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Court No. - 5

Case :- ELECTION PETITION No. - 7 of 2022

Petitioner :- Sheshmani Nath Tripathi (S.N. Tripathi In Short)

Respondent :- Shri Dinesh Rawat, The Returned Candidate

Counsel for Petitioner :- In Person,Devendra Nath Tripathi,Om
Prakash Srivastava,Shraddha Tripathi

Counsel for Respondent :- Kaushlendra Yadav,Anupriya
Srivastava,Indrajeet Shukla,Skand Bajpai

Hon'ble Abdul Moin,J.

1. Heard the petitioner who appears in person as well as Shri Skand Bajpai, learned counsel for the respondent, on the application under Order 7 Rule 11 CPC more particularly the provisions of Sub Rule (a) and (d) of Order 7 Rule 11 of the CPC.

2. Arguing on Sub Rule (a) of Order 7 Rule 11 the argument of the Shri Skand Bajpai is that the said sub rule pertains to rejection of a plaint where it does not disclose a cause of action.

3. Reference has been made to Section 36 of the Representation of Peoples Act, 1951 (hereinafter referred to as the 'Act, 1951') to contend that the said provision pertains to scrutiny of nomination. Sub Section (1) of Section 36 of the Act, 1951 provides for examination of the nomination papers of all candidates which power has been given to the candidates, the election agents, one proposer of each candidate and one other person duly authorized in writing by each candidate but no other person; Sub Section (2) of Section 36 of the Act, 1951 provides for the nomination papers to be examined by the returning officer and to decide all objections which may be made to any nomination and thereafter to reject any nomination either on his own motion or on such objection as might have been preferred.

4. The contention is that once the petitioner does not fall within

the ambit of a person who was given a right of filing of any objection under Sub Section (1) of Section 36 of the Act, 1951 consequently merely because the petitioner is an 'elector' of Haidergarh reserved assembly constituency, as such, in case the nomination of the elected candidate -respondent herein, has been accepted and subsequent thereto he has been declared elected after election consequently no cause of action would accrue to the petitioner to file the instant election petition.

5. Further contention is that apart from the above, no cause of action has arisen to the petitioner to file the instant petition as there is no bar under the Act, 1951 whereby a candidate, who might be set up by a political party, cannot contest the elections and be elected by the people.

6. Further, the argument is that Section 100 of the Act, 1951 gives the grounds for declaring an election to be void. Sub Section (1) (c) indicates the ground as where a nomination has been improperly rejected and further sub-section (1)(d)(i) is a ground for declaring an election to be void where the nomination has been improperly accepted which would materially affect the result of the election.

7. Further, as per Section 81 of the Act, 1951, which deals with the presentation of the petitions, an election petition challenging an election has to be presented on one or more of the grounds specified in Sub Section (1) of Section 100 and Section 101 to the High Court meaning thereby that the grounds on which the election petition can be filed would have to adhere to the aforesaid sections of the Act, 1951. In the absence of the election petition, as filed by the petitioner, adhering or indicating the aforesaid grounds as specified under the Act, 1951 consequently it cannot be said that any cause of action has arisen to the petitioner to file the instant election petition.

8. Referring to the provisions of Section 83 of the Act, 1951, the argument is that an election petition has to contain a concise statement of the material facts on which the petitioner relies as well as to set forth full particulars of any corrupt practice that the petitioner alleges.

9. It is contended that a perusal of the election petition filed by the petitioner does not indicate the corrupt practice which is alleged to have been committed by the elected candidate, respondent herein, and consequently again it cannot be said that any cause of action has arisen to the petitioner to file the election petition.

10. Sri Skand Bajpai, learned counsel for the respondent further argues that as Section 81 of the Act, 1951 has not been complied with i.e none of the grounds as specified in sub Section (1) of Section 100 and Section 101 of the Act, 1951 have been enumerated, consequently, the petition deserves to be dismissed as per Section 86 of the Act, 1951.

11. Elaborating the same, the argument of Sri Bajpai is that Section 100 of the Act, 1951 sets out the ground for declaring an election to be void. It is contended that the grounds as raised by the petitioner in order to challenge the election are that (a) as the respondent has been sponsored or set up by a political party consequently, the equality clause has been violated inasmuch as for a candidate sponsored or set up by a political party only one proposer is required while for an independent candidate, ten proposers are required as per section 33 of the Act, 1951 and (b) the BJP being a political party does not have the right to contest and vote.

12. It is contended that the aforesaid grounds will not fall within the ambit of being grounds as provided under Section 100 of the Act, 1951 inasmuch as none of the grounds as specified under Section 100

of the Act, 1951 are attracted on the aforesaid grounds as raised by the petitioner in the election petition.

13. So far as violation of Section 100 (1) (d) of the Act, 1951 is concerned, which has also been made a ground for declaring the election of the respondent to be void i.e the result of the election of the respondent has been materially affected by the improper acceptance or any nomination on the ground that the objections as preferred by the petitioner were not decided, Sri Bajpai has referred to paragraph 8 (f) and paragraph 14 of the petition to contend that when the aforesaid ground is seen in the context of Section 36 of the Act, 1951 it clearly emerges that once under Sub Section (1) of Section 36 of the Act, 1951 the petitioner had no right to submit any objections consequently, there was no requirement of the returning officer to decide the objections even if preferred by the petitioner, under sub Section (2) of Section 36 of the Act, 1951 and further, as there is no bar under the Act, 1950 or Act, 1951 for a candidate to be set up by a political party as such, it cannot be said that there was an improper acceptance of the nomination of the respondent.

14. Further, elaborating the same, the contention is that the alleged corrupt practice has been detailed in paragraph 17 of the petition. It is contended that Section 123 (2) of the Act, 1951 indicates as to what would be deemed to be a corrupt practice for the purpose of the Act, 1951 but the details as referred to in paragraph 17 of the petition do not make out any "corrupt practice" as per Section 123 of the Act, 1951.

15. Placing reliance on the aforesaid argument, the contention of Sri Bajpai is that no cause of action has arisen to the petitioner to file the instant petition and even though in the capacity of being an "elector" he can file an election petition but then the ground should

emerge in the election petition so as to give any rise of cause of action to the petitioner to file the election petition and consequently, the election petition deserves to be dismissed considering the provisions of order 7 Rule 11 (a) CPC.

16. In this regard, reliance has been placed on the judgment of the Apex Court in the case of **Hari Shankar Jain Vs. Soniya Gandhi- 2001 (8) SCC 429** more particularly paragraphs 23 & 33 pertaining to the cause of action.

17. So far as the ground taken by the petitioner of the respondent could not have been sponsored or set up by a political party, reliance has been placed on the judgment of the Apex Court in the case of **Rama Kant Pandey Vs Union of India- 1993 (2) SCC 438** paragraphs 9 & 10 to contend that once the Apex Court has held that the political party can set up a candidate then as the respondent is a candidate of the BJP, a political party and has duly been elected then no cause of action would accrue to the petitioner to file the instant petition.

18. So far as the provisions of Order 7 Rule 11 (d) CPC is concerned, the argument of Sri Bajpai is that in terms of the aforesaid provisions, a plaint can be rejected where the suit appears from the statement in the plaint to be barred by any law.

19. Reliance has been placed on the judgment of the Apex Court in the case of **Bhargavi Constructions & Anr. Vs. Kothakapu Muthyam Reddy & ors- 2018 (13) SCC 480** paragraphs 26 to 32 to contend that the law laid down by the Apex Court would also come within the ambit of "law" as indicated in Order 7 Rule 11 (d) CPC and thus it is contended that once the Apex Court in the case of **Rama Kant Pandey (supra)** has held that a candidate can be sponsored or

set up by a political party consequently, the instant petition challenging the election of the respondent on the ground of he being a candidate put up or sponsored by a political party being legally invalid, would consequently be hit by the provisions of Order 7 Rule 11 (d) CPC keeping in view the "law" in this regard as laid down in the case of **Rama Kant Pandey (supra)**.

