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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Judgement reserved on 17.11.2021*  
*Judgement pronounced on 24.12.2021*

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+ **EL.PET. 10/2020**

YOGENDER CHANDOLIA ..... Petitioner

Through: Mr Abhijat, Adv.  
versus

VISHESH RAVI & ORS. .... Respondents

Through: Mr Anupam Srivastava along with Ms  
Sarita Pandey and Mr Dhairya Gupta,  
Adv. for R-1.  
Mr Sidhant Kumar, Adv. [Amicus  
Curiae]

**CORAM:**  
**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**RAJIV SHAKDHER, J.:**

**I.A. No.296/2021**

**Preface:-**

1. This is an application preferred on behalf of respondent no.1 under Order VII Rule 11 of the Code of Civil Procedure, 1908 [in short "CPC"] read with Section 86 of the Representation of the People Act, 1951 [in short "1951 Act"].

1.1. The application is predicated on the ground that the election petition read as a whole along with the documents filed, does not disclose a cause of action, and hence, ought to be rejected.

2. According to the applicant/respondent no.1, the election petition

preferred under Section 80 read with Section 100(1)(b) & (d) as also Section 101 of the 1951 Act, which seeks direction from this Court, to the effect, that the result of the election *qua* Assembly Constituency-23, Karol Bagh, NCT of Delhi [hereafter referred to as “Karol Bagh Constituency”] held on 08.02.2020 be declared null and void, is founded on the assertions which do not disclose any cause of action.

2.1 In this context, applicant/respondent no.1 has averred that the petitioner has made two principal allegations against him :

(i) First, that the applicant/respondent no.1 has disclosed in his affidavit filed in the prescribed form i.e., Form-26 along with his nomination, that his educational qualification is “Matric (10<sup>th</sup>) passed from National Institute of Open Schooling (NIOS) (2003)” ; which according to the petitioner is false.

(ii) Second, that there is no disclosure concerning the pendency of the First Information Report (FIR) registered at Police Station, Paharganj, Delhi in Form-26.

2.2. Insofar as the first allegation is concerned, reference is made to paragraph 12(iii) of the election petition.

2.3. As regards the second allegation, the applicant/respondent no.1, says that registration of an FIR does not tantamount in law to pendency of the criminal proceedings, and therefore, would also not furnish any cause of action against him.

2.4. It is also asserted by applicant/respondent no.1 that the alleged false declaration in Form-26 i.e., the affidavit filed with the nomination papers does not amount to corrupt practice within the meaning of Section 123(4) of the 1951 Act.

2.5. Independent of the aforesaid, the applicant/respondent no.1 says that

the election petition should be rejected at this stage itself given the fact it has not been framed in accordance with Form-25, prescribed in Rule 94A of the Conduct of Elections Rules, 1961 [in short “1961 Rules”]. The petitioner has neither specified the name of the person whose election is being questioned nor adverted to the corrupt practice undertaken by the applicant/respondent no.1; an aspect which is required to be stated in the affidavit prescribed under Form-25.

2.6. Furthermore, the applicant/respondent no.1 avers that the affidavit filed along with the election petition does not conform to the requirements of the proviso to sub-section (1) of Section 83 of the 1951 Act. In this context, the assertions made qua alleged corrupt practice referred to in paragraphs 8, 12, 13 and the grounds contained in the election petition, have not been verified as per law. In this context, it is averred that there is no distinction made while verifying the assertion made in the election petition, as to the averments, which are true to the knowledge of the deponent and those, which are based on the information received and believed to be true.

**Submissions of the counsel for the parties:-**

3. The petitioner has, broadly, made the following assertions in the reply to the above-captioned application:

(i) Firstly, the averment made by the applicant/respondent no.1 that he had passed the Class-X examination via NIOS in 2003 was false, which is evident upon a perusal of the mark sheet, which is appended on page 97 of the documents filed by the petitioner. As per the rules of NIOS, one learner/student has at disposal nine attempts, albeit over in five years, to sit for and clear the examination. Once admission is taken, no learner is allowed to take re-admission for the next five years.

