitioner. They were official documents and it would not be possible to obtain the said documents under Right to Information Act within 45 days from the date of announcement of results, as such, the same could not be filed along with the election petition. The non-filing of the documents along with the election petition was neither

willful nor wanton. The respondent No.1 also filed the documents in the same manner as per the procedure adopted by the petitioner. As such, the learned counsel for R1 could not contend that the procedure followed by the petitioner was not legal. The objection raised by the learned counsel for the R1 with regard to the marking of the documents was not on the ground of authenticity, credibility or their genuineness, but was only on the ground that they were not filed along with the election petition and relied upon the judgments of the Hon'ble Apex Court in **Sugandhi (dead) by LRs. Vs. P. Rajkumar²** and **Bhagwan Swaroop and Others Vs. Mool Chand³**.

15(c). In the light of the rival contentions raised by both the learned counsel, it is necessary to refer to Section 87 of the R.P. Act. Section 87 is in Chapter-III- Trial of election petitions, wherein the procedure for trying the election petitions before the High Court is provided. Section 87 reads as follows:

“87. Procedure before the High Court:-

(1) Subject to the provisions of this Act and of any rules made thereunder, every election

² AIR 2020 SC 5486

³ AIR 1983 SC 355

petition shall be tried by the High Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (5 of 1908) to the trial of suits:

Provided that the High Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 (1 of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of an election petition.”

15(d). A reading of Section 87(1) of the R.P. Act lays down that, subject to the provisions of the Act and the Rules made thereunder, every election petition shall be tried by the High Court **as nearly as may be**, in accordance with the procedure applicable under the C.P.C., 1908 to the trial of suits. Therefore, strict compliance of C.P.C. is not required.

15(e). Learned counsel for the petitioner relied upon the judgment of the Hon'ble Apex Court in **Sugandhi (dead) by LRs.**

Vs. P. Rajkumar (2 supra) wherein while considering Order VIII, Rule 1A of C.P.C. the Hon'ble Apex Court held that:

“It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under subrule (3).”

15(f). The Hon'ble Apex Court in **Bhagwan Swaroop and Others Vs. Mool Chand** (3 supra) held that a hyper-technical approach which if carried to end may result in miscarriage of justice. If the trend is to encourage fair play in action in administrative law, it must all the more inherent in judicial approach. Such applications have to be approached with this view whether substantial justice is done between the parties or technical

rules of procedure are given precedence over doing substantial justice in Court. Undoubtedly, justice according to law is to be administered. It is specifically held in para 12 as follows:

“12. It is no doubt true that a Code of Procedure 'is designed to facilitate justice and further its ends and it is not a penal enactment for punishment and penalty and not a thing designed to trip people up'. Procedural laws are no doubt devised and enacted for the purposes of advancing justice. Procedural laws, however, are also laws and are enacted to be obeyed and implemented. The laws of procedure by themselves do not create any impediment or obstruction in the matter of doing justice to the parties. On the other hand, the main purpose and object of enacting procedural laws is to see that justice is done to the parties. In the absence of procedural laws regulating procedure as to dealing with any dispute between the parties, the cause of justice suffers and justice will be in a state of 'confusion and quandary. Difficulties arise when parties are at default in complying with the laws of procedure. As procedure is aptly described to be the handmaid of justice, the Court may in appropriate cases ignore or excuse a mere irregularity in the observance of the procedural law in the larger interest of justice. It is, however, always to be borne in mind that procedural laws' are as valid as any other law and are enacted to be observed and have not been enacted merely to be brushed aside by the Court Justice means justice to the parties in any

particular case and justice according to law. If procedural laws are properly observed, as they should be observed, no problem arises for the Court for considering whether any lapse in the observance of the procedural law needs to be excused or overlooked. As I have already observed depending on the facts and circumstances of a particular case in the larger interests of administration of justice the Court may and the Court in fact does, excuse or overlook a mere irregularity or a trivial breach in the observance of any procedural law for doing real and substantial justice to the parties and the Court passes proper orders which will serve the interests of justice best.”

15(g). As both the parties also had not filed all the documents relied by them along with their pleadings and got marked them through the witnesses at the time of trial, and the object of filing the documents along with the petition is to give the other party an opportunity to cross-examine the witnesses basing on the said documents and not to take by surprise and both the counsel had cross-examined the witnesses with reference to the said documents, this Court does not find the objection sustainable.

15(h). As seen from Section 87 of the R.P. Act, C.P.C. is not required to be complied strictly but as nearly as may be. Procedure is the hand maid of justice and mere irregularity in the

observance of the procedural law can be ignored in larger interest of justice. As such, this Court finds fit to set aside the objection raised by the learned counsel for the R1 with regard to marking of the documents under Exs.P6 to P13 and P15 to P20 and holds that the same could be considered. In view of the explanation given by the learned counsel for the petitioner that the above documents were official documents and they were unable to get the said documents under Right to Information Act within 45 days from the date of announcement of results and the objection was only with regard to filing of the same without taking leave of the Court, but not on the ground of their relevancy, authenticity, credibility or genuineness, it is considered fit to set aside the said objection.

16. With regard to the contention of the learned counsel for the R1 that there were no specific pleadings on material facts and particulars and in respect of the exhibits, a specific issue was framed under issue No.7.

16(a). **ISSUE No.7:**

Whether there are sufficient pleadings in the present Election Petition to set aside the Election of the Returned Candidate, if not, whether the Election of

the Returned Candidate can be set aside in the absence of pleadings of material facts and particulars?

The contention of the learned counsel for the R1 was that there was no specific pleading in the election petition in respect to land in Sy.No.122 admeasuring Ac.1-33 guntas. Mere mentioning of the same in the annexure had no authenticity and it could not be the basis for the allegation. He also contended that there were no specific allegations in the election petition pertaining to the land in Sy.No.992/2 to an extent of Ac.8-37 guntas. The election petitioner had taken a reference to a sheet of paper appended in the material papers that there was non-disclosure of this property. The contention that all the allegations were covered by a statement referred as various omissions and commissions could not be sustained.