20. Further argument is that as the affidavit accompanying the election petition is defective consequently, the election petition deserves to be dismissed. However, Sri Bajpai fairly states that it is a curable defect which can be cured by the petitioner.

21. Responding to the aforesaid arguments, Shri Sheshmani Nath Tripathi, the petitioner in person has argued that it is admitted by the respondent that the petitioner has a right to file the election petition, as such, the trial of the election petition has to take place.

22. It is further argued by the petitioner that considering the law laid down by the Hon'ble Supreme Court in the case of **Kesavananda Bharati Sripadagalvaru & Ors. v. State of Kerala & Anr, 1973 (4) SCC 225**, it is only a 'person' who can contest the elections and not a person who has been sponsored by a political party.

23. Referring to Article 173 of the Constitution of India read with Sections 5 and 79(d) of the Act, 1951 and Section 2(g) of the Act, 1950, the argument of the petitioner is that both under the Constitution of India as well as under the Act, 1951, it is only a 'person' who can contest for membership of the State Legislator, as in the instant case, and consequently the respondent, who is a nominated candidate of a political party, could not have validly contested election and thus as his nomination itself is bad in the eyes of law consequently his election would also be bad, which fact has been indicated in the

election petition.

24. Referring to the definition of a 'person' as per the definition clause under Section 2(g) of the Act, 1950, Sri Tripathi has argued that a 'person' would not include a body of persons while as per Section 29-A of the Act, 1951 any association or body of individual citizens of India calling itself a political party can apply for its registration as a political party for the purpose of Act, 1951 and thus argues that there is a clear distinction between a person and a body of persons.

25. Shri Tripathi also argues that once objections had been preferred by him against the nomination of the respondent consequently the returning officer was under obligation/statutory duty to decide the said objections as per the provisions of Section 36(2) of the Act, 1951. Shri Tripathi argues that while filing an election petition, he has invoked Section 100(1)(a) and Section 100(1)(d) of the Act, 1951 as the grounds for declaring the election of the respondent to be void and consequently a cause of action has arisen to him to challenge the said election and thus the objections filed by the respondent under Order 7 Rule 11 C.P.C. merit to be rejected and the election petition should go for trial. In this regard, Shri Tripathi has indicated that in order to consider said objections under Order 7 Rule 11 C.P.C. the entire petition has to be read.

26. Shri Tripathi has also stated that written arguments as filed by him should also be considered by this Court apart from the arguments as advanced by him.

27. For the sake of convenience, written arguments as filed by Shri Tripathi are reproduced below verbatim:-

"The humble petitioner respectfully states:-

1. Briefly recapitulating all that has happen uptil now on

defendant's application under Order 7 Rule 11 of C.P.C seeking limine dismissal of this election petition on ground that it does not disclose any cause of Action. Hence, it is liable to be rejected on this ground at one.

2. The petitioner furnished his reply. Even the Counsel of the petitioner Shri D.N. Tripathi furnish a "Short Note" as required by this Hon'ble Court. All these documents are on record.

3. There after the learned Counsel of the defendant made Oral submission which was nothing but practically a trial of the issue of merit of the matter, totally Contrary to the law settled by the Hon'ble Supreme Court as to the provisions of Order 7 Rule 11 C.P.C.

4. Thereafter, the petitioner started making his submissions.

5. During the course of petitioner's arguments, this Hon'ble Court raised a few question pertaining to sections 82, 84, 86, 100 of the R.P.Act, 1951, including Election Court's power to grant relief and petitioner's right to seek those relief expressed as prayer in this petition.

6. In reply to court's specific question pertaining to the said provisions of this Act, the petitioner quoted the settled laws declared by two Constitution Benches of the Hon'ble Supreme Court, namely- (1) Durga Shanker Mehta Vs, Raghuraj Singh, AIR 1954 S.C. 520 and (2) M.S. Gill Vs. C.E.C. New Delhi, 1978 (1) S.C.C.405 reading the Specific paras specifically taking relief under the Constitution subject to the statutory regulation.

7. This Hon'ble Court expressed satisfaction and also Complemented by saying-"enlightened talk."

8. However, certain doubts still remained in the mind of this Hon'ble Court. Consequently, this Hon'ble Court formulated four questions in respect of the said provisions of this Act, including the issue of the virus of the Statutory instrument and referred to same to be Considered and decided by the larger Bench. Accordingly, the Hon'ble larger bench pronounced its Considered decision and returned back the record to this Hon'ble Court for further proceeding in the matter as recorded in its para-60.

9. In the Context of the decision of the Hon'ble larger bench as recorded in its para-40 is relevant requiring its perusal and last five lines of this para being decisive are extracted below:-

".....and the election petition had to be tried in accordance with the provisions of the Act,1951 and also that the High Court cannot entertain and pronounce upon matters which do not fall within the ambit of section 100 of the Act, 1951."

10. Accordingly, it is now loud and clear that all questions and issues falling within the ambit of section 100 of the Act, 1951 are triable by this Hon'ble Court

11. In this Context, on perusal of the pleadings in para-1 of this election petition, it becomes clear that this election petition is substantially based on the "non- compliance" with limitations enacted in Art. 173 of the Constitution read with sections 32, 36(2)(a) and 79(d) of this Act, attracting section 100 (1)(a) and 100 (1)(d) (iv) of the Act, 1951 and section 100(1)(d)(iv) is held as the residuary provision, exhaustive of all grievances.

12. The grounds for questioning an election in section 81 are the material facts u/s 100(1)(a) referable to section 83(1)(a) which is quite different from section 83(1)(b) talking of the corrupt practice.

13. The Hon'ble Supreme Court has by now settled the law that at the stage of the examination of the application under Order 7 Rule 11 of C.P.C., the issue of merit of the matter would not be within the realm of this Hon'ble Court. Only the averments in the plaint would be relevant. It is the settled position of law that no material except to the plaint or the documents annexed to the plaint, Could be considered at the stage of consideration of the application under Order 7 Rule 11 of C.P.C.

14. The following case laws are the final and conclusive authority in this Context, namely:-

A. Kum. Geetha, D/o- Late Krishna v. Nanjundaswami decided on 31 October, 2023 (paras 8 and 17 & Para 6 and 7)

B. Church of Chirts Charitable Trust & Education Vs.M/S Poniamman Educational Trust Rep- on 3 July,2012 (para 6 page 28 and para 8 page 29)

C. Eldico Housing & Industries Ltd V. Ashok Vidyarthi- On 30 November, 2023, Para & Page 6 and para 17 page 8.

D. Gururdev Singh V. Harvinder Singh- On 10 Oct, 2022, Para-4.

E. Hari Shanker jain V. Sonia Gandhi, 2001 (8) S.C.C.233, para 24 and also-

F. A.K. Chaudhuri V. State Of Assam, 1975(4).S.C.C.7 P-1.

Material Facts and Full Particulars :-

15. The expression "Material facts" and full particulars are referable to section 83(1)(a) and (b) of the Act, 1951, are no longer res-Integra, it refer to para-43 of Anil Vasudev Solgaonker. Naresh Kaushali Solgaonker on 20.08.2009, S.L.P No- (Civil)18893 of 2008 and para-10 of Mohan Rawale V. Damoder tatyaba alias Dadasahab,1994 (2) S.C.C.392, what particulars are to be stated depends on the facts of each case. But in my opinion, it is absolutely essential that the pleadings, not to be embarrassing to the defendants, should state those facts which will put the defendants on their guard and tell them what they have to meet when the case comes on for trial"- as per para-40 of Anil Vasudev Solgaonker (Supra)

16. Para-60 of Anil Vasudev Solgaonker(supra) says:-

"What particulars could be said to be "material fact would depend on the facts of each case, and no rule of universal application can be laid down. It is however essential that all basic and primary facts must be proved at the trial by the party to establish the existence of a Cause of Action or defense, are material facts and must be stated by the party"

17. In para-63 of Anil Vasudev Solgaonker (Supra). The Hon'ble Supreme Court says:

"the election petition must contain concise statements of material facts on which the petitioner relies. There is no definition of the 'material facts' either in R.P. Act,1951 nor in the C.P.C. In a series of judgments, this court has laid down that all facts necessary to formulate a complete Cause of Actions should be termed as 'material facts', Material fact in other words mean the entire bundle of facts a Complete Cause

of Action.