(ii) Secondly, there is a discrepancy in the date of birth and the father's name; an aspect which emerges upon perusal of the following document filed by the defendant i.e., Academic Examination Result of Class X, appended on page 1 of the said documents.

(iii) As per various judgments rendered by the Supreme Court and High Court, the applicant/respondent no.1 was required to disclose material facts concerning his criminal antecedents and education.

(iv) Thirdly, the petition has been properly verified, as per the provisions of Order VI Rule 15(2) of the CPC.

(v) Fourthly, the assertion that since full particulars of corrupt practices have not been set forth in the election petition, it is liable to be dismissed due to non-compliance of the provisions of Section 83(1)(b) of the 1951 Act, is untenable.

(vi) Fifthly, the affidavit which has been filed along with the election petition conforms to Form 25, prescribed under Rule 94A of the 1961 Rules.

(vii) In sum, the petitioner asserts that the application is liable to be dismissed.

4. The arguments on behalf of the applicant/respondent no.1 were advanced by Mr Anupam Srivastava, while the arguments on behalf of the petitioner were advanced by Mr Abhijat.

5. Mr Srivastava's arguments can be, broadly, paraphrased as follows:

(i) A bare perusal of the documents placed on record by the petitioner, in support of the assertions made that applicant/respondent no.1 did not pass his Class-X examination in April 2003, would show that the pleadings and the material placed on record are not aligned.

(i)(a) In support of this plea, my attention was drawn to NIOS Academic

Examination Result for May 2002. Based on this document, it was contended that the document reveals that applicant/respondent no.1 was absent and not that he had failed. As against this, the applicant/respondent no.1 had placed on record Form-26, which indicated that he had passed his Class-X examination via NIOS in 2003. Thus, the best evidence placed on record contradicts the averments made in the petition. Since the evidence does not support the allegation, no cause of action arises against the applicant/respondent no.1 qua this allegation, and therefore, the petition is liable to be rejected.

(ii) The allegation concerning the criminal proceedings pending against applicant/respondent no.1 is founded on FIR No.64/2016, dated 30.01.2016, registered with P.S. Paharganj, Central District, Delhi. The applicant/respondent no.1 in Form – 26 has indicated that there was no criminal case pending against him. A criminal case is said to be pending against a person only if cognizance is taken of an offence by a Magistrate under Section 190 of Code of Criminal Procedure, 1973 [in short, “Cr. P.C”] or once charges are framed and not before that. [See *Paras vs. Chaitanya Kashyap* 2015 (1) J.L.J. 391 @ paragraphs 15, 16 & 17.]

(iii) Since the petitioner has not been able to place on record any document to show that cognizance had been taken in the matter or charges have been framed against the applicant/respondent no.1 at the relevant point in time i.e., the date of filing of the nomination, it cannot be said that any criminal case was pending against the applicant/respondent no.1. That being the position in law, the petition is liable to be rejected.

(iv) As regards improper/faulty verification in consonance with the assertion made in the application, as noticed above, a reference was made to

the fact that the election petition was not verified in accordance with the provisions of Section 83(1)(c) of the 1951 Act and Order VI Rule 15(2) of the CPC. It was asserted that a perusal of the averments made in the election petition, would show that there is no clarity as to assertions which are true to the knowledge of the affiant i.e., the petitioner and those that are based on information, received and believed to be true. [See **R.P. Moidutty vs. P.T. Kunju Mohammad and Ors.** AIR 2000 SC 388.]

(v) Since the petitioner claims that applicant/respondent no.1 is guilty of corrupt practices in terms of Section 123(4) of the 1951 Act, he was required to give full particulars qua this assertion; an aspect which does not find mention.

(vi) Insofar as the alleged false declaration of educational qualification is concerned, in law, it does not constitute a corrupt practice [See **M.J. Zakharia Sait vs. T.M. Mohammed and Ors.** (1990) 3 SCC 396 @ paragraphs 6 & 10 and **Anil Vasudev Salgaonkar vs. Naresh Kushali Shigaonkar** (2009) 9 SCC 310]

(vii) Lastly, the affidavit accompanying the election petition is not framed in accordance with Form-25, as prescribed under Rule 94A of the 1961 Rules.

