

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

MC(EI. Petn.) No. 50 of 2022

(Ref:- EI. Petn. No. 1 of 2022)

Shri Thangjam Arunkumar, aged about 54 years, S/o (Late) Thangjam Birchandra of Chingmeirong Mamang Leikai, P.O. Lamlong, P.S. Lamphel, District: Imphal East, Manipur – 795010.

... Applicant

-Versus-

1. Shri Okram Henry Singh, aged about 37 years, S/o (Late) O. Lukhoi Singh of Khurai Ahongei, P.O. & P.S. Porompat, District-Imphal East, Manipur – 795010.

... Principal Respondent

2. Shri Yumkham Erabot Singh, aged about 82 years, S/o (Late) Y. Angangyaima Singh of Khurai Ahongei, P.O. Imphal & P.S. Porompat, District- Imphal East, Manipur – 795010.

3. Shri Rajkumar Priyobarta Singh, aged about 47 years, S/o R.K. Maipaksana Singh of Nongmeibung Wangkheirakpam Leikai, P.O. Imphal & P.S. Porompat, Imphal East District, Manipur – 795005.

... Proforma Respondents

-AND-

IN THE MATTER OF:

Ref: Election Petition No. 1 of 2022

Shri Okram Henry Singh, aged about 37 years, S/o (Late) O. Lukhoi Singh of Khurai Ahongei, P.O. & P.S. Porompat, District-Imphal East, Manipur – 795010.

.... Petitioner

-Versus-

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... Respondents

With

MC(EI. Petn.) No. 138 of 2022

(Ref:- EI. Petn. No. 1 of 2022)

Shri Thangjam Arunkumar, aged about 54 years, S/o (Late) Thangjam Birchandra of Chingmeirong Mamang Leikai, P.O. Lamlong, P.S. Lamphel, District: Imphal East, Manipur – 795010.

... Applicant

-Versus-

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... Respondents

B E F O R E

HON'BLE MR. JUSTICE AHANTHEMBIMOL SINGH

For the applicant	::	Mr. H.S. Paonam, Sr. Advocate assisted by Mr. B.R. Sharma, Advocate
For the respondents	::	Mr. Ajoy Pebam, Advocate; Mr. S. Chittaranjan, Advocate & Mrs. L. Ayangleima, Advocate
Date of Hearing	::	29-03-2023
Date of Judgment	::	11-04-2023

J U D G M E N T

[1] Heard Mr. H S. Paonam, learned senior counsel assisted by Mr. B.R. Sharma, learned counsel appearing for the applicant, Mr. Ajoy Pebam, learned counsel appearing for the respondent No. 1, Mr. S. Chittaranjan, learned counsel appearing for the respondent No. 2 and Mrs. L. Ayangleima, learned counsel appearing for the respondent No. 3.

[2] MC(EI Petn.) No. 50 of 2022 and MC(EI. Petn.) No. 138 of 2022 are applications filed under Order -VII Rule-11 of the Code of Civil

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Procedure, 1908 (CPC, 1908) and Section 86(i) of the Representation of People Act, 1951 (RP Act, 1951) with the prayer for dismissing Election Petition No. 1 of 2022 on the ground that the election petition suffers from "absence of concise statement", "lacking immaterial particulars", "non-disclosure of a triable issue or cause of action", "non-compliance of mandatory requirements of law in preferring an election petition" as provided under section 81 and 83 of the RP Act, 1951 and Rule 94A of the Conduct of Election Rules, 1961.

As the facts and question of law raised in the present two applications are common, the same are being disposed of jointly by this common judgment.

[3] Mr. H S. Paonam, learned senior counsel appearing for the applicant mainly raised the following three points in the present application:-

- (i) Absence of concise statement of material facts and lacking full particulars of any corrupt practice;
- (ii) Non-disclosure of a triable issue or cause of action;
- (iii) Non-compliance of mandatory requirements of law in preferring an election petition.