18. In para-10 of Mohan Rawale (supra) the Hon'ble Supreme Court has ruled this:-

Court has ruled this:-

"A reasonable Cause of Action is said to mean a Cause of Action with some chances of success when only the allegations in the pleading are considered, but so long as the claim discloses some Cause of Action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for, striking it out"

19. It is thus evident that the Concise statement of material facts pertaining to the allegation of "non-compliance" with the fundamental rights, Constitutional and statutory rights falling within the ambit of section 100(1)(d) (iv) of this Act, would certainly be different from the cases of corrupt practice u/s 83(1)(b) there under. And a classic example of the same can be seen in the pleadings contained in para-1 of this election petition be read the same as per the ruling of the Hon'ble Supreme Court in this Context.

Perusal of the Pleadings in this Election Petition:-

20. Kindly para -(A) Firstly may be referred to, which is reproduced below as ready reference:-

" The Returned Candidate has made a declaration on Oath in his nomination paper FORM-2B, AnnX. No.1, that he has been set up at this election by B.J.P, which is a recognized National party in this State and accordingly, he demanded that the symbol reserved for that party be allotted to him, which is referred to in Part-3 of his nomination paper FORM 2B. Where as a nominee of any political party is not qualified to be chosen to fill a seat in the legislature of a State under the limitation enacted in Article 173 of the Constitution of India read with sections 32, 79(d) and 36(2)(a) of this Act."

Para-1(B) Secondly-

This election has been conducted in gross violation of the provisions of Sections 15(2), 32, 33(1), 36(2)(a), 79(b) and (d) of this Act and also, of the limitation enacted in Article 173 of

the Constitution, Apart from the violation of the said provisions, the provisions of Article 13(2), 14, 19(1)(a), 19(4) and 21 in Part-III of the Constitution, that is fundamental rights, has also been violated in the sense explained in the succeeding paras- which attracts sub-section IV of section 100(1)(d) of this act, materially effecting the statutorily defined electoral right in section 79(d) of this Act, which inter- alia includes the right to stand or not to stand as candidate for election to the legislature read with section 32 of this Act, and Art. 173 of the Constitution and Consequently, the entire scheme of free and fair" election and the Rules of Electoral Morality has been set at naught and Rule of Law is demolished.

Para-1(C) Thirdly-*A body of persons called B.J.P. claimed as recognized political party, is alien to this Assembly Constituency and being a "non-citizen" and " non- adult" is alien to Articles 19(1)(a), 170, 173 and 326 of the Constitution. Hence, the said B.J.P. does not possess any legal right to set-up a person for election at this Assembly Constituency u/s 32 of this Act, read with Art.173 of the Constitution and section 79(d) of this Act,- Under which a person does not require any kind of association or party etc, for being nominated as a candidate u/s 32.*

Nevertheless the Returned candidate Mr. Dinesh Rawal stood as a candidate at the instance of the B.J.P. and FORM -A and B attached, which amounts to "undue influence" at the "electoral right" within the meaning of section 123(2) of this Act, referable to the "electoral right" defined u/s 79(d) of this Act.

28. According to the law settled by the Hon'ble Supreme Court as to the examination of the application under Order 7 Rule 11 C.P.C. it is mandatory that the election Court shall consider only the averments in the petition and nothing else. Wherefore, it is unavoidable the reading of this election petition as a whole and by meaningful reading taking it to be true.

29. Accordingly, the petitioner may kindly be permitted to read this petition as a whole for consideration and decision in this matter and

be pleased to reject the application of the defendant under Order 7 Rule 11 C.P.C. being merit less.

30. Apart from giving his written arguments, which the Court has reproduced verbatim, Sri Tripathi, the petitioner who appears in person has also vehemently argued that while considering the application filed under Order 7 Rule 11 CPC, it is only the averments made in the petition which are to be seen in the context and no other material is to be considered.

31. In this regard, reliance has been placed on the judgment of the Apex Court in the case of **Geetha v. Nanjundaswamy-2023 SCC OnLine SC 1407**. He has also placed reliance on the judgment of the Apex Court in the case of **Mohan Rawale vs Damodar Tatyaba-MANU/SC/0637/1994** on the point of cause of action.

32. Thereafter, Sri Tripathi has proceeded to read out the election petition.

33. Emphasizing on the use of the words "corrupt practice" as used in the election petition, the argument of Sri Tripathi is that the said "corrupt practice" is to be seen in the context of Section 123 (2) of the Act, 1951 as per the specific averment made in paragraph 1 of the election petition.

34. Further contention on the basis of averments made in the election petition is that the returning officer should have himself *suo moto* seen the nomination of the respondent herein considering the provisions of Section 36 (2) (a) of the Act, 1951 which caste the duty upon the returning officer to do so.

35. Emphasis has also been laid on the averments contained in paragraph 20 of the petition to contend that as admittedly the

respondent elected candidate is a candidate put up or sponsored by a political party consequently, the respondent would not fall within the ambit of being a "person" and once a political party itself cannot contest the election as such, the law laid down by the Apex Court in the case of **Keshava Nand Bharti (supra)** as well as **Smt. Indra Nehru Gandhi Vs. Sri Raj Narain** in Civil Appeal No.887 of 1975 dated 07.11.1975 would be attracted.

36. Again, Sri Tripathi has reiterated the corrupt practice as has been levelled against the returned candidate as per the details given in paragraph 17 of the election petition. Further contention is that as the decision of the returning officer has been challenged in the election petition per which the returned candidate was permitted to contest the election as such, the said decision merits to be set aside keeping in view the averments made in the election petition.

37. Responding to the aforesaid argument, Sri Skand Bajpai, learned counsel for the sole respondent has argued that nomination has correctly been accepted by the returning officer as the said nomination was filed by the respondent in the capacity of being a "person" as defined under the Act, 1950 and which also confirms to the provision of Article 173 of the Constitution of India and mere fact that he was sponsored or put up by a political party to which there is no bar is clearly permissible and admissible under the provisions of the Act, 1950 and Act, 1951 would not thus render his nomination invalid.

38. In this regard, reliance has been placed on the Constitution Bench judgment of the Apex Court in the case of **Anoop Barnwal Vs. Union of India- (2023) 6 SCC 161** (Para 130 to 133, 137, 140, 143 to 149, 174 and 175) to contend that the Apex Court has clearly held that right to elect and right to vote are all creation of statute and there is no

fundamental right for the same.

39. Likewise, reliance has also been placed on the judgment of the Apex Court in the case of **Kuldeep Nair Vs. Union of India- 2006 (7) SCC 1** (Para 35, 353, 355 to 363, 380 to 385) to argue that it has been held that right to contest the election is also a statutory right.