16(b). Learned counsel for the petitioner on the other hand contended that a comparative table of discrepancies in respect of immovable assets as declared by R1 in his Form-26 affidavit filed in the years 2004, 2009, 2014 and 2018 which tabulates the properties disclosed by R1 in earlier election affidavits in 2004, 2009 and 2014, and those not disclosed in 2018 was attached to the

election petition as Annexure-XII. The same was signed by the petitioner and verified in the manner as laid down in the C.P.C., for the verification of pleadings. Annexure-XII was part and parcel of the election petition and relied upon the judgments of the Hon'ble Apex Court in **Smt. Sahodrabai Rai Vs. Ram Singh Aharwar and Others**⁴, three judge bench judgment of the Hon'ble Apex Court in **Mohan Vs. Bhairon Singh Shekhawat**⁵, judgment of the High Court of Allahabad in **Madan Mohan Vs. Arun Shourie and Others**⁶ and the judgment of the Delhi High Court in **K.K. Manchanda & another Vs. S.D. Technical Services (P) Ltd.**⁷.

16(c). The R.P. Act in Chapter-II pertaining to Presentation of Election Petitions to High Court provides in Section 83, what an election petition should contain. The same reads as follows:

83. Contents of petition:-

1) An election petition—

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

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges,

⁴ AIR 1968 SC 1079

⁵ 1996 (7) SCC 679

⁶ AIR 2010 Allahabad 66

⁷ [161 (2009) DLT 119]

including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

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

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

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

16(d). Thus, this Section mandates that the schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition. As such, the schedules or annexures are part of the election petition.

16(e). In **Smt. Sahodrabai Rai Vs. Ram Singh Aharwar and Others** (4 supra) wherein the document filed as annexure to the petition, a copy of which was not served on the respondent along with the copy of the petition, the Hon'ble Apex Court held that:

“12. We may now see whether the election law provides anything different. The only provision to which our attention has been drawn is sub-s. (3) of s. 81 and sub-s. (2) of s. 83. The first provides that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and that every such copy shall be an authenticated true copy. The words used here are only "the election petition". There is no mention of any document accompanying the election petition. If the matter stood with only this sub-section there would be no doubt that what was intended to be served is only a copy of the election petition proper. Assistance is however taken from the provisions of sub-s. (2) of s. 83 which provides that any schedule or any annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition. It is contended that since the pamphlet was an annexure to the petition it was not only necessary to sign and verify it, but that it should have been treated as a part of the election petition itself and a copy served upon the respondents. In this way, non-compliance with the provisions of s. 86(1) is made out. In our opinion, this is too strict a reading of the provisions. We have already pointed out that s. 81(3) speaks only of the election petition. Pausing here, we would say that since the election petition itself reproduced the whole of the pamphlet in a translation in English, it could be said that the averments with regard to the pamphlet were themselves a part of the petition and therefore the pamphlet was served upon the respondents although in a translation and not in original. Even if this be not the case, we are quite clear that sub-s. (2)

of s. 83 has reference not to a document which is produced as evidence of the averments of the election petition but to averments of the election petition which are put, not in the election petition but in the accompanying schedules or annexures. We can give quite a number of examples from which it would be apparent that many of the averments of the election petition are capable of being put as schedules or annexures. For examples, the details of the corrupt practice there in the former days used to be set out separately in the schedules and which may, in some cases, be so done even after the amendment of the present law. Similarly, details of the averments too compendious for being included in the election petition may be set out in the schedules or annexures to the election petition. The law then requires that even though they are outside the election petition, they must be signed and verified, but such annexures or schedules are then treated as integrated with the election petition and copies of them must be served on the respondent if the requirement regarding service of the election petition is to be wholly complied with. But what we have said here does not apply to documents which are merely evidence in the case but which for reasons of clarity and to lend force to the petition are not kept back but produced or filed with the election petitions. They are in no sense an integral part of the averments of the petition but are only evidence of those averments and in proof thereof. The pamphlet therefore must be treated as a document and not as a part of the election petition in so far as averments are concerned. When the election petitioner said that it was to be treated as part of her election petition she was

merely indicating that it was not to be thought that she had not produced the document in time. She was insisting upon the document remaining with the petition so that it could be available whenever the question of the election petition or its contents arose. It would be stretching the words of sub-s. (2) of s. 83 too far to think that every document produced as evidence in the election petition becomes a part of the election petition proper. In this particular case we do not think that the pamphlet could be so treated. We are, therefore, of the opinion that whether or not s. 86(1) is mandatory or directory there was no breach of the provisions of the Representation of the People Act in regard to the filing of the election or the service of the copies thereof and the order under appeal was therefore erroneous.”

16(f). Thus, the Hon’ble Apex Court held that the annexures or schedules are integrated with the election petition though they are outside the election petition and are part of the pleadings. The averments too compendious for being included in the election petition were set out in the schedules or annexures to the election petition.

16(g). The Hon’ble Apex Court in **Mohan Vs. Bhairon Singh Shekhawat** (5 supra) also held that the averments of the petition have to be read together with the annexures. It also held

that where contents of annexures to the election petition were incorporated by reference in the petition, averments in the petition have to be read along with the annexures. When averments contained in one part of the petition read with the annexures clearly raise certain triable issues, rejection of the entire petition under Order VII, Rule 11 of C.P.C. was held to be illegal and unsustainable. It was also further held that a part of the petition could not be struck out under Order VI Rule 16 of C.P.C. when the same was also required to be read with the annexures having related matters.

16(h). The High Court of Allahabad in **Madan Mohan Vs. Arun Shourie and Others** (6 supra) held that documents filed along with election petition were part and parcel of election petition.

16(i). The High Court of Delhi in **K.K. Manchanda & another Vs. S.D. Technical Services (P) Ltd.** (7 supra) held that:

“It is settled law that admissions/denials of the party and opposite side in a case form part of pleadings. It is also settled law that all annexures attached to the plaint or written statement become part of the pleadings. In

order to bring on record the pleadings of a party in another case, it is not necessary that the annexures should have been exhibited or proved. A document filed by a party as a part of plaint can always be read against the party even if it is not proved.”