6. On the other hand, Mr Abhijat contended that while adjudicating upon an application under Order VII Rule 11 of the CPC, the Court has to look only to the assertions made by the petitioner and the documents filed in support of the same. In other words, this Court is not empowered [at this stage of the proceedings] to the pleadings and the documents filed by the applicant/respondent no.1, in support of his stand. [See **Madanuri Sri Rama Chandra Murthy vs. Syed Jalal**, (2007) 13 SCC 174.]

6.1. The petitioner has categorically averred that the applicant/respondent no.1's assertion in Form-26 regarding his educational qualification, to the effect, that he had passed Class-X examination via NIOS in 2003 and that it was his highest qualification was false.

6.2. The petitioner, in this context, has referred to Form-26 filed by the applicant/respondent no.1 in 2013 and 2015. In Form-26 filed in 2013, the applicant-respondent no.1 had declared that his highest educational qualification was B.Com.; a degree that he had obtained from Chaudhary Charan Singh (CCS) University, in 2008. However, in Form – 26 filed in 2015, the applicant/respondent no.1 had declared that his educational qualification was B.A. (Prog.), which he was said to be pursuing, at the relevant point in time, from Indira Gandhi National Open University, Delhi.

6.3. There was, thus, a clear contradiction in the highest educational qualification declared by the applicant/respondent no.1 in Form-26 filed in 2020, as against the disclosure made qua the same aspects in Form-26 filed in 2013 and 2015, at the time, when he participated in Assembly Elections in respect of the said year.

6.4. It was further submitted by the petitioner that as per the result available for enrolment no.91771200133, the applicant/respondent no.1 did not appear for the Class-X examination between 1990 and 2019. This assertion was sought to be substantiated by relying upon May 2002 Academic Examination Result declared by NIOS, *vis-a-vis* the applicant/respondent no.1.

6.5. It was contended by the petitioner that the document filed by the applicant/respondent no.1, which is ostensibly the Academic Examination Result declared by NIOS for April 2003, and concerns the

applicant/respondent no.1, is forged and fabricated. This is evident if one were to compare the date of birth and the father's name given in the said document with the document placed on record by the petitioner i.e., the Academic Examination Result declared by NIOS for May 2002. A close perusal of the two documents would show that in the document of April 2003, the date of birth of the applicant/respondent no.1 is given as 19.05.1983 and the name of the father is set forth as "Krishan Chand Ravi", whereas the document placed on record, to which a reference is made above by the petitioner, the date of birth of the applicant/respondent no.1 is indicated as 19.05.1984 and the father's name as "Kishan Chand Ravi"; the alphabet "R" is missing from the father's first name.

6.6. Information received through inquiries made under the Right to Information Act, 2005 reveal that both the documents concern the same person, although they bear two different enrolment numbers i.e., 91771200133 and 27026922399. However, both enrolment numbers are not valid because the learner's admission is valid only for five years [See *Nand Kishore Garg vs. Jitender Singh Tomar*, 2020 SSC OnLine Del 208 and *Bidisa Chakraborty vs. Indira Gandhi National Open University*, 2014 SCC Online Del 3910.]

6.7. The submission of the applicant/respondent no.1 that the election petition ought to be rejected because the verification made is not in accordance with the provisions of Order VI Rule 15(2) of the CPC or that there is a failure to comply with the provisions of Section 83(1)(b) of the 1951 Act, or even that the affidavit filed along with the said petition is not in the prescribed format i.e., Form-25 read with Rule 94A of the 1961 Rules, is not tenable for the reason that these defects are curable [See *G.M.*

*Siddeshwar vs. Prasanna Kumar* (2013) 4 SCC 776.]

**Analysis and Reasons:-**

7. I have heard the learned counsel for the parties.

7.1. In my opinion, the only issue which arises for consideration at this stage is whether the petition should be rejected at this stage without the matter going to trial. As per the well-established principle of law, at this juncture, I am required to examine only the assertions made in the election petition and the documents filed in support of thereof.