40. The argument is that once the Apex Court in the aforesaid judgments has held that the right to contest the election, right to elect and right to vote are only statutory rights or a creation of statute and there is no fundamental right and there is no bar under the Act, 1950 or Act, 1951 per which the returned candidate could not have been put up or sponsored by a political party and his nomination has been accepted by the returning officer consequently, even if objections may have been filed by the petitioner which could not validly be filed by him and his nomination has been accepted and the respondent has been declared as elected after due election yet no cause of action has arisen to the petitioner to file the instant election petition and thus the provisions of Order 7 Rule 11 (a) & (d) CPC are clearly applicable in the instant case and thus the said application merits to be allowed and the petition merits to be dismissed.

41. Heard the petitioner in person as well as Sri Skand Bajpai, learned counsel for the respondent and perused the election petition.

42. The application under Order 7 Rule 11 CPC has been filed for rejection of the election petition primarily on the basis of sub-rule (a) and (d) of Rule 11 of Order 7 CPC on the ground that the election petition does not disclose a cause of action for filing of the election petition and that the suit appears from the statement in the plaint to be barred by law.

43. For the sake of convenience, relevant extract of Order 7 Rule 11 (a) & (d) of CPC are reproduced as under:-

“Rejection of Plaint -The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(d) where the suit appears from the statement in the plaint to be barred by any law;”

44. It is admitted by the learned counsel for the respondent that the petitioner has a right of filing of an election petition considering the provisions of Section 81 of the Act, 1951, the petitioner being an ‘elector’. Thus, the only question to be seen is as to whether the petition filed by the petitioner discloses a cause of action to the petitioner to file the election petition and whether the election petition appears from the statement in the plaint to be barred by any law inasmuch as it is a settled law that in order to consider an application under Order 7 Rule 11 CPC, it is only the averments made in the plaint/petition which are to be seen. Consequently, the Court proceeds to see as to whether from the averments made in the election petition any cause of action has arisen to the petitioner to file the election petition.

45. The cause of action as disclosed by the petitioner while filing the election petition and the election petition having been read out by the petitioner is that firstly the respondent has made a declaration on oath in his nomination paper that he has been set up at this election by the Bhartiya Janta Party (hereinafter referred to as ‘BJP’) whereas a nominee of any political party is not qualified to be chosen to fill a seat in the legislature keeping in view the provisions of Article 173 of the Constitution of India read with Sections 32, 79(d) and 36(2)(a) of the Act, 1951 which attracts Section 100 (1)(a) of the Act, 1951; secondly election has been conducted in gross violation of provisions

of Sections 15(2), 32, 33(1), 36(2)(a), 79(b) and (d) of the Act, 1951 as well as Article 173 of the Constitution of India and the fundamental rights have been violated which attracts sub-section (iv) of Section 100 (1) (d) of the Act, 1951 and thirdly the BJP, a recognized political party, is alien to the assembly constituency concerned and thus does not possess any legal right to set up a person for election and considering the nomination form at the instance of BJP as filed by the respondent, the same amounts to undue influence at the electoral right within the meaning of Section 123 (2) of the Act, 1951 referable to electoral right defined under Section 79(d) of the Act, 1951.

46. Further the averment in the election petition is that the petitioner went to meet the Returning Officer on the date, time and place fixed for scrutiny of the nomination papers to deliver his written objections under Section 36(2) of the Act, 1951 against the nomination of all those who were set up by the political parties but he was not allowed entry and he was stopped by the police at the main gate. Despite a request in this regard to meet the Returning Officer the said request was rejected. On repeated insistence, the petitioner was called in by the Observer at around 12 in the afternoon and the Observer heard the petitioner in person and then received the written objection of the petitioner, made a note on the said written objection and handed over to the Returning Officer which was received by the Returning Officer who also made a note on the copy of the petitioner as a token of receipt but till filing of the election petition (and even subsequent thereto) the petitioner has not received written reply to the objection made under Section 36(2) of the Act, 1951 and thus as no cognizance of the objections were taken by the Returning Officer the same amounts to violation of Section 36(2) of the Act, 1951 as the Returning Officer has to decide all objections which have been made to any nomination.

47. The petitioner has placed much emphasis on sub-section (iv) of Section 100 (1)(d) (iv) of the Act, 1951 to argue that the said provision categorically provides that in case of non-compliance with the provisions of the Constitution or the Act, 1951 or any rule or order made under the Act, 1951, the same can be a ground for declaring the election to be void.

48. Further the petitioner has argued that it was the duty of the Returning Officer to have satisfied himself that the candidate, in this case the respondent, is qualified and not disqualified as per Article 173 of the Constitution of India.

49. Laying much emphasis on the definition of 'person' as defined under Section 2(g) of the Act, 1950, the contention is that aforesaid definition does not include a body of persons and consequently the respondent who was a candidate put up by the BJP could not have contested the election.

50. Though the vires of various provisions have also been raised in the election petition but considering the Larger Bench judgment dated 18.07.2024 of this Court, more particularly paragraph 59 of the Larger Bench judgment, this Court exercising powers as an Election Judge cannot adjudicate the vires of the Act, 1951 or any provision thereof nor can it adjudicate the vires of any other enactment in view of nature of power and jurisdiction exercised.

51. The corrupt practice as alleged in the instant petition is on the basis of the BJP, a political party, as defined under Section 2(1)(f) of the Act, 1951 not being possessed of the electoral rights in having put up the respondent as its nominee and having allotted the symbol reserved for BJP and that as the respondent was induced to stand as a candidate, the same is an undue influence at the free exercise of the

electoral right under Section 79(d) attracting sub-section (2) of Section 123 of Act, 1951. Further the electoral right as defined under Section 79(d) of the Act, 1951 is said to be a constitutional right under Article 173 and 326 of the Constitution i.e. a substantive right to elect and be elected and to hold public office in the polity and that such electoral right cannot be wished away by juristic persons like BJP.

52. Further it has been argued that the Returning Officer has patently erred in law in accepting the nomination form of the respondent being contrary to the provisions of Section 36(2)(a) of the Act, 1951 and in not deciding the objections of the petitioner.

53. Further the ground is that considering Article 173 of the Constitution there is no provision of any kind of association or body of individuals for standing as a candidate for election as such right has only been given to an individual person.

54. The aforesaid arguments of the petitioner as also emerge from a perusal of the election petition are said to be the cause of action for filing of the election petition which have been opposed on the basis of averments contained in the application filed under Order 7 Rule 11 CPC by Sri Skand Bajpai learned counsel for the respondent.

55. The arguments of Sri Bajpai, learned counsel for the respondent, which have already been indicated above, are not being repeated for the sake of brevity.

56. From perusal of the election petition as well as the judgment of Hon'ble Supreme Court in the case of **Geetha (supra)** it is clearly apparent that while considering the application filed under Order 7 Rule 11 CPC it is only the averments made in the petition which are to be seen in the context and no other material is to be considered.

57. From perusal of the election petition and the arguments as raised by the petitioner it emerges that the cause of action(s) which has led the petitioner to file election petition are that the respondent's nomination form could not have been accepted by the Returning Officer as he was a 'person' put up by the political party; considering Article 173 of the Constitution only a 'person' can stand for an election; the objections filed by the petitioner were required to be decided by the Returning Officer under Section 36(2) of the Act, 1951; by improper acceptance of the nomination of the respondent a corrupt practice has been committed.

58. The Court now proceeds to consider as to whether any cause of action has arisen to the petitioner to file the election petition.

59. In order to consider the point of cause of action to the petitioner to file the election petition, the relevant provisions over which reliance has been placed by the petitioner and respondent are to be seen.

Section 2(g) of the Act, 1950 reads as under:-

"person" does not include a body of persons.