16(j). Thus, it is clear that annexures are part of the pleadings and they shall be read along with the pleadings. Thus, the comparative table filed by the petitioner showing the details of the properties disclosed by R1 in earlier election affidavits filed in the years 2004, 2009 and 2014, and not disclosed in 2018 shall be considered as pleadings and part and parcel of the election petition, as they were also signed by the petitioner and verified in the manner laid down in the C.P.C. for verification of pleadings. Thus, the allegations of the petitioner with regard to non-disclosure of agricultural lands in Sy.No.122/2/ Samastan to an extent to Ac.1-33 guntas pertaining to him and in Sy.No.992/2 to an extent of Ac.8-37 guntas of Palvoncha village pertaining to his wife mentioned in the annexures are considered as necessary pleadings.

17. Learned counsel for the R1 also contended that there were no pleadings with regard to non-disclosure of liabilities/dues in Form-26 affidavit (Ex.P2) filed by R1, however, the petitioner

adduced evidence with regard to the same, it was settled law that any amount of evidence without pleadings was not proper and the evidence in the said regard could not be considered.

17(a). Learned counsel for the petitioner on the other hand contended that this Court suo-motto had framed an issue in election petition under issue 6, as whether the returned candidate had suppressed information relating to his movables, liabilities and dues in Form-26 affidavit dated 14.11.2018. The court had inherent powers to protect the fundamental rights of voters and also conducting fair election and protecting the process of democracy, as such he had adduced evidence in the said regard and relied upon the judgments of the Hon'ble Apex Court in **Mairembam Prithviraj @ Prithviraj Singh Vs. Shri Pukhrem Sharatchandra Singh**⁸. He further contended that both the petitioner and R1 had not raised any objection on the framed issues. Thus, issues framed by this Court became final. As an issue was framed on liabilities and dues and evidence had been recorded, the Court had to adjudicate the issue basing on collected evidence and relied upon the three judge bench judgment of the

⁸ (2017) 2 SCC 487

Hon'ble Apex Court in **Bhagwati Prasad Vs. Chandramaul**⁹ and of the two judge bench judgments of the Hon'ble Apex Court in **Sardul Singh Vs. Pritam Singh and Others**¹⁰.

17(b). The Hon'ble Apex Court in **Bhagwati Prasad Vs. Chandramaul** (9 supra) held that:

“...If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence.”

17(c). The Hon'ble Apex Court in **Sardul Singh Vs. Pritam Singh and Others** (10 supra) held that:

“...It is well-settled that notwithstanding the absence of pleadings before a court or authority, still if an issue is framed and the parties were conscious of it and went to trial on that issue and adduced evidence and had an opportunity to produce evidence or cross examine witnesses in relation to the said issue, no objection as to want of specific pleading can be permitted to be raised later...”

⁹ AIR 1966 SC 735

¹⁰ AIR 1999 SC 1704

17(d). Learned counsel for the petitioner relied upon the judgment of the Hon'ble Apex Court in **Konda Lakshmana Bapuji Vs. Government of A.P. & Others**¹¹ wherein it was held that:

“However, it is a settled position that if the parties have understood the pleadings of each other correctly, an issue was also framed by the Court, the parties led evidence in support of their respective cases, then the absence of a specific plea would make no difference.”

17(e). The Hon'ble Apex Court in **Kali Prasad Agarwala (Dead by LRs.) and others Vs. M/s. Bharat Coking Coal Ltd. and others**¹² held that:

“It was, however, urged for the appellants that there is no proper pleading or issue for determination of the afore- said question and the evidence let in should not be looked into. It is too late to raise this contention. The parties went to trial knowing fully well what they were required to prove. They have adduced evidence of their choice in support of the respective claims. That evidence has been considered by both courts below. They cannot now turn round and say that the evidence should not be looked into. This is a well accepted principle.”

¹¹ AIR 2002 SC 1012

¹² AIR 1989 SC 1530

17(f). Learned counsel for the petitioner also relied upon the judgment of the Kerala High Court in **Suchithra Vs. Anil Krishnan**¹³ wherein it was held that:

“It would be sufficient if a general plea is made in the petition. Order 6 Rule 2 C.P.C. also indicates that it is not necessary to plead evidence but only material facts. Even if there is no pleading or if the pleadings are vague or non-specific the court has to consider the totality of the materials. If the parties went to trial knowing fully well what they had to prove, no objection can be taken regarding the absence of pleadings.”

17(g). As seen from the above judgments it is clear that a case not specifically pleaded can be considered by the court only where the pleadings in substance, though not in specific terms, contains the necessary averments to make out a particular case and the issues framed also generally cover the question involved and the parties proceed on the basis that such case was at issue and had led evidence thereon. As the very requirements indicate that this should be followed only in exceptional cases where the court is fully satisfied that the pleadings and issues generally cover the case subsequently put forward and that the parties being conscious of

¹³ 2007(2) KHC 680

the issue, had led evidence on such issue, but where the court is not satisfied that such case was at issue, the question of resorting to the exception to the general rule does not arise.

17(h). The Hon'ble Apex Court in **Bachhaj Nahar Vs. Nilima Mandal & Anr.**¹⁴ held that:

“...The principles laid down in Bhagwati Prasad and Ram Sarup Gupta referred to above and several other decisions of this Court following the same cannot be construed as diluting the well settled principle that without pleadings and issues, evidence cannot be considered to make out a new case which is not pleaded.”

17(i). On a perusal of the petition, it would disclose that there were no pleadings with regard to suppressing information by R1 in the election petition relating to liabilities and dues. As such, there was no rebuttal also against it. As the Court had framed an issue with regard to suppressing information regarding liabilities and dues, the petitioner had led evidence with regard to the same. But however, as it is a well settled principle that no amount of evidence can be looked into, upon a plea which was never put forward in the pleadings, a question which did not arise from the

¹⁴ CIVIL APPEAL NOS.5798-5799 OF 2008

pleadings and which was not the subject matter of the issue cannot be decided by the Court. As such, this Court is not inclined to look into the evidence with regard to suppressing the information relating to liabilities and dues by R1, led by the petitioner.

17(j). As such, issue No.7 is answered holding that annexures can be considered as pleadings and the discrepancies in respect of immovable assets which were pointed out by the petitioner in Annexure-XII can be looked into. But as there were no pleadings either in the election petition or in the Annexure-XII filed along with the petition with regard to suppressing information by R1 relating to his liabilities and dues in Form-26 affidavit dated 14.11.2018, the same cannot be looked into.