[4] It has been submitted by the learned senior counsel appearing for the applicant that the petitioner did not disclosed the source of information upon which the allegations have been levelled in the petition and that the petition does not contain a concise statement of material facts on which the petitioner relies and therefore it does not disclose a triable issue or cause of action and that even the material particulars are absent in the election

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petition. The learned senior counsel also submitted that the present election petition lacks concise statement of material facts and that specially when corrupt practice is alleged, the date and place of corrupt practice need to be specifically pleaded, which is absent in the election petition. It has also been submitted that the names of the persons committing corrupt practice, receiving benefits and gifts of such corrupt practice, the place, date and time of such act/commission are not at all pleaded. It has also been submitted that the complete reading of the election petition would show that the petitioner failed to plead the details of corrupt practice which can constitute a cause of action as contemplated by Section 100 of the RP Act and that the petitioner failed to give the material facts and other details of the alleged corrupt practice. The learned senior counsel submitted that the allegations relating to corrupt practice, as stated in various paragraphs of the election petition, even assuming but not admitting to be true, did not constitute any corrupt practice.

[5] It has been submitted on behalf of the applicant that the election petition lacks in material facts constituting the cause of action required under the Representation of People Act, 1951 and that the said election petition does not fulfil the mandatory requirements of law and accordingly the petition does not disclose a triable issue or cause of action. It has further been submitted that the so called specific allegation of corrupt practice as contained in the election petition do not meet the basic requirement, which can constitute the cause of action as required by law and that the material fact as to how the information came to the knowledge of the petitioner pertaining to undue influence/ corrupt practice is absolutely missing,

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whereas the same is preliminary requirement for maintainability of the petition. It has been submitted that the petition does not disclose a triable issue or cause of action and accordingly the same is liable to be dismissed.

[6] Mr. H. S. Paonam, learned senior counsel submitted that in the election petition, allegation of corrupt practice are made against the applicant however no affidavit had been filed in support of the allegation of such corrupt practice as mandated under the proviso to sub-section 1 of section 83 of the RP Act, 1951 and accordingly the election petitioner has failed to comply with the mandatory requirements of section 83 of the RP Act and accordingly the election petition is liable to be dismissed.

[7] Mr. H.S. Paonam, learned senior counsel also submitted that under section 81(3) of the RP Act, 1951, it is provided that every election petition shall be accompanied by as many as copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition. It has been submitted that in the present case the copy of the election petition served upon the applicant has not been attested by the petitioner in the manner provided under section 81(3) of the RP Act, inasmuch as the said copy had been attested by the election petitioner only as "true copy of the original" and not attested as "true copy of the petition" as mandated under section 81 (3) of the RP Act and accordingly the election petition is liable to be dismissed on ground of non-compliance of the mandatory provisions of section 81(3) of the RP Act, 1951.

[8] Mr. Ajoy Pebam, learned counsel appearing for the respondent No. 1/ election petitioner submitted that the election petition has been filed in the context of the gross misrepresentation of a concealment of facts, documents, assets, liabilities and holdings by the applicant in filing his Form -26 affidavit along with his nomination papers in the 12th Manipur Legislative Assembly Election held in the months of February and March, 2022. It has also been submitted that the actions and commissions of the applicant as detailed in the election petitioner are sufficient to constitute a case for setting aside the election of the applicant in terms of Section 100 of the RP Act, 1951 being violative of Section 33 and 33A of the RP Act read with Rule 4A of the Conduct of Elections Rules, 1961 as well as instructions/ informations issued by the election Commission of India under Article 324 of the Constitution of India and being writ large with instances of corrupt practice as defined under Section 123 of the RP Act, 1951.

[9] It has been submitted Section 33 and 33A of the RP Act, 1951 provides the procedure for presentation of nomination papers and the requirements for a valid nomination and that violation of section 33 and 33A of the said Act by the applicant is very much relevant as the same establishes that the nomination of the applicant in the 12th Manipur Legislative Assembly Election, 2022 from the 15-Wangkhei Assembly Constituency was invalid and that his nomination had been properly accepted which leads to the ultimate conclusion that the election of the applicant is liable to be declared void under section 100(1)(d)(i) of the RP Act, 1951.