Section 5 of the Act, 1951 is reproduced as under:-

Qualifications for membership of a Legislative Assembly—A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless—

- (a) *in the case of a seat reserved for the Scheduled Castes or for the Scheduled Tribes of that State, he is a member of any of those castes or of those tribes, as the case may be, and is an elector for any Assembly constituency in that State;*
- (b) *in the case of a seat reserved for an autonomous district of Assam, 6*** he is a member of a [Scheduled Tribe of any autonomous district] and is an elector for the Assembly constituency in which such seat or any*

other seat is reserved for that district; and

- (c) *in the case of any other seat, he is an elector for any Assembly constituency in that State:*

[Provided that for the period referred to in clause (2) of article 371 A, a person shall not be qualified to be chosen to fill any seat allocated to the Tuensang district in the Legislative Assembly of Nagaland unless he is a member of the regional council referred to in that article.]

Section 32 of the Act, 1951 is reproduced as under:-

“32. Nomination of candidates for election. - Any person may be nominated as a candidate for election fill a seat if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act [or under the provisions of the Government of Union Territories Act, 1963 (20 of 1963), as the case may be].

Section 33 of the Act, 1951 is reproduced as under:-

Presentation of nomination paper and requirements for a valid nomination.

(1) *On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven O'clock in the forenoon and three O'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer:*

[Provided that a candidate not set up by a recognised political party, shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency:

Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday:

Provided also that in the case a local authorities' constituency, graduates' constituency or teachers' constituency, the reference to “an elector of the constituency as proposer” shall be construed as a

reference to ten per cent. of the electors of the constituency or ten such electors, whichever is less, as proposers.]

[(1A) Notwithstanding anything contained in sub-section (1), for election to the Legislative Assembly of Sikkim (deemed to be the Legislative Assembly of that State duly constituted under the Constitution), the nomination paper to be delivered to the returning officer shall be in such form and manner as may be prescribed:

Provided that the said nomination paper shall be subscribed by the candidate as assenting to the nomination, and—

- (a) in the case of a seat reserved for Sikkimese of Bhutia-Lepcha origin, also by at least twenty electors of the constituency as proposers and twenty electors of the constituency as seconders;*
- (b) in the case of a seat reserved for Sanghas, also by at least twenty electors of the constituency as proposers and at least twenty electors of the constituency as seconders.*
- (c) in the case of a seat reserved for Sikkimese of Nepali origin, by an elector of the constituency as proposer:*

Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday.]

(2) In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State.

(3) Where the candidate is a person who, having held any office referred to in 1 [section 9] has been dismissed and a period of five years has not elapsed since the dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State.

(4) On the presentation of a nomination paper, the

returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls:

[Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.]

(5) Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny.

[(6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper:

Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the returning officer for election in the same constituency.]

[(7) Notwithstanding anything contained in sub-section (6) or in any other provisions of this Act, a person shall not be nominated as a candidate for election,—

(a) in the case of a general election to the House of the People (whether or not held simultaneously from all Parliamentary constituencies), from more than two Parliamentary constituencies;

(b) in the case of a general election to the Legislative Assembly of a State (whether or not held simultaneously from all Assembly constituencies), from more than two Assembly constituencies in that State;

(c) in the case of a biennial election to the Legislative Council of a State having such Council, from more than two Council constituencies in the State;

(d) in the case of a biennial election to the Council of States for filling two or more seats allotted to a State, for filling more than two such seats;

(e) in the case of bye-elections to the House of the People from two or more Parliamentary constituencies which are held simultaneously, from more than two such Parliamentary constituencies;

(f) in the case of bye-elections to the Legislative Assembly of a State from two or more Assembly constituencies which are held simultaneously, from more than two such Assembly constituencies;

(g) in the case of bye-elections to the Council of States for filling two or more seats allotted to a State, which are held simultaneously, for filling more than two such seats;

(h) in the case of bye-elections to the Legislative Council of a State having such Council from two or more Council constituencies which are held simultaneously, from more than two such Council constituencies.

Explanation.—For the purposes of this sub-section, two or more bye-elections shall be deemed to be held simultaneously where the notification calling such bye-elections are issued by the Election Commission under sections 147, 149, 150 or, as the case may be, 151 on the same date.]

Section 36 of the Act, 1951 reads as under:-

Scrutiny of nominations

(1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer 4*** of each candidate, and one other person duly authorised in writing by each candidate, but no other person, may attend at such time and place as the returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have

been delivered within the time and in the manner laid down in section 33.

- (2) *The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, 5[reject] any nomination on any of the following grounds:—*

*[(a)[that on the date fixed for the scrutiny of nominations the candidate] either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:—Articles 84, 102, 173 and 191, 8***. [Part II of this Act and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963)] 10***; or*

(b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.]

- (3) *Nothing contained in 11[clause (b) or clause (c)] of sub-section (2) shall be deemed to authorise the 12[rejection] of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.*

- (4) *The returning officer shall not reject any nomination paper on the ground of any 1*** defect which is not of a substantial character.*

- (5) *The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:*

Provided that in case 2 [an objection is raised by the returning officer or is made by any other person] the candidate concerned may be allowed time to rebut it not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

- (6) *The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.*
- (7) *For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950).*
- (8) *Immediately after all the nomination papers have been scrutinised and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board.]*

Section 79 of the Act reads as under:-

Definitions.

—In this Part and in [Part VII] unless the context otherwise requires,—

[(a) any reference to a High Court or to the Chief Justice or Judge of a High Court shall, in relation to a Union territory having a Court of the Judicial Commissioner, be construed as a reference to the said Court of the Judicial Commissioner or to the Judicial Commissioner or any Additional Judicial Commissioner, as the case may be;]

[(b) “candidate” means a person who has been or claims to have been duly nominated as a candidate at any election;]

(c) “costs” means all costs, charges and expenses of, or incidental to, a trial of an election petition;

(d) “electoral right” means the right of a person to stand or not to stand as, or 4[to withdraw or not to withdraw] from being, a candidate, or to vote or refrain from voting at an election;

[(e) “High Court” means the High Court within the local limits of whose jurisdiction the election to which the election petition relates has been held;]

(f) “returned candidate” means a candidate whose name has been published under section 67 as duly elected.

Section 100 of the Act reads as under:-

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 of 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) [Omitted];

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the High Court may decide that the election of the returned candidate is not void.

Section 123 of the Act reads as under:-

Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act:—

(1) “Bribery”, that is to say—

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing—

(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to—

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.

Explanation.—For the purposes of this clause the term “gratification” is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in Section 78.

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:

Provided that—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and excommunication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance

of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:

⁹*[Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.]*

(3-A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

¹⁰*[(3-B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.*

Explanation.—For the purposes of this clause, “sati” and “glorification” in relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987.]

(4) The publication by a candidate or his agent or by any other person with 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 the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under Section 25 or a place fixed under sub-section (1) of Section 29 for the poll:

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the pur-

pose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation.—In this clause, the expression “vehicle” means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(6) The incurring or authorising of expenditure in contravention of Section 77.

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely:—

(a) gazetted officers;

(b) stipendiary judges and magistrates;

(c) members of the armed forces of the Union;

(d) members of the police forces;

(e) excise officers;

(f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and

(g) such other class of persons in the service of the Government as may be prescribed:

¹¹[Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent (whether by reason to the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election.]

¹²[(8) Booth capturing by a candidate or his agent or other person.]

Explanation.—(1) In this section the expression “agent” includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(2) For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent of that candidate.

¹³[(3) For the purposes of clause (7), notwithstanding anything contained in any other law, the publication in the Official Gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Central Government (including a person serving in connection with the administration of a Union Territory) or of a State Government shall be conclusive proof—

(i) of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, and

(ii) where the date of taking effect of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, is stated in such publication, also of the fact that such person was appointed with effect from the said date, or in the case of resignation, termination of service, dismissal or removal from service such person ceased to be in such service with effect from the said date.]

¹⁴[(4) For the purposes of clause (8), “booth capturing” shall have the same meaning as in Section 135-A.]