7.2. As alluded to hereinabove, one of the principal reliefs sought in the petition is, to the effect, that this Court should declare the result of the applicant/respondent no.1 qua the Karol Bagh Constituency as null and void. In this context, reference is made to the election held on 08.02.2020.

7.3. There are other consequential prayers made in the petition; which were given up by the petitioner at the hearing held on 29.09.2020 when the election petition was listed before the Court for the very first time. On that date, counsel for the petitioner indicated to the court that insofar as the reliefs sought in prayer clause (ii) and (iii) are concerned [which, *inter alia*, sought criminal prosecution of the applicant/respondent no.1 and his debarment from participating in an election for six years], the same are not pressed. Counsel for the petitioner on that date had indicated that he would take recourse to an appropriate remedy, in that regard. Accordingly, amongst other directions issued which included dropping respondent nos.11 to 13 from the array of parties, prayer clauses (ii) and (iii) set out in the election petition were ordered to be deleted.

8. That being said, before I rule on the tenability of application, certain

broad facts need to be noticed.

8.1 On 14.01.2020, the General Election to the legislative assembly of GNCTD for all 70 Assembly Constituencies was notified.

8.2. The applicant/respondent no.1, on 20.01.2020, filed his affidavit in the prescribed format i.e., Form-26 along with his nomination papers for Karol Bagh Constituency. In Form-26, against serial no.10 and 11, the following declaration was made by the applicant/respondent no.1:

*“...10. My educational qualification is as under:  
Matric (10<sup>th</sup>) Passed from National Institute of Open Schooling  
(NOIS) [2003]*

*11. Highest educational qualification: Matric (10<sup>th</sup>) Passed  
from National Institute of Open Schooling 2003... ”*

8.3. On 22.01.2020, the petitioner filed objections qua the nomination filed by applicant/respondent no.1. The Returning Officer rejected the objections filed by the petitioner, vide order dated 22.01.2020.

8.4. Being aggrieved by the decision of the Returning Officer, the petitioner filed a writ petition in this Court i.e., W.P.(C) No.1238/2020. This writ petition was dismissed by the court on 03.02.2020. The petitioner assailed the said order of the learned Single Judge by way of an appeal i.e., LPA No.70/2020. It is claimed on behalf of the petitioner that the appeal is pending adjudication.

8.5. In consonance with the poll notification, elections were held on 08.02.2020. The election result was declared on 11.02.2020. The applicant/respondent no.1 was declared successful, from the Karol Bagh Constituency. The declaration of the result was, formally, notified on 12.02.2020.

8.6. It is in this backdrop that the instant election petition was instituted in this Court in and about 23.03.2020.

9. The election petition was listed before the Court for the first time on 29.09.2020. While issuing notice, certain directions were issued to which a reference is made hereinabove.

9.1. Although, as alluded to hereinabove, the applicant/respondent no.1 has filed a reply to the election petition, the above-captioned application was also instituted in which, notice was issued on 08.01.2021.

9.2. I may also record that the petitioner has filed an application i.e. I.A. No.11988/2020 for amendment of the election petition on which orders have not been passed since the same has not been pressed by the petitioner. The proceedings of 01.03.2021 show that the counsel for the petitioner, Mr Abhijat, had conveyed, on that date, that he would like to reassess as to whether or not the petition needs to be amended.

10. With this preface, the first aspect which in my view, should be dealt with at the very outset, is as to whether there was an obligation on the part of the applicant/respondent no.1 to disclose information, *inter alia*, about his educational qualifications and the fact concerning his involvement in a criminal case.

10.1. The Supreme Court in the judgment rendered in *Union of India vs. Association of Democratic Reforms* (2002) 5 SCC 294, has held that the voter has a fundamental right to know the antecedents of the candidate, who stands for elections. The relevant observations made by the Supreme Court are set forth hereafter:

“48. The Election Commission is directed to call for information on

affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:

- (1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past — if any, whether he is punished with imprisonment or fine.
- (2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.
- (3) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependants.
- (4) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.
- (5) The educational qualifications of the candidate.”