18. **ISSUE Nos.1, 4 AND 6:**

ISSUE No.1:

Whether the non-disclosure of assets i.e., agricultural property and house property, which were earlier disclosed by the Returned Candidate viz., Sri Vanama Venkateswara Rao during the Elections held in the years 2004, 2009 and 2014, in the present Form-26 affidavit dated 14.11.2018 filed by the Returned Candidate in the Elections

held in the year 2018, amounts to suppression of material fact and whether the same amounts to corrupt practice?

ISSUE No.4:

Whether the information provided by the Returned Candidate in Form-26 affidavit dated 14.11.2018 is sufficient and complete and non-disclosure of essential particulars in Form-26 affidavit filed along with the nomination form to contest the elections for the Kothagudem Assembly Constituency amounts to corrupt practice?

ISSUE No.6:

Whether the Returned Candidate has suppressed information relating to his immovable assets, liabilities and dues in Form-26 affidavit dated 14.11.2018?

(Issue 6 is considered only with regard to the part pertaining to suppression of information relating to immovable assets, but not with regard to liabilities and dues.)

18(a). The contention of the learned counsel for the petitioner was that the agricultural properties and house property which were earlier disclosed by the Returned Candidate during the Elections held in the years 2004, 2009 and 2014 were not shown in Ex.P2, Form-26 affidavit dated 14-11-2018. As mentioned in

Annexure-XII, R1 was the pattedar and possessor of the agriculture land in Sy.No. 122/2/Samstan to an extent of Ac.1-33 gts. of Palvoncha Village and Mandal since 2004 to till date but the same was suppressed in his Form-26 affidavit dated 14.11.2018. Likewise, the R1's wife Smt. Vanama Padmavathi was pattedar and possessor of the agriculture land in Sy.No.992/2 to an extent of Ac.8-37 gts. of Palvoncha Village and Mandal, since 1993 to till date but the same was suppressed in his Form- 26 affidavit dated 14.11.2018. The R1's wife was the owner of the house property bearing H.No.5-8-82 & 83, situated at Kothagudem Municipality, since 21.07.2005 to till date and the same was suppressed in his Form- 26 affidavit dated 14.11.2018. The R1 was the owner of house property bearing H.No.20-2-208 to an extent of 300 Sq.yards situated at Indira Nagar, New Palvoncha, Palvoncha Municipality. He claimed it as his self-acquired property and declared in his election affidavits filed along with nomination form during the elections held in the years 2004, 2009 and 2014 respectively. A part of the said house admeasuring to an extent of 151.11 Sq.Yard was sold by Smt. Vanama Anjali, claiming that she was wife of R1 under registered sale deed. Further the remaining land to an extent

of 149.89 Sq.yards was retained by him, but the same was not shown by R1 in Ex.P2.

18(b). With regard to the non-disclosure of the agricultural land in Sy.No.122/2/Samstan, of Palvoncha Village and Mandal to an extent of Ac. 1-33 gts., the learned counsel for the petitioner contended that R1 was the pattedar and possessor of the said agricultural land since 2004. The property was shown as ancestral property and the same was entered in the revenue records. Accordingly the pass books / title No.U-2538 with Katha No.534 were issued in favour of the R1 by the Tahsildar. The said ownership was disclosed by the R1 in his earlier Form-26 affidavits in the years 2004 (Ex.P3) and 2009 (Ex.P4) while contesting for the post of M.L.A. from Kothagudem Assembly Constituency. Being the owner of the said land, R1 had not shown the same in Ex.P2, Form- 26 Election Affidavit dated 14.11.2018.

18(c). The petitioner got examined Tahsildar of Palvoncha Mandal as PW.3. PW.3 stated in his evidence that he was working as Tahsildar, Palvoncha since 6th February, 2021. He had brought the original pahanies for the years 2017-2018. As per pahani, R1

was the pattedar and possessor of land to an extent of Ac.1-33 Gts. in Sy.No.122/2/Samsthan of Palvoncha village. As per Dharani portal also R1 was the pattedar and possessor of the said land as on the date of his evidence. To his knowledge, as per record there was no dispute with regard to the title of the said land.

18(d). The above evidence of PW.3 would show that R1 was pattedar and possessor of the land by the date of filing Ex.P2 (Form-26 affidavit) dated 14.11.2018.

18(e). The learned counsel for the petitioner further submitted that the Government of Telangana had introduced Raithu Bandhu Scheme to transfer money to the pattedar of agriculture lands for use in agriculture activities. The R1 had received the money disbursement made by the Government under Raithu Bandhu Scheme and got examined PW.4 the Mandal Agricultural Officer.

18(f). PW.4 stated that he was working as Mandal Agricultural Officer, Palvoncha from 24.9.2018. The Telangana State Government had introduced Raithu Bandhu Scheme for the welfare of the farmers by providing monetary assistance. In their

Mandal also they provided monetary assistance to the farmers from 10.05.2018 and released monetary assistance through cheques to R1 in respect of land in Sy.No.122/2/Samsthan of Palvoncha to an extent of Ac.1-33 gts. during 2018 Kharif as well as Rabi season. The amount pertaining to Rabi season was released in the month of October, 2018. The first season's amount was paid in the shape of cheque in May, 2018 whereas thereafter the amount was transferred to R1's account being maintained with SBI, Palvoncha vide account No. 52088496486. Since the cheque pertaining to 1st season was encashed, they transferred the 2nd season amount to the same account. He admitted that Exs.P7 and P8 were the letters of information issued by him which would show the disbursement of Raithu Bandhu amount in respect of Sy.No.122/2/Samstan to an extent of Ac.1-33 Guntas of Palvoncha village to the account of R1. He further submitted that none raised any objection before him with regard to the payment of the Raithu Bandhu amount to R1. R1 also did not take any objection in this behalf nor did he refund the said amount. Based on the online information received by his Department from Revenue Department and also the online

pattedar pass books and its numbers with regard to the title, they made payment to the farmers concerned.