Article 173 of the Constitution of India reads as under:-

Article 173. Qualification for membership of the State Legislature.—

A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he—

²*[(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;]*

(b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and in the case of a seat in the Legislative Council, not less than thirty years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

60. Section 2(g) of the Act, 1950 gives the definition of a person which does not include a body of persons.

61. Section 5 of the Act, 1951 provides the qualification for membership of State Legislature which also gives the qualifications for a 'person'.

62. Section 32 of the Act, 1951 provides that any person may be nominated as a candidate for election if he is qualified to be chosen to fill that seat under the provisions of the Constitution and the Act, 1951.

63. Section 33 of the Act, 1951 pertains to presentation of nomination papers and requirements for a valid nomination which indicates that a 'candidate' has to deliver his nomination papers in person or by his proposer. The proviso to Section 33 of the Act, 1951 provides that where a candidate has not been set up by a recognised political party he shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is

subscribed by ten proposers being electors in the constituency i.e. a difference has been created between a candidate set up by recognised political party and any other candidate.

64. Section 36 of the Act, 1951 provides a scrutiny of nomination of which sub-section (1) provides that the candidates, their election agents, one proposer of each candidate, and one other person duly authorised in writing by each candidate, **but no other person**, may attend at such time and place as the returning officer may appoint for examination of the nomination papers of all candidates. Sub-section (2) of Section 36 of the Act, 1951 provides that the returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination meaning thereby that considering sub-section (1) and sub-section (2) of Section 36 of the Act, 1951, the objections can only be given by the persons as specified under sub-section (1) of Section 36 of the Act, 1951, which objections are to be decided.

65. Section 79 of the Act, 1951 pertains to the definitions in part VI of the Act, 1951 of which sub-section (d) of Section 79 of the Act, 1951 pertains to “electoral rights” of a person whether to stand or not to stand or to withdraw or not to withdraw from being a candidate.

66. Section 100 of the Act, 1951 pertains to the grounds for declaring election to be void of which much emphasis has been laid on Section 100 (1)(a) of the Act, 1951 and Section 100 (1)(d)(iv) of the Act, 1951.

67. Section 123 of the Act, 1951 pertains to corrupt practice which indicates that corrupt practices as specified under Section 123 of the Act, 1951 would be deemed to be corrupt practices for the purposes of the Act, 1951.

68. Article 173 of the Constitution of India gives the qualification for membership of the State Legislature of which emphasis has been laid by the petitioner on the word 'person' i.e. a person not being qualified to be chosen to fill up a seat in the Legislature unless he fulfills certain qualifications.

69. After considering the aforesaid provisions of the Act, 1950, Act, 1951, Article 173 of the Constitution of India, and the arguments of the petitioner, it is apparent that the thrust of the election petition and the arguments of the petitioner are primarily on the ground that as the respondent herein was put up by a political party consequently it was the political party itself which was contesting the election and this aspect of the matter should have been considered on the basis of objections that had been raised by the petitioner before the Returning Officer upon the nomination being filed by the respondent herein but the Returning Officer did not decide the objections which were filed by the petitioner.

70. The aforesaid argument is patently misconceived. The reason is that the respondent has fought the election in the capacity of being a 'person' and there is no bar either under Constitution of India or the Act, 1951 or even as per the definition clause as given under the Act, 1950 whereby a 'person' who has been put up by a political party can not contest the election. There is a clear distinction between the definition of a 'person' which excludes a body of persons as defined under Section 2(g) of the Act, 1950 but again it is the respondent who has contested the election as a 'person' put up by a political party and has been declared elected and not a political party and, as already indicated above, is no bar under the Act, 1950, Act, 1951 and Constitution of India which bars the political parties to put up a candidate.

71. This aspect of the matter has been considered by Hon'ble Supreme Court in the case of **Ramakant Pandey (supra)** wherein the Hon'ble Supreme Court after placing reliance on the Constitution Bench judgment of **Dr. P.N. Thampy Terah vs. Union of India – 1985 Supp. SCC 189** held as under:-

9. The challenge of the petitioner is directed against the differential treatment which the election law in India gives to candidates set up by political parties. The main thrust of the argument of the learned counsel is that the party system and the recognition of political parties is itself detrimental to the cause of real democracy. In any event, no additional advantage ought to have been allowed to candidates set up by political parties. This stand runs counter to the constitutional scheme adopted by the nation. It has firmly been established that the Cabinet system of Government has been envisaged by our Constitution and that the same is on the British pattern. (See Shamsher Singh v. State of Punjab [(1974) 2 SCC 831, 840 : 1974 SCC (L&S) 550 : (1975) 1 SCR 814, 827] .) In England where democracy has prevailed for longer than in any other country in recent times, the Cabinet system of Government has been found to be most effective. In the other democratic countries also the party system has been adopted with success. It has been realised that for a strong vibrant democratic Government, it is necessary to have a parliamentary majority as well as a parliamentary minority, so that the different points of view on controversial issues are brought out and debated on the floor of the Parliament. This can be best achieved by the party system, so that the problems of the nation may be discussed, considered and resolved in a constructive spirit. To abolish or ignore the party system would be to permit a chorus of discordant notes to replace an organised discussion. In his book Cabinet Government (2nd Edn., page 16) Sir Ivor Jennings has very rightly said, "Party warfare is thus essential to the working of the democratic system". It is, therefore, idle to suggest that for establishing a true democratic society, the party system should be ignored. Our Constitution has clearly recognized the importance of this system, which was further emphasised by the addition of the Tenth Schedule to it. The Election Symbols (Reservation and Allotment) Order is also a step in that very direction.

10. There is also no merit whatsoever in the contention that candidates set up by political parties should not receive any

special treatment. The fact that candidates set up by political parties constitute a class separate from the other candidates has been recognised by this Court in numerous cases. In paragraph 14 of judgment in the case of Dr P.N. Thampy Terah v. Union of India [1985 Supp SCC 189] the Constitution Bench observed thus: (SCC pp. 200-01, para 14)

“It is the political parties which sponsor candidates, that are in a position to incur large election expenses which often run into astronomical figures. We do not consider that preferring political parties for exclusion from the sweep of monetary limits on election expenses, is so unreasonable or arbitrary as to justify the preference being stuck down upon that ground.”

In D.M.L. Agarwal v. Rajiv Gandhi [1987 Supp SCC 93] a Division Bench of this Court took note of and emphasised the vital role of political parties in a parliamentary form of democracy and anxiety was expressed about the growing number of independent candidates.

(emphasis by Court)

72. The further argument of the petitioner that his objections as filed before the Returning Officer under the provisions of Section 36 of the Act, 1951 should have been decided is also found to be patently misconceived. The reason is that a bare perusal of Section 36 of the Act, 1951, clearly makes it apparent that it is the persons who have been permitted to remain present under sub-section (1) of Section 36 of the Act, 1951, their objections are to be decided by the Returning Officer under sub-section (2) of Section 36 of the Act, 1951 and no other person. Consequently in case the objections preferred by the petitioner were not decided, no error was committed by the Returning Officer.

73. So far as the allegation of corrupt practice as levelled by the petitioner in the context of Section 100 of the Act, 1951 read with Section 123 of the Act, 1951, suffice to state that once the respondent was perfectly entitled to contest the election as a ‘person’ as put up by

a political party and the said nomination being in accordance with law was duly accepted by the Returning Officer consequently the said election of the respondent cannot be said to be barred by any corrupt practice as alleged in the election petition.

74. Considering the aforesaid, it is thus apparent that no cause of action can be said to have arisen to the petitioner to file the election petition. Even though considering the provisions of Section 81 of the Act, 1951, he has a right to file an election petition but then again, at the risk of repetition, there has to be cause of action which should have accrued to the petitioner to have filed the election petition.