10.2. It appears that the 1951 Act was amended which led to the insertion of Section 33A and 33B of the 1951 Act. The sum total of this exercise was that the amendments made to the 1951 Act did not carry through the directions issued by the Supreme Court in the *Association of Democratic Reforms* case, which led to the second round of litigation. In the matter of *People's Union for Civil Liberties vs. Union of India & Anr.*, (2003) 4 SCC 399, the Supreme Court, via a majority decision, reaffirmed the disclosure requirements stipulated in its earlier judgment rendered in *Association of Democratic Reforms* case.

10.3. Therefore, what emerges, is that as per the law which obtains at present the candidate who files his nomination is required, *inter alia*, to disclose his educational qualifications as also his past convictions including fines imposed, imprisonments suffered, acquittals/discharge, if any,

obtained.

10.4. Disclosure qua the aforesaid is in addition to the disclosure of information qua pending criminal case where a person if convicted, can be sentenced to imprisonment for two years or more, albeit, where charge is framed or cognizance is taken by Court of law, and information concerning the candidate's assets including those of the spouse and dependents as also liabilities, particularly, those related to the Government or public institutes.

10.5. Therefore, the assertions made in the election petition have to be viewed in the broad framework of law, as enunciated by the Supreme Court in the aforementioned judgments.

10.6. The petitioner, even according to the applicant/respondent no.1, has adverted to the fact that the FIR No.64/2016 dated 30.01.2016 was filed with P.S. Paharganj, Delhi. Concededly, the said assertion is made in the election petition and a copy of the FIR has been placed on record by the petitioner.

10.7. The argument advanced by Mr Srivastava that the relevant entry in the prescribed form required the applicant/respondent no.1 to only disclose pending criminal cases, may not be a tenable argument, given the enunciation of law by the Supreme Court in the aforementioned judgments. The candidate who files his/her nomination is required to disclose his past conviction/acquittal/discharge, if any, and punishment awarded by way of imprisonment and/or fine. Likewise, if prior to six months of filing nomination, if a candidate is accused of an offence punishable with imprisonment of two years or more, in which charge is framed or cognizance is taken by a Court of law, the same needs to be disclosed.

10.8. That being said, one cannot quibble with the proposition that the registration of an FIR does not bring the matter adverted to therein, within

the ambit of a pending criminal case. Mr Srivastava is right when he says that a criminal case is said to be pending, either when the concerned Magistrate has taken cognizance under Section 190 of the Code of Criminal Procedure, 1973, or a charge sheet has been filed. Admittedly, the petitioner has neither made any assertion nor placed any document on record, in this behalf. However, this by itself may not help the applicant/respondent no.1 in sustaining his defence that he has made full disclosure given the directions issued by the Supreme Court concerning the disclosure of information by a candidate while filing his nomination.

11. Insofar as the submission made by Mr Srivastava that the allegation made against the applicant/respondent no.1 that he had falsely claimed that he had passed Class-X examination in 2003 was not liable to be sustained [since the document filed in support of the same was a copy of the Academic Examination Result ostensibly issued by NIOS for May 2002, wherein the applicant/respondent no.1 was shown as having absented himself and not failed], is not tenable, as at this stage, the apparent dissonance between the pleading and the document would not be enough to reject the election petition.

11.1. The reason being that a careful perusal of the election petition would show that there are assertions made in paragraph 12, which seek to demonstrate that applicant/respondent no.1 has been taking inconsistent stands concerning the highest educational qualification secured by him.

11.2. It is averred that as per Form-26 filed in 2013, the applicant/respondent no.1 claimed that he had obtained a degree in B.Com.in 2008 from CCS University, whereas in Form- 26 filed in 2015, the applicant/respondent no.1 claimed that he was pursuing a B.A.

(Programme) from IGNOU, Delhi; which is also claimed to be the highest educational qualification attained by him, at that juncture. In contradiction, in Form-26 filed in 2020, the applicant/respondent no.1 claims his highest educational qualification as Class X pass in 2003, via NIOS.