18(g). As seen from Exs.P7 and P8, the R1 had received amounts under Raithu Bandhu Scheme eight times from May 2018 to October 2021, from the government into his bank account as follows:-

	PAYMENT MONTH	AMOUNT RECEIVED BY R1
1	2018 Kharif (May)	Rs.7,300/-
2	2018 Rabi (October)	Rs.7,300/-
3	2019 Kharif (May)	Rs.9,125/-
4	2019 Rabi (October)	Rs.9,125/-
5	2020 Kharif (May)	Rs.9,125/-
6	2020 Rabi (October)	Rs.9,125/-
7	2021 Kharif (May)	Rs.9,125/-
8	2021 Rabi (October)	Rs.9,125/-
	Total amount paid to R1	Rs.69,350/-

Thus, R1 had received a total amount of Rs.69,350/-under Raithu Bandhu Scheme from Rabi 2018 (May 2018) to Rabi 2021(October 2021).

18(h). The R1 filed his written statement contending that there was no claim of ownership with regard to the land in Sy.No.122/2/Samstan and as there was dispute as on the date of filing nomination, he had not shown the said property in Form-26 affidavit. The petitioner filed the certified copy of pahani for the year 2017-2018 as Ex.P21 relating to the agricultural land in Sy.No.122/2/Samstan of Palvoncha Village which would show that the R1 was pattedar and possessor of the said land. He also filed Ex.P6 Dharani-Integrated Land Records Management System of Government of Telangana, Dharani-portal search which would show that R1 was pattedar and possessor of the agricultural land in Sy.No.122/2/Samstan to an extent of Ac.1-33 gts., Palvoncha village and mandal, vide katha No.534 as on 09.04.2022. Though Ex.P21, Ex.P6 and the evidence of PW.3 would show that R1 was the owner of the land even as on the date of giving evidence by PW.3, R1 filed written statement contending that there was no claim of ownership over the said land, as there was a dispute as on the date of filing of the nomination, as such, he had not shown the said property in Form-26 affidavit, but the evidence of PWs.3 and 4 would disclose that there was no such

dispute with respect to the said land as on the date of filing Ex.P2 on 14.11.2018.

18(i). To prove his contention, R1 got examined RW.1 (his brother's wife) to show that the said land did not belong to him. RW1 deposed in her evidence in chief affidavit that after demise of her husband in the year 2011, the said land was voluntarily left to her by the R1 in the year 2011. She filed five receipts marked as Ex.B13 (payment receipts signed by the RW1) and Exs.B14 and B15 showing the transfer of amount through two cheques on 31.03.2022. The chronological events of payments mentioned in Exs.B13, B14, and B15 are summarized as under :-

	Raithu Bandhu Payment Month	Amount received by R1	Given to R1 date	Mode of Payment
1	2018 Kharif (May)	Rs.7,300/-	23.07.2018	Cash
2	2018 Rabi (October)	Rs.7,300/-	16.10.2018	Cash
3	2019 Kharif (May)	Rs.9,125/-	21.10.2019	Cash
4	2019 Rabi (October)	Rs.9,125/-	29.06.2020	Cash
5	2020 Kharif (May)	Rs.9,125/-	21.01.2021	Cash
6	2020 Rabi (October)	Rs.9,125/-		
7	2021 Kharif (May)	Rs.9,125/-		
8	2021 Rabi (October)	Rs.9,125/-		
		Rs.9,125/	31.03.2022	Cheque

18(j). RW1 had deposed in her cross examination that she was in possession of Ex.B13, receipts since the date she signed. If her version is to be believed, these receipts should be with R1, but not with RW.1. The R1 had not filed any documents to show as to when and how the said lands were transferred to RW.1. The evidence on record i.e., the evidence of PWs.3 and 4 and the documents marked as Ex.P3 (Form-26 affidavit filed by R1 in the year 2004), Ex.P4 (Form-26 affidavit filed by R1 in the year 2009), Ex.P21 (pahanies for 2017-2018), Ex.P6 (Dharani search) and Exs.P7 and P8 (money disbursement made to R1 by Government of Telangana), would establish that the R1 was the pattedar and possessor of the agriculture land in Sy.No.122/2/Samstan to an extent of Ac.1-33 guntas and as the owner of the said land, he was continuously receiving the government monetary assistance under Raithu Bandhu Scheme for the land, but failed to disclose his ownership over the said land.

19. With regard to non-disclosure of the agricultural land in Sy.No.992/2 to an extent of Ac.8-37 gts. of Palvoncha Village and Mandal owned by Smt. Vanama Padmavathi (wife of R1), there was no specific denial by R1.

19(a). Learned counsel for the petitioner contended that when there was no specific denial, it should be considered as an admission as per the doctrine of non-traversal and the admitted facts need not be proved. He relied upon the judgments of the Hon'ble Apex Court in **Jaspal Kaur Cheema and Anr. Vs. Industrial Trade Links and Ors. etc.**¹⁵, **Lohia Properties (P) Ltd., Tinsukia Vs. Atmaram Kumar**¹⁶, **Balraj Taneja and another Vs. Sunil Madan and another**¹⁷, **Badat and Co., Bombay Vs. East India Trading Co.**¹⁸ and **M.Venkataramana Hebbar (D) by LRs. Vs. M.Rajagopal Hebbar and Ors.**¹⁹

19(b). Order VIII Rule 3 and Rule 5 of C.P.C. reads as follows:

“3. Denial to be specific:

It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.”

¹⁵ AIR 2017 SC 3395

¹⁶ (1993) 4 SCC 6

¹⁷ AIR 1999 SC 3381

¹⁸ AIR 1964 SC 538

¹⁹ 2007 AIR SCW 2863

“5. Specific denial:

(1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the court may in its discretion require any fact so admitted to be proved otherwise than by such admission,’

(2) Where the defendant has not filed a pleading, it shall be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.”

19(c). The Hon’ble Apex Court in all the above cases held

that:

“If a plea which was relevant for the purpose of maintaining a suit had not been specifically traversed, the Court was entitled to draw an inference as if the same had been admitted. The

fact admitted in terms of Section 58 of the Evidence Act need not be proved”.