75. This aspect of the matter has been considered by Hon'ble Supreme Court in the case of **Hari Shanker Jain (supra)** wherein the Hon'ble Supreme Court has held as under:-

*23. Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. **By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908.** The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See Samant N. Balkrishna v. George Fernandez [(1969) 3 SCC 238 : (1969) 3 SCR 603] , Jitendra Bahadur Singh v. Krishna Behari [(1969) 2 SCC 433] .) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. **In V.S.***

Achuthanandan v. P.J. Francis [(1999) 3 SCC 737] this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead “material facts” is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

33. Without further burdening this judgment by dealing with each and every other averment made in the two election petitions, it would suffice to say that we have carefully read each of the two election petitions and heard each of the two election petitioners (appellants) in very many details especially on the aspect of the election petitions suffering from the vice of not satisfying the mandatory requirement of pleading material facts as required by Section 82(1)(a) of RPA, 1951 and we are satisfied that the two election petitions do not satisfy the requirement statutorily enacted and judicially explained in umpteen number of decisions. The petitions are hopelessly vague and completely bald in the allegations made, most of which could not possibly be within the personal knowledge of the petitioners but still verified as “true” to their knowledge, without indicating the source. Such pleadings cannot amount to disclosing any cause of action and are required to be rejected/dismissed under Order 7 Rule 11 CPC.

(emphasis by Court)

76. Further, the Hon’ble Supreme Court in the case of **Bhargavi Construction (supra)** has held as under:-

26. We also do not agree with the submissions of Mr Adinarayana Rao, learned Senior Counsel for the respondents when he urged that firstly, the expression “law” occurring in clause (d) of Rule 11 Order 7 does not include the “judicial decisions” and clause (d) applies only to bar which is contained in “the Act” enacted by the legislature; and secondly, even if it is held to include the “judicial decisions”, yet the law laid down in State of Punjab [State of Punjab v. Jalour Singh, (2008) 2 SCC 660 : (2008) 1 SCC (Civ) 669 : (2008) 1 SCC (Cri) 524 : (2008) 1 SCC (L&S) 535] cannot be read to hold that the suit is barred. Both these submissions, in our view, have no merit.

27. Black's Law Dictionary (9th Edn.) defines the expression "law". It says that "law" includes the "judicial precedents" (see at p. 962). Similarly, the expression "law" defined in Jowett's Dictionary of English Law (3rd Edn., Vol. 2, (pp. 1304/1305) says that "law is derived from judicial precedents, legislation or from custom. When derived from judicial precedents, it is called common law, equity, or admiralty, probate or ecclesiastical law according to the nature of the courts by which it was originally enforced".

28. The question as to whether the expression "law" occurring in clause (d) of Rule 11 of Order 7 of the Code includes "judicial decisions of the Apex Court" came up for consideration before the Division Bench of the Allahabad High Court in Virendra Kumar Dixit v. State of U.P. [Virendra Kumar Dixit v. State of U.P., 2014 SCC OnLine All 16476 : (2014) 9 ADJ 1596] The Division Bench dealt with the issue in detail in the context of several decisions on the subject and held in para 15 as under : (SCC OnLine All)

"15. Law includes not only legislative enactments but also judicial precedents. An authoritative judgment of the courts including higher judiciary is also law."

29. This very issue was again considered by the Gujarat High Court (Single Bench) in Hermes Marines Ltd. v. Capeshore Maritime Partners FZC [Hermes Marines Ltd. v. Capeshore Maritime Partners FZC, 2016 SCC OnLine Guj 8686 : (2016) 3 Guj LR 2393] The learned Single Judge examined the issue and relying upon the decision [Virendra Kumar Dixit v. State of U.P., 2014 SCC OnLine All 16476 : (2014) 9 ADJ 1596] of the Allahabad High Court quoted supra held in para 53 as under : (Hermes case [Hermes Marines Ltd. v. Capeshore Maritime Partners FZC, 2016 SCC OnLine Guj 8686 : (2016) 3 Guj LR 2393] , SCC OnLine Guj)

"53. In the light of the above discussion, in the considered view of this Court, it cannot be said that the term "barred by any law" occurring in clause (d) of Rule 11 of Order 7 of the Code, ought to be read to mean only the law codified in a legislative enactment and not the law laid down by the courts in judicial precedents. The judicial precedent of the Supreme Court in Liverpool & London Steamship Protection and Indemnity Assn. Ltd. v. M.V. Sea Success I [Liverpool & London Steamship Protection and Indemnity Assn. Ltd. v. M.V.

Sea Success I, (2004) 9 SCC 512] , has been followed by the decision of the Division Bench in *Croft Sales & Distribution Ltd. v. M.V. Basil* [Croft Sales & Distribution Ltd. v. M.V. Basil, 2011 SCC OnLine Guj 673 : (2011) 2 Guj LR 1027] . It is, therefore, the law as of today, which is that the Geneva Convention of 1999 cannot be made applicable to a contract that does not involve public law character. Such a contract would not give rise to a maritime claim. As discussed earlier, the word “law” as occurring in Order 7 Rule 11(d) would also mean judicial precedent. If the judicial precedent bars any action that would be the law.

30. Similarly, this very issue was again examined by the Bombay High Court (Single Judge) in *Shahid S. Sarkar v. Mangala Shivdas Dandekar* [Shahid S. Sarkar v. Mangala Shivdas Dandekar, 2017 SCC OnLine Bom 3440] . The learned Judge placed reliance on the decisions of the Allahabad High Court in *Virendra Kumar Dixit v. State of U.P.* [Virendra Kumar Dixit v. State of U.P., 2014 SCC OnLine All 16476 : (2014) 9 ADJ 1596] and the Gujarat High Court in *Hermes Marines Ltd.* [Hermes Marines Ltd. v. Capeshore Maritime Partners FZC, 2016 SCC OnLine Guj 8686 : (2016) 3 Guj LR 2393] and held as under : (Shahid case [Shahid S. Sarkar v. Mangala Shivdas Dandekar, 2017 SCC OnLine Bom 3440] , SCC OnLine Bom paras 18 & 19)

“18. ... The law laid down by the highest court of a State as well as the Supreme Court, is the law. In fact, Article 141 of the Constitution of India categorically states that the law declared by the Supreme Court shall be binding on all courts within the territories of India. There is nothing even in CPC to restrict the meaning of the words “barred by any law” to mean only codified law or statute law as sought to be contended by Mr Patil. In the view that I have taken, I am supported by a decision of the Gujarat High Court in *Hermes Marines Ltd.* [Hermes Marines Ltd. v. Capeshore Maritime Partners FZC, 2016 SCC OnLine Guj 8686 : (2016) 3 Guj LR 2393] ...

19. One must also not lose sight of the purpose and intention behind Order 7 Rule 11(d). The intention appears to be that when the suit appears from the statement in the plaint to be barred by any law, the courts will not unnecessarily protract the litigation and proceed with the hearing of the suit. The purpose clearly appears to be to ensure that where a defendant is able to establish that the plaint ought to be rejected on any of the grounds set out in the said Rule, the

Court would be duty-bound to do so, so as to save expenses, achieve expedition and avoid the court's resources being used up on cases which will serve no useful purpose. A litigation, which in the opinion of the court, is doomed to fail would not further be allowed to be used as a device to harass a defendant.”

31. Similarly, issue was again examined by the High Court of Jharkhand (Single Judge) in Mira Sinha v. State of Jharkhand [Mira Sinha v. State of Jharkhand, 2015 SCC OnLine Jhar 4377 : AIR 2016 Jhar 92] . The learned Judge, in para 7 held as under : (SCC OnLine Jhar)

“7. In the background of the law laid down by the Hon'ble Supreme Court, it is apparent that Order 7 Rule 11(d) CPC application is maintainable only when the suit is barred by any law. The expression “law” included in Rule 11(d) includes the law of limitation and, it would also include the law declared by the Hon'ble Supreme Court.”