11.3. Given the material on record, I am unable to persuade myself that merely because the May 2002 Academic Examination Result for Class X, concerning the applicant/respondent no.1, does not align with the assertion made in the petition that the application/respondent no.1 did not pass the examination of Class X in 2003 would not be a good enough reason to reject the petition. The averments made in this behalf have to be read in their entirety, and, therefore, the matter, in my view, needs to be tried.

12. The argument of Mr Srivastava that the verification of the averments made in the election petition is faulty, and not in consonance with the provisions of Order VI Rule 15(2) of CPC or that the affidavit filed along with the petition does not adhere to the prescribed format i.e., Form-25 read with Rule 94A of the 1961 Rules, in my opinion, are curable defects. [See **A. Manju v. Prajwal Revanna**, 2021 SCC OnLine SC 1234<sup>1</sup>.] In any event,

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<sup>1</sup>17. It was further sought to be urged by referring to Section 83 of the RP Act that the signing and verification of pleadings in terms of Section 83(1)(c) of the RP Act if not complied with, cannot be fatal and the circumstances in which a petition could be thrown out at the threshold in terms of Section 86(1) of the RP Act were only non-compliance of Sections 81, 82 and 117 of the RP Act. This issue was urged not to be *res integra* in view of the judgment of this Court in **Ponnala Lakshmaiah**<sup>11</sup> case, wherein this Court opined against the rejection of an election petition at the threshold stage on hyper-technical grounds. The observations in this case by the Supreme Court have received the imprimatur of a larger Bench of three Judges in **G.M. Siddeshwar**<sup>12</sup> case, where the relevant portion from **Ponnala Lakshmaiah**<sup>13</sup> case has been extracted as under:

“43. More recently, the issue was again considered in **Ponnala Lakshmaiah** and relying upon **Sardar Harcharan Singh Brar v. Sukh Darshan Singh**, (2004) 11 SCC 196 it was held : (**Ponnala Lakshmaiah case** SCC p. 799 para 22)

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“22. Even otherwise the question whether non-compliance with the proviso to Section 83(1) of the Act is fatal to the election petition is no longer *res integra* in the light of a three-Judge Bench decision of this Court in *Sardar Harcharan Singh Brar v. Sukh Darshan Singh*. In that case a plea based on a defective affidavit was raised before the High Court resulting in the dismissal of the election petition. In appeal against the said order, this Court held that non-compliance with the proviso to Section 83 of the Act did not attract an order of dismissal of an election petition in terms of Section 86 thereof. Section 86 of the Act does not provide for dismissal of an election petition on the ground that the same does not comply with the provisions of Section 83 of the Act. It sanctions dismissal of an election petition for non-compliance with Sections 81, 82 and 117 of the Act only. Such being the position, the defect if any in the verification of the affidavit filed in support of the petition was not fatal, no matter the proviso to Section 83(1) was couched in a mandatory form.”

44. The issue having been considered several times by this Court must now be allowed to rest at that.”

24. We may take note of the Constitution Bench judgment of this Court in *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore*<sup>17</sup> which opined that the defect in verification of an affidavit cannot be a sufficient ground for dismissal of the petitioner's petition summarily and such an affidavit can be permitted to be filed later. This Constitution Bench judgment was also referred to in *G.M. Siddeshwar*<sup>18</sup> case to come to a conclusion that non-compliance with proviso to Section 83(1) of the RP Act was not fatal to the maintainability of an election petition and the defect could be remedied, i.e., even in the absence of compliance, the petition would still be called an election petition. We cannot say that the High Court fell into an error while considering the election petition as a whole to come to the conclusion that the allegations of the appellant were not confined only to Section 33A of the RP Act, but were larger in ambit as undue influence and improper acceptance of nomination of respondent No. 1 were also pleaded as violation of the mandate under Sections 123 and 100 of the RP Act.