19(d). However, the petitioner had also adduced evidence showing that the agricultural land in Sy.No.922/2 to an extent of Ac.8-37 gts. of Palvoncha village and Mandal was purchased by the R1's wife Smt. Vanama Padmavathi in the year 1993 through Ex.P9 (a Registered Sale Deed, Doc. No.536/1993, dated 01.06.1993, S.R.O. Kothagudem) with specific boundaries. The property was entered in the revenue records and accordingly the ROR Pass Books/Title No.U-2560 with Patta No. 556 were issued in her favour by the Tahsildar, Palvoncha. The said ownership was disclosed by the R1 in his earlier Form-26 affidavits for the years 2004 vide Ex.P3 and 2009 vide Ex.P4, while he was contesting for the post of M.L.A. from Kothagudem Assembly Constituency.

19(e). Ex. P10 (Dharani - Portal Search related to land in Sy.No.992/2) was filed by the petitioner. The same would show that Smt. Vanama Padmavathi (wife of the R1) was the owner/pattedar of the said land even in 2022.

19(f). PW.3 (Tahsildar, Palvoncha Mandal) also stated that:

“As per pahani for the year 2017-18 and Dharani portal search 2022, Smt. Vanama Padmavathi (R1's Wife) is the pattedar and possessor of land in Sy. No. 992/2 of Palvoncha village. According to pahani she is the pattedar to an extent of Ac.8.00, whereas as per the Dharani portal she is the Pattedar to an extent of Ac.8.30 guntas. There is no title dispute with regard to this land also as per my knowledge and record.”

19(g). PW.5, the Sub-Registrar, Kothagudem stated that Ex.P9 (the registered sale deed Doc.No.536/1993 dated 01.06.1993) was issued by his office. According to Ex.P9, an extent of Ac.8.37 guntas in Sy.No.992 of Bangarju Jala, hamlet of Palvoncha was sold by one Kommineni Sreenivas Rao and others to Smt. Vanama Padmavathi, wife of R1. The document was registered on 04.06.1993. Ex.P13 encumbrance certificate was also issued by their office. As per Ex.P13, the aforesaid land stood in the name of R1's wife till 14.11.2021.

19(h). The petitioner also got examined PW.4, the Mandal Agriculture Officer of Palvoncha Mandal to prove that their office had transferred money under Raithu Bandhu Scheme and the same

was received by the wife of R1 for the land in Sy.No.992/2. PW4 stated that:

“In the above manner we also transferred Rythu Bandhu amount to the wife of R-1 viz. Smt. Vanama Padmavathi to the account maintained with I.C.I.C.I. Bank, Kothagudem, vide account No.068501500023 from 2020 onwards in respect of Sy.No.992/2 to an extent of Ac.8.30 guntas. Exs.P11 and P12 letters were issued by me under R.T.I. Act regarding the payment of Raithu Bandhu. None raised any objection nor did Smt.Vanama Padmavathi refunded the said amount”.

19(i). The evidence of PW.4 would show that the wife of R1 Smt. Vanama Padmavathi had received a total amount of Rs.1,31,250/- through her bank account for the period i.e., Rabi 2020 (June 2020) to Rabi 2021 (June 2021) under Raithu Bandhu Scheme for the said land under Exs.P11 and P12. The amount can be summarized as under:

	Payment Month	Amount received by R1
1	2020 Rabi (October)	Rs.43,750/-
2	2021 Khariff (May)	Rs.43,750/-
3	2021 Rabi (October)	Rs.43,750/-
		Rs.1,31,250/-

19(j). Ex.P13 Encumbrance Certificate dated 17.11.2021 issued by the Sub-Registrar Kothagudem would show that the wife of R1, Smt. Vanama Padmavati was the owner of the said land in Sy.No.992 to an extent of Ac. 8-37 gts. Palvoncha village and mandal. No suggestion was given by the learned counsel for the R1 to this witness that R1's wife was not the owner of the land in Sy.No.992/2 to an extent of Ac.8.37 guntas. The evidence of PWs.3, 4 and 5 and the documents marked under Ex.P9, the affidavits filed by the R1, for the earlier years i.e., Exs.P3 (R1's Form-26, Affidavit-2004), Ex.P4 (R1's Form-26, Affidavit 2009), Ex.P10 (Dharani Portal Search -2022) in respect of the said land, Exs.P11 and P12 money disbursement under Raithu Bandhu Scheme by the Government in respect of agriculture land in Sy.No.992/2 to R1's wife, Ex.P13 the Encumbrance Certificate, all these public documents i.e., revenue records/bank transactions would establish that the R1's wife Smt. Vanama Padmavathi was the owner/pattedar & possessor of the land in Sy.No. 992/2, Palvoncha village to an extent of Ac.8.37 gts, since the year 1993. But the R1 failed to disclose his wife's ownership over the said land in Sy.No.992/2, Palvoncha village to an extent of Ac.8.37

gts. in his Form-26 affidavit 2018 (Ex.P2) which would amount to non-disclosure of his spouse/dependant's immovable assets and would amount to suppression of material fact/information.

20. With regard to non-disclosure of the house property bearing H.No.5-8-82 & 83, situated at Kothagudem Municipality owned by Smt. Vanama Padmavathi, wife of R1, learned counsel for the petitioner contended that Smt. Vanama Padmavati along with her two sons had purchased house properties through registered Sale deed vide Doc.No.990/2005 dated 21.07.2005, SRO Kothagudem under Ex.P16. There were two schedules to the said property.

- i. H.No. 5-8-76 (Schedule-A) and
- ii. H.No. 5-8-82 & 83, (Schedule-B)

As per Ex.P16, R1's wife was having 1/3rd share and the same was disclosed in his Form-26 affidavit-2018, in respect of H.No.5-8-76 (Schedule-A) as commercial building, but had not disclosed H.No. 5-8-82 & 83, mentioned in Schedule-B.

20(a). There is no specific denial even with regard to this property by R1 in his written statement. However, learned counsel

for R1 contended that it was a typographical mistake, instead of H.Nos.5-8-82 & 83, the same was mentioned as Sy.No.82 and 83 in Ex.P2, the petitioner was making a mountain out of a mole hill, there was no non-disclosure. On a perusal of Ex.P2, the said explanation appears to be valid. Hence, this Court accepts the said explanation given by learned counsel for the R1.