[10] It has been submitted that the election petitioner disclosed all relevant and material facts in the connected election petition and the details of specific violation of law as well as commission of corrupt practice have been made and the contents of the election petition have been made in due compliance of the provisions under section 83 of the RP Act, 1951 and there is no defect in the same and that sufficient evidence in support of the allegation including violation of Section 36(2) of the RP Act, 1951 have been produced in the proceedings of the election petition.

It has also been submitted that the question as to whether the pleadings made in the election petition and the evidence produced by the election petitioner are sufficient or not is to be determined only after the issues are framed, the evidences are properly exhibited and witnesses are examined and at the time of final hearing of the election petition. It has also been submitted that the cause of action for filing the election petition has been sufficiently disclosed and that the allegations of the applicant are baseless and devoid of merit and the same are nothing but frivolous and vexatious and made with the sole mala fide intention to delay the proceedings of the connected election petition.

[11] Mr. Ajoy Pebam, leaned counsel submitted that the election petitioner disclosed all sources of information of his pleadings made in the election petition and that the election petitioner has also filed MC(EI. Petn.) No. 55 of 2022 under Order-XIII Rule-8 of the CPC, 1908 read with section 87 of the RP Act, 1951 praying for impounding (i) Authenticated/ Certified documents of Account status as on 07/02/2002 of A/C No. 918010112468797 of Axis Bank, Paona Bazar, (ii) Authenticated/

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Certified copies of Loan Status as on 07/02/2022 of loan account being A/C No. 0254010664295 of PNB, M.B. Avenue, Imphal, (iii) Authenticated/ Certified copies of all records/ loan file of loan account being A/C No. 0254010664295 of PNB, M.B. Avenue, Imphal including Valuation Report, Shop Licence, the Land Valuation Certificate issued by the Sub-Deputy Collector, Heingang, etc. of Thangjam Arunkumar, (iv) Authenticated/ Certified copies of the details of loan and status as on 07/02/2022 of Loan A/C No. BPRO140055144090 linked with A/C No. 916010075728945 of Axis Bank, Imphal Branch and (v) Authenticated /Certified documents of status of the said 4 (four) GST of Thangjam Arunkumar as on 07/02/2022 i.e. (a) GSTIN:14ABXPT3470H2Z3-M/S B.M. Medical Store of Thangjam Arunkumar, (b) GSTIN: 7ABXPT3470H1ZZ-CORE Grow & Co. of Thangjam Arunkumar, (c) GSTIN: 14ABXPT3470H3Z2-M/S Arun Enterprises of Thangjam Arunkumar and (d) GSTIN: 14ABXPT3470H1Z4-M/S B.M. Bakery of Thangjam Arunkumar from the concerned authorities.

[12] The learned counsel submitted that the election petition had been filed in compliance of all provisions provided under the RP Act, 1951 and that after thorough verification, the Stamp Reporter of this court accepted the election petition and accordingly, there is no issue of violation of any provisions of the RP Act, 1951. It has further been submitted on behalf of the respondent No. 1/ election petitioner that the allegations made in the election petition are in connection with the improper acceptance of the nomination of the applicant and non-compliance of the statutory provisions and that the allegations regarding corrupt practice under Section 123 of the RP Act, 1951 is related with the concealment of material information in

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Form - 26 affidavit filed by the applicant which amounts to undue influence and thus the submission of Form - 25 affidavit was not necessary and that even if the submission of Form- 25 affidavit is required it is a curable defect and on this ground the election petition cannot be dismissed.

It has been submitted that the present applications are absolutely misconceived, baseless, frivolous and devoid of merit and that the applicant is not entitled to any relief and the present applications are liable to be dismissed with cost.