25. However, we are not persuaded to agree with the conclusion arrived at by the High Court that the non-submission of Form 25 would lead to the dismissal of the election petition. We say so because, in our view, the observations made in *Ponnala Lakshmaiah*<sup>19</sup> case which have received the imprimatur of the three Judges Bench in *G.M. Siddeshwar*<sup>20</sup> case appear not to have been appreciated in the correct perspective. In fact, the *G.M. Siddeshwar*<sup>21</sup> case has been cited by the learned Judge to dismiss the petition. If we look at the election petition, the prayer clause is followed by a verification. There is also a verifying affidavit in support of the election petition. Thus, factually it would not be appropriate to say that there is no affidavit in support of the petition, albeit not in Form 25. This was a curable defect and the learned Judge trying the election petition ought to have granted an opportunity to the appellant to file an affidavit in support of the petition in Form 25 in addition to the already existing affidavit filed

these are the aspects that can be put to the petitioner in the course of trial i.e., which part of the assertions are true to his knowledge as against those which he believes to be true based on the information received by him.

13. This brings me to the last issue, which is, that the aspect concerning educational qualification does not fall within the ambit of Section 123(4) of the 1951 Act, which provides as to what practices are deemed as corrupt practices for the purposes of 1951 Act. A coordinate Bench of this Court in the matter of *Nand Kishore Garg*, on this aspect, has ruled that non-disclosure and/ or false declaration made, vis-a-vis educational qualifications, would constitute a corrupt practice.

13.1. A bare reading of sub-Section (4) of Section 123 of the 1951 Act would show that, *inter alia*, corrupt practice as defined in the said provision includes publication by a candidate or his agent or by any other person with

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with the election petition. In fact, a consideration of both the judgments of the Supreme Court referred to by the learned Judge, i.e. *Ponnala Lakshmaiah*<sup>22</sup> as well as *G.M. Siddeshwar*<sup>23</sup>, ought to have resulted in a conclusion that the correct ratio in view of these facts was to permit the appellant to cure this defect by filing an affidavit in the prescribed form.

26. The arguments of learned counsel for respondent No. 1 were predicated on the distinction between the absence of an affidavit and a defective affidavit. This presupposes that for an opportunity of cure to be granted, there must be the submission of a Form 25 affidavit which may be defective. This would be very narrow reading of the provisions. Once there is an affidavit, albeit not in Form 25, the appropriate course would be to permit an affidavit to be filed in Form 25. We have to appreciate that the petition is at a threshold stage. It is not as if the appellant has failed to cure the defect even on being pointed out so. This is not a case where the filing of an affidavit now in Form 25 would grant an opportunity for embellishment as is sought to be urged on behalf of respondent No. 1.

27. The appellant states the case clearly and in no uncertain terms with supporting material in the election petition. Whether the violation is made out by respondent no. 1 or not would be a matter of trial but certainly not a matter to be shut out at the threshold.”

the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true in relation to:

- (i) the personal character or conduct of any candidate;
- (ii) in relation to a candidature or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

13.2. The expression "in relation to candidature" should, in my view, include information concerning the educational qualification of a candidate, since the Supreme Court has unambiguously held that voters have the fundamental right to know the antecedents of the candidate. A false declaration made, qua educational qualification can be brought within the four corners of Section 123(4) of the 1951 Act.

**Conclusion:-**

14. In view of the discussion above and the ratio of the judgement of the Supreme Court in *A. Manju* case, to hasten the proceedings, leave is granted to the petitioner to file a fresh affidavit in the prescribed form i.e., Form-25<sup>2</sup>, within fifteen days from today. While doing so, the petitioner will bear in mind the requirements captured in Form-25, vis-a-vis verification of the particulars of the corrupt practice required to be provided in the affidavit. The petitioner will state clearly in the affidavit, the parts which are true to his knowledge and those which are based on information.

15. For the reasons given hereinabove, I am not inclined to reject the election petition at this stage. The above-captioned application is,

accordingly, dismissed.

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16. List the matter for admission/denial of documents filed by the parties before the concerned Registrar on 10.01.2022.

16.1. Counsel for the parties will file their respective affidavits, admitting/denying each other's documents, within two weeks from today.

17. List the matter for framing of issues on 25.02.2022.

**DECEMBER 24, 2021**

**RAJIV SHAKDHER, J.**

*Click here to check corrigendum, if any*

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<sup>2</sup> read with rule 94A of the 1961 Rules