21. With regard to non-disclosure of the house property bearing H.No.20-2-208 situated at Indira Nagar, New Palvoncha, Palvoncha Municipality by the R1, it was the contention of the learned counsel for the petitioner that R1 claimed the ownership of the house property bearing H.No. 20-2-208 to an extent of 300 Square yards, situated at Indira Nagar, New Palvoncha, Palvoncha Municipality as his self acquired property, and the same was declared in his Election Affidavits for the elections held in the years 2004, 2009 and 2014 which were marked as Exs.P3, P4 and P5 respectively, but not disclosed the same in Ex.P2 Form-26 affidavit dated 14.11.2018. He further contended that part of the said house admeasuring an extent of land 151.11 square yards (out of 300 square yards) was sold by Smt. Vanama Anjali, claiming to

be the wife of R1 in favour of Smt. Nagalanchu Haritha under a registered sale deed vide Doc.No.1419/2018 dated 22.03.2018 under Ex. P14 and therefore, the remaining land to an extent of 148.89 square yards was retained by them and the same was not shown by R1 in Ex.P2.

21(a). In order to prove the same, the petitioner got examined PW5 the Sub- Registrar, Kothagudem. PW.5 stated that Ex.P14 was issued by their office, according to it, an extent of 151.11 Sq. Yards out of 300 Sq.Yards was sold by Smt. Vanama Anjali. As per Ex.P14, Vanama Anjali was described as wife of R1. Ex.P15 Encumbrance Certificate dated 20.11.2021 was issued by their office and it pertained to the transaction covered by Ex.P14.

21(b). The Respondent No.1 admitted in his written statement that he disclosed the ownership of the said house property, in Form-26, Affidavits in the elections held on 2004, 2009, and 2014 in view of the claim over the property. But stated that subsequently the claim over the said property was settled and he had no right over the said property as on the date of filing of

Form-26 affidavit, as such had not disclosed the same. He further submitted that he was not concerned with the sale of 151.11 Sq.yards of land.

21(c). But R1 had not disclosed as to how the said claim was settled and what kind of settlement took place to relinquish his rights over the property as on the date of filing of Form-26 affidavit. R1 failed to adduce any evidence to support his version. As such, it had to be concluded that not disclosing the same in Ex.P2 or not submitting any explanation as to how the said claim was settled would amount to suppression of material fact.

22. There is also another pertinent question to be considered in this case, whether the suppression of material facts would amount to corrupt practice? Learned counsel for the petitioner relied upon the judgments of the Hon'ble Apex Court in **Krishnamoorthy Vs. Sivakumar and Ors.** (1 supra) and **Lok Prahari, through its General Secretary S.N. Shukla Vs. Union of India and Ors.**²⁰.

²⁰ AIR 2018 SC 1041

22(a). The Hon'ble Apex Court in **Krishnamoorthy Vs. Sivakumar and Ors.** (1 supra) which was a case of non-disclosure of criminal antecedents held that:

“86. In view of the above, we would like to sum up our conclusions:

(a) Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative.

(b) When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right.

(c) Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.

(d) As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non- disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the

Election Tribunal under Section 100(1)(b) of the 1951 Act.

(e) The question whether it materially affects the election or not will not arise in a case of this nature.”

22(b). Further in **Lok Prahari, through its General Secretary S.N. Shukla Vs. Union of India and Ors.** (21 supra) which was a case pertaining to non-disclosure of assets and sources of income, the Hon’ble Apex Court while considering that whether the same would amount to ‘undue influence’ - corrupt practice under Section 123 (2) of the R.P. Act held that:

“63. We shall now deal with prayer No.2 which seeks a declaration that non disclosure of assets and sources of income would amount to ‘undue influence’ - a corrupt practice under Section 123(2) of the R.P. Act of 1951. In this behalf, heavy reliance is placed by the petitioner on a judgment of this Court in *Krishnamoorthy v. Sivakumar and others* [(2015) 3 SCC 467 : (AIR 2015 SC 1921)].

57. Prayer No. 2 – “declare that non-disclosure of assets and sources of income of self, spouse and dependents by a candidate would amount to undue influence and thereby, corruption and as such election of such a candidate can be declared null and void under Section 100(1) (b) of the R.P. Act of 1951 in terms of the judgment reported in AIR 2015 SC 1921.”

It was a case arising under the Tamil Nadu Panchayats Act, 1994. A notification was issued by the State Election Commission stipulating that every candidate at an election to any Panchayat is required to disclose information inter alia whether the candidate was accused in any pending criminal case of any offence punishable with imprisonment for two years or more and in which charges have been framed or cognizance has been taken by a court of law. In an election petition, it was alleged that there were certain criminal cases pending falling in the abovementioned categories but the said information was not disclosed by the returned candidate at the time of filing his nomination. One of the questions before this Court was whether such non-disclosure amounted to 'undue influence' - a corrupt practice under the Panchayats Act. It may be mentioned that the Panchayats Act simply adopted the definition of a corrupt practice as contained in Section 123 of the R.P. Act of 1951.

On an elaborate consideration of various aspects of the matter, this Court held as follows.

“91.While filing the nomination form, if the requisite information, as has been highlighted by us, relating to criminal antecedents, is not given, indubitably, there is an attempt to suppress, effort to misguide and keep the people in dark. This attempt undeniably and undisputedly is undue influence and, therefore, amounts to corrupt practice...”

64. For the very same logic as adopted by this Court in Krishnamoorthy [(AIR 2015 SC 1921)] we are also of the opinion that the non-disclosure of assets and sources of income of the CANDIDATES and their ASSOCIATES would constitute a corrupt practice falling under heading 'Undue influence as defined under Section 123(2) of the R.P. Act of 1951. We, therefore, allow prayer No.2..”

22(c). Thus, the Hon’ble Apex Court held that the non-disclosure of assets and sources of income of the candidates and their associates would constitute a corrupt practice falling under heading ‘undue influence’ as defined under Section 123(2) of the R.P. Act. In the present case also it was respondent No.1 who has the knowledge of his assets and a duty is cast upon him to disclose as to how the claims were settled and how he has relinquished his right over the properties. In the absence of any evidence in proof of the same simply stating that since he had no claim over the property, he had not disclosed the same is not a justifiable explanation. As such, this Court considers it as a corrupt practice falling under ‘undue influence’ under Section 123(2) of the R.P. Act.