[13] Mr. S. Chittaranjan, learned counsel and Mrs. L. Ayangleima, learned counsel appearing for the respondents No. 2 and 3 endorsed the submission advanced by the learned counsel appearing for the respondent No. 1.

[14] I have heard the rival arguments of the learned counsel appearing for the parties at length and have also carefully examined the materials available on record. The object and purpose of the pleading is to ensure that the litigants came to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the before the court for its consideration. Since the object and purpose is to enable the opposite party to know the case he is to meet with, all pleadings must be pleaded in support of the case set up by the petitioner. In the absence of pleadings, a party cannot be allowed to lead evidence and violation to state even a single material

fact will entail dismissal of the suit or petition. Particulars on the other hand, are the details of the case which is in the nature of evidence, a party would be leading at the time of trial. On the other hand, the object of framing issues is to be identified from the pleadings the question or points required to be decided by the courts so as to enable the parties to led evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties or its attention on that claim or relief by framing an appropriate issues. Thus, it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

[15] In the present case, the election petition had been filed in the context of the gross misrepresentation and the concealment of facts, documents, assets, liabilities and holdings by the applicant at the time of filing his affidavit in Form - 26 along with his nomination papers in connection with the 12th Manipur Legislative Assembly Election. On careful perusal of the averments made in the election petition, this court find that the election petitioner, respondent No.1 herein, elaborately and concisely pleaded all the material facts and set forth full particulars of all the actions and omissions of the applicant which are sufficient to constitute the case for claiming to set aside the election of the applicant in terms of the relevant provisions of the RP Act, 1951.

[16] In the said election petition, the applicant, who is the respondent No. 1 had already filed his written statement and in the said written statement, the applicant generally denied some of the averments made in

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the election petition, admit some of the averments and made statements that some of the averments are subject to trial. On careful perusal of the averments made by the election petitioner in the said election petition, this court is not inclined to accept the contentions advanced on behalf of the applicant that in the said election petition there is not concise statement of material facts and no full particulars of corrupt practice and that the election petition did not disclose a triable issue or cause of action.

[17] With regard to the arguments advanced on behalf of the applicant that the election petition is liable to be dismissed on ground of non-compliance of the provisions of Section 81(3) of the RP Act, 1951, it is to be pointed out that the specific argument made on behalf of the applicant is that the copy of the election petition furnished to the applicant was not attested by the petitioner in the manner as provided under Section 81(3) of the RP Act, inasmuch as, the copy of the said election petition furnished to the applicant was attested by the election petitioner only as "true copy of the original" and not as "true copy of the petition". It is not the case of the applicant that the election petitioner did not at all attest the copy of the election petition furnished to the applicant under his signature but only that the election petitioner failed to write the words "true copy of the petition" while attesting the said copy.

[18] In my considered view, the election petitioner had substantially complied with the mandate of Section 81(3) of the RP Act, 1951 and this is not inclined to dismiss the election petition only on the ground of omitting to write the words "the petition" at the time of attestation of the copy of the

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election petition furnished to the applicant. In this regard, we can gainfully rely on the following judgments:-

1. **“Ch. Subbarao Vs. Member, Election Tribunal, Hyderabad & ors.”** reported in AIR 1964 SC 1027

“26. If the signature of the petitioner whose name is set out in the body of the petition is appended at the end, surely it authenticates the contents of the document. Now in regard to this the learned Judges of the High Court themselves observed after referring to the terms of S. 81(3):

"No doubt, what is necessary is a substantial compliance with the requirement of attestation. For instance, if it is proved that the election petitioner has signed animo attestendi, and omitted the words 'true copy' by mistake or inadvertently, there is a substantial requirement of the compliance of S. 81(3). The same may be said if the relative positions of the words 'true copy' and of the signature one below the other are not correct."