23. As such, issues 1, 4 and 6 are answered in favour of the petitioner holding that the respondent No.1 had suppressed information relating to his immovable assets while filing Form-26 affidavit dated 14.11.2018 which would amount to suppression of material facts and that the same would amount to corrupt practice.

24. **ISSUE No.3:**

Whether a mere reference of Smt. Anjali as the wife of the Returned Candidate in the sale deed No.1419/2018 dated 22.03.2018 and her Aadhar Card, can be construed her as a family member of the Returned Candidate?

Learned counsel for the petitioner while arguing the matter stated that he was not insisting on this issue and that he was limiting his arguments only with regard to non-disclosure of house property to an extent of 148.89 Sq.yards (out of 300 Sq.yards) bearing No.20-2-208 situated at Indira Nagar, Palvoncha village and mandal. As such this Court is not inclined to answer this issue.

25. **ISSUE No.8:**

Whether the petitioner is entitled to be declared as elected Returned Candidate from 12.12.2018 of Kothagudem Assembly Constituency?

Section 84 of the R.P. Act reads as under:

“84. Relief that may be claimed by the petitioner:—

A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.”

25(a). The above Section would enable the petitioner to seek a declaration to declare him as elected candidate in case the election of the returning candidate was declared as void. Hence, the relief sought by the petitioner would fall within the ambit of Section 84 of the R.P. Act.

25(b). It was admitted and undisputed fact that the votes gained by the petitioner and the R1 are as mentioned below:

	Votes gained by
Respondent No.1	81118
Petitioner	76979
Difference	4139

25(c). As the petitioner is the next highest candidate, who secured 76979 votes, the petitioner is entitled to be declared as elected returned candidate from 12.12.2018 of Kothagudem

Assembly Constituency. The judgments relied by the learned counsel for the petitioner in **Kisan Shankar Kathore Vs. Arun Dattatray Sawant & others**²¹ and in **Chandeshwar Saw Vs. Brij Bhushan Prasad and others**²² and of the High Court of Andhra Pradesh in **Mopuragunda Thippeswamy Vs. K.Eranna and Others**²³ and of the High Court of Manipur in **Mayanglambam Rameshwar Singh Vs. Yengkhom Surchanddra Singh**²⁴ also would disclose that Section 84 of the R.P. Act would enable the petitioner to seek a declaration to declare him as elected candidate in case the election of the returning candidate was declared as void. Hence, the petitioner is entitled for such a declaration. As such, issue No.8 is answered in favour of the petitioner.

26. It is also to be noted that the R1 being a party to the proceedings did not chose to enter the witness box and to face the cross-examination. Thus an adverse inference could be drawn against him as per Section 114 of the Evidence Act. Learned counsel for the petitioner relied upon the judgment in **Vidhyadhar**

²¹ AIR 2014 SC 2069

²² 2020 (12) SCC 70

²³ 2019(2) ALD 504

²⁴ 2020 Law Suit (Manipur)

Vs. Manikrao and another²⁵ and of the Division Bench of High Court of Andhra Pradesh in **B.Ravi Yadav Vs. Cherkula Uday Kumar**²⁶.

26(a). The Hon'ble Apex Court in **Vidhyadhar Vs. Manikrao and another** (26 supra) held that:

“15. It was defendant No. 1 who contended that the sale deed, executed by defendant No. 2 in favour of the plaintiff, was fictitious and the whole transaction was a bogus transaction as only Rs. 500 were paid as sale consideration to defendant No. 2. He further claimed that payment of Rs. 4,500 to defendant No. 2 at his home before the registration of the deed was wholly incorrect. This plea was not supported by defendant No. 1 as he did not enter into the witness box. He did not state the facts pleaded in the written statement on oath in the Trial Court and avoided the witness box so that he may not be cross examined. This, by itself, is enough to reject the claim that the transaction of sale between defendant No. 2 and the plaintiff was a bogus transaction.”

26(b). The Division Bench of High Court of Andhra Pradesh in **B. Ravi Yadav Vs. Cherkula Uday Kumar** (27 supra) held that:

²⁵ AIR 1999 SC 1441

²⁶ 2013(1) ALD 733 (DB)

“28. The non-examination of the fourth respondent as witness is to be taken very seriously in the circumstances of the case. It is quite strange that in such a serious matter the fourth respondent did not take measures for his examination before the Tribunal. Even though sufficient evidence was placed before the Tribunal by the petitioner to prove the allegations and set aside the election, still he had chosen to refrain from attending the Court for giving evidence and rebut the evidence adduced on behalf of the petitioner. This draws an inference that having been under the impression that he would not have any chance to disprove the claim of the petitioner if he was examined before the Tribunal and also to keep open his avenues to question the claim of the petitioner on the basis of the said differences found in Exs.A-1 to A-3, he refrained himself from doing so. His attitude in doing so is highly deprecated. In order to sustain the democratic norms every corresponding election should be conducted freely and fairly and only genuine candidates are to be allowed to contest the elections. The ultimate aim of each and every election should be to serve the people of the country in the best possible way. If the returned candidates are tainted with violating the law prescribed in that behalf, such people cannot be expected of serving the people at large in the best possible way. They can only remain in their posts as long as they serve the people upholding the concept of democracy only.”

26(c). In the present case also, the R1 had chosen to refrain himself from attending the Court and giving the evidence and to

rebut the evidence adduced by the petitioner. As such, an adverse inference could be drawn against him under Section 114 (g) of the Evidence Act.

27. **ISSUE No.9:**

To what relief?

In the result, the Election Petition is allowed, declaring the election of respondent No.1 as returned candidate for 117 Kothagudem Assembly Constituency, Bhadradi Kothagudem District, Telangana State as void. The petitioner is declared as returned candidate for 117-Kothagudem Assembly Constituency with effect from 12.12.2018. The respondent No.1 is also sentenced with fine of Rs.5,00,000/- (Rupees Five Lakhs Only) as a penalty for filing false affidavit. Respondent No.1 is also directed to pay costs to the petitioner.

Miscellaneous applications pending, if any, shall stand closed.

Dr. G. RADHA RANI, J

July 25th, 2023

Note:
Furnish CC today.
LR copy to be marked.
B/o.SS