They however held that as there was no evidence of the signature having been appended animo attestendi, there was non-compliance with S. 81(3). The learned Solicitor-General while not disputing the correctness of the observations of the learned Judges just extracted pressed upon us that the signature at the end of the copy was meant only as a copy of that in the original petition and could not satisfy the requirement as to attestation of the copy. He also submitted that the position would have been different if there were two signatures instead of one at the end of the copy, even if the words 'true copy' were omitted to be put down. In that case, he said, one signature could be treated as representing the copy of the signature on the original and the other might be taken to have been made animo attestendi. We do not however consider that there is really need for so much refinement when one has to look at whether there is a substantial compliance with the requirement of this provision. If the signatures now found on the copies were intended to authenticate the document to which it is appended, viz., the copy, it would only mean that the copy did not reproduce the signature in the original.

There is no compelling necessity to hold that the signatures were merely intended to be a copy of those on the original in order to spell out a non-compliance with S. 81(3), seeing that a signature in original was not needed on the copy and a writing copying out the name of the signatory would suffice. The decision of this Court in

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Murarka's case, C.A. Nos. 30 and 31 of 1963 D/- 7-5-1963 (SC) is authority for the position that the absence of a writing in the copy indicating the signature in the original would not detract the copy from being a true copy. In the circumstances, we consider that there has been substantial compliance with the requirement of S. 81(3) in the petition that was filed by the appellant and the learned Judges were in error in directing the dismissal of the petition.

2. **“Pukhrem Saratchandra Singh Vs. Mairembam Prithviraj @ Prithibiraj Singh”** reported in 2016 Legal Eagle (Manipur) 25.

“9. On the basis of the pleadings, the following six (6) issues were framed:

- i) Whether the Returning Officer of 27th-Moirang AC has illegally accepted the nomination paper of the respondent or not?
- ii) Whether the election of the respondent had been materially affected by the acceptance of the nomination paper of the respondent by the R.O. of 27th -Moirang A/C or not?
- iii) Whether the respondent had filed false affidavit in respect of the highest education qualification in the form, in which the respondent had mentioned "MBA Mysore University" or whether it was merely a clerical error?
- iv) Whether the petition lacks material facts or not?
- v) Whether the election petition is liable to be dismissed for not putting the words "attested to be true copy of the petition" on each and every page of the petition by the petitioner himself or not; or on any of the defects raised by the respondent in his written statement?
- vi) Whether the petitioner is entitled to the relief claimed in the writ petition?"

“21. As regards the objection raised by the respondent that the election petition is liable to be dismissed on the ground of non conformity with Section 81(3) of the RP Act, 1951, which is a procedural defect, there were overwhelming judicial pronouncements that the Court ought not to take a hyper technical view and that it is only where there is total or near total non-compliance of the provisions of Section 81(3) that it may render such election petition liable to be dismissed. However, if there is a substantial compliance with the requirements of Section 81(3), the election petition cannot be dismissed. The Hon'ble Supreme Court as far back as in the year 1964 in Ch. Subbarao Vs. Member, Election Tribunal, Hyderabad and Ors., AIR 1964 SC 1027 th had dealt with the case in which the election petition was typewritten and copies which accompanied the

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petition were carbon copies of the typescript. The copies bore 2 (two) signatures in original of the election petitioner authenticating both the contents of the petition as well as the verification thereof. The petitioner did not, however, insert the words "true copy" before or above his signatures. The High Court dismissed the election petition on the ground of non-compliance of the provisions of Section 81(3) of the Act. The Hon'ble Supreme Court held that if the signature of the petitioner whose name is set out in the body of the petition is appended at the end, surely it authenticates the contents of the document. The aforesaid decision in Ch. Subbarao (supra) was relied upon by another Constitution Bench in Dr. Anup Singh Vs. Shri Abdul Ghani and ors., AIR 1965 SC 815. In Para No. 7, the Hon'ble Supreme Court held that:

"(7) An exactly similar matter came to be considered by this Court in Ch. Subba Rao v. Member, Election Tribunal, AIR 1964 SC 1027 th. In that case also the copies were signed by the petitioner but there was no attestation in the sense that the words "true copy" were omitted above the signature of the petitioner. This Court held that as the signature in original was there in the copy, the presence of such original signature in the copy was sufficient to indicate that the copy was attested as a true copy, even though the words "true copy" were not written above the signature in the copies. This court further held that there was substantial compliance with S. 81(3) of the Act and the petition could not be dismissed under S. 90(3). That case applies with full force to the facts of the present case, and it must therefore be held that there was substantial compliance with S. 81(3) and the petitions could not therefore be dismissed under S. 90(3)."

"22. In the present case at hand, even if the election petitioner did not write the words "attested to be true copy of the petition", along with his signatures, the election petitioner wrote the words "attested" before his signatures in his own hand writing on each page, thus, in conformity with the aforesaid 2 (two) decisions of the Hon'ble Supreme Court. This Court is of the view that since the election petitioner had put his signatures on the copies furnished to the respondent and also had written the word "attested" on each page, he has substantially complied with the requirements of Section 81(3) of the RP Act, 1951. Hence, it cannot be said that the election petitioner has not complied with the provisions of Section 81(3) and cannot, therefore, be dismissed under Section 86(1) of the Act as sought by the respondent in view of the above Constitution Bench decisions in Ch. Subbarao (supra) and Dr. Anup Singh (supra). This Court is of the view that it may not be necessary to deal with the

other case laws relied upon by the respondent as these are not applicable to the present case.”

“23. Accordingly, the Issue No. (v) as to whether the election petition is liable to be dismissed for not putting the words “attested to be true copy of the petition” on each and every page of the petition by the petitioner himself; or on any of the defects raised by the respondent in his written statement, is decided against the respondent and in favour of the petitioner”.

The judgement and orders rendered by this court in the case of Pukhrem Saratchandra Singh (supra) had been upheld by the Hon'ble Apex Court in the case of “**Mairembam Prithviraj Singh @ Prithviraj Singh Vs. Pukhrem Saratchandra Singh**” reported in (2017) 2 SCC 487.

[19] With regard to the argument advanced on behalf of the applicant for dismissing the election petition for non-compliance with the requirements of filing an affidavit in support of the allegation of corrupt practice as provided under the proviso to Section 83(1) of the RP Act, this court is of the considered view that the allegation made in the election petition are mainly in connection with the improper acceptance of the nomination of the applicant and non-compliance with the statutory provisions. The allegation regarding corrupt practice made in the election petition relates to the concealment of material information in Form -26 affidavit filed by the applicant, which amounts to undue influence as defined in Section 123(2) of the RP Act, 1951.

[20] In the case of “**Lok Prahari through its General Secretary Vs. Union of India & ors.**”, reported in (2018) 4 SCC 699, the Hon'ble Apex Court held that non-disclosure of assets and source of income by the candidate and their associates would constitute a corrupt practice falling

under the heading "undue influence" as defined under Section 123(2) of the RP Act, 1951. The relevant paragraphs of the aforesaid judgments are as under:-

"79. We shall now deal with Prayer 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 1951 RP Act. In this behalf, heavy reliance is placed by the petitioner on a judgment of this Court in Krishnamoorthy v. Sivakumar. 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 RP Act of 1951.

"80. On an elaborate consideration of various aspects of the matter, this Court in Krishnamoorthy case 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. ..."

"81. For the very same logic as adopted by this Court in Krishnamoorthy, 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 1951 RP Act. We, therefore, allow Prayer No.2."

[21] In view of the law laid down by the Hon'ble Apex Court as quoted above and keeping in view the facts and circumstances of the present case,

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this court is not inclined to dismiss the election petition on the ground raised by the applicant.

In view of the facts and circumstances of the present case and the findings and reasons given hereinabove, this Court is not inclined to grant the reliefs sought for by the applicant in the present applications and accordingly, the present applications are hereby dismissed as being devoid of merit.

Parties are to bear their own cost.

JUDGE

FR / NFR

Devananda