32. We are in agreement with the view taken by the Allahabad, Gujarat, Bombay and Jharkhand High Courts in the aforementioned four decisions which, in our opinion, is the proper interpretation of the expression “law” occurring in clause (d) of Rule 11 of Order 7 of the Code. This answers the first submission of the learned counsel for the respondents against the respondents.

(emphasis by Court)

77. From perusal of the aforesaid judgment of Hon’ble Supreme Court in the case of **Bhargavi Construction (supra)**, it emerges that the law laid down by Hon’ble Supreme Court would also come within the ambit of ‘law’ as indicated in Order 7 Rule 11 (d) CPC. Once the Hon’ble Supreme Court in the case of **Ramakant Pandey (supra)** and **Dr. P.N. Thampy Terah (supra)** has found no fault or rather approved putting up of a candidate by the political parties consequently the sheet anchor of the election petition filed by the petitioner arguing against the same cannot be said to be valid and thus once the law stands settled by the Hon’ble Supreme Court as such instant election petition would be barred under the provisions of Order

7 Rule 11 CPC.

78. The judgment of Hon'ble Supreme Court in the case of **Kesavananda Bharati Sripadagalvaru (supra)** over which reliance has been placed by the petitioner, more particularly Paragraphs 2016 and 2017 of the said judgment, for the sake of convenience, the said paragraphs are reproduced below:-

"2016.....As Judges, we are confronted and therefore concerned with practical problems and it is well to remind ourselves that our principal task is to construe the Constitution and not to construe judgments. Those judgments are without doubt, like lamp-posts on the road to freedom and judges who have shed on that road the light of their learning and the impress of their independence, have carved for themselves a niche in the history of civil liberties. See what Frankfurter J. said in Joint Anti-Fascist Ref. Comm. v. McGraths 341, U.S. 123, 171 "Man being what he is, cannot safely be trusted with complete immunity from outward responsibility in depriving others of their rights"; or, what Jackson J. said in American Comm. Assoc. v. Doudds 339, U.S. 382, 439 "Our protection against all kinds of fanatics and extremists, none of whom can be misted with unlimited power over others, lies not in their forbearance but in the limitations of our Constitution"; or, what Patterson J. said in his famous charge to the Jury in Van Home's lessee v. Dorrance 1 L. ed. 391: "The Constitution...is stable and permanent, not to be worked upon by the temper of the times, nor to rise and fall with the tide of events.... One encroachment leads to another; precedent gives birth to precedent; what has been done may be done again; thus radical principles are generally broken in upon, and the Constitution eventually destroyed." These are sonorous words and they will resound through the corridor of Times. But these landmarks in the development of law cannot be permitted to be transformed into weapons for defeating the hopes and aspirations of our teeming millions,-half-clad, half-starved, half-educated. These hopes and aspirations representing the will of the people can only become articulate through the voice of their elected representatives. If they fail the people, the nation must face death and destruction. Then, neither Court nor Constitution will save the country. In those moments of peril and disaster, rights and wrongs are decided not before the blind eyes of justice, not under the watchful eyes of the Speaker

with a Marshal standing by but, alas, on streets and in by-lanes, Let us, therefore, give to the Parliament the freedom, within the framework of the Constitution, to ensure that the blessings of liberty will be shared by all. It is necessary, towards that end, that the Constitution should not be construed in a "narrow and pedantic sense Per Lord Wright in *James v. Commonwealth of Australia*, (1936) A.C. 578, 614" Rules of interpretation which govern other statutes also govern a Constitutional enactment but those "very principles of interpretation compel us to take into account the nature and scope of the Act that we are interpreting,-to remember that it is a Constitution, a mechanism under which laws are to be made and not a mere Act which declares what the law is to be Per Higgins J. in *Att. Genl. for New South Wales v. Brewery Employees Union*, (1908) 6 Commonwealth L.R. 469, 611-12. (2)" To put it in the language of Sir Maurice Gwyer C.J., "a broad and liberal spirit should inspire those whose duty it is to interpret it; but I do not imply by this that they are free to stretch or pervert the language of the enactment in the interests of any legal or Constitutional theory, or even for the purpose of supplying omissions or of correcting supposed errors. A Federal Court will not strengthen, but only derogate from, its position, if it seeks to do anything but declare the law; but it may rightly reflect that a Constitution of government is a living and organic thing, which of all instruments has the greatest claim to be construed *ut res magis valeat quam pereat* In *re. The Central Provinces and Berar Act No. XIV of 1939*. (1938) F.C.R. p. 18, 37." In the exercise of our powers of judicial review, let us therefore not act as a check of the past on the present and the future "...it is the present that represents the will of the people and it is that will that must ultimately be given effect in a democracy Schwartz : *A Basic History of the U.S. Supreme Court*" The core of social commitment is the quintessence of our Constitution and we must approach it in the spirit in which it was conceived. We erected the edifice of our Constitution in the hope that it will last, unlike the French who, on the establishment of the Third Republic in 1875, framed a Constitution in the hope that it will fail, since the majority of the Constitution-makers were not Republicans but Royalists. In the peculiar conditions in which the French Republic found itself, there was only one throne but three claimants for a seat on it. The social philosophy of our Constitution defines expressly the conditions under which liberty has to be enjoyed and justice is to be administered in our country; and shall I say of our country what Justice Fitzgibbon said of his in Ryan's case : "this other Eden demi-Paradise, this precious stone, set

in the silver sea, this blessed plot, this earth, this, realm, this" India. If it is not that to-day, let us strive to make it so by using law as a flexible instrument of social order. Law is not, in the phrase of Justice Holmes, a "brooding omnipotence in the sky. 2086. All through the hearing of the case, there was hardly a point on which Dictionaries and Law Lexicons were not cited. Sec this long list: The Shorter Oxford English Dictionary on historical Principles, 3rd Ed.; Shorter Oxford English Dictionary; Webster's Third New International Dictionary of the English Language; Webster's English Dictionary, 1952; The Random House Dictionary of the English Language; The Reader's Digest Great Encyclopaedic Dictionary; The Dictionary of English Law, Earl Jowitt; The Cyclopaedic Law Dictionary by Frank D. Moore; Prem's Judicial Dictionary- Words & Phrases judicially defined in India England, U.S.A. & Australia; Bouvier's Law Dictionary; Universal English Dictionary; Chamber's 20th Century Dictionary; Imperial Dictionary by Ogilvie; Standard Dictionary by Funk & Wagnalls; Stroud's Judicial Dictionary; Judicial and Statutory Definitions of Words and Phrases, Second Series; Words and Phrases legally defined, John B. Saunders; Wharton's Law Lexicon; Venkataramaiya's Law Lexicon; Law Lexicon of British India-compiled and edited by P. Ramanatha Aiyer; Words and Phrases, Permanent Edition; The Construction of Statutes by Earl T. Crawford; Corpus Juris Secundum and American Jurisprudence. These citations were made in order to explain the meaning, mainly, of the words 'Amendment', 'Constituent', 'Constitution', 'Constitutional law', 'Distribute' and 'law'. This is of course in addition to several decisions which have dealt with these words and phrases in some context or the other. It is useful to have a dictionary by one's side and experience has it that a timely reference to a dictionary helps avert many an embarrassing situation by correcting one's inveterate misconception of the meaning of some words. But I do not think that mere dictionaries will help one understand the true meaning and scope of words like 'amendment' in Article 368 or 'law' in Article 13(2). These are not words occurring in a school text-book so that one can find their meaning with a dictionary on one's right and a book of grammar on one's left. These are words occurring in a Constitution and one must look at them not in a school-masterly fashion, not with the cold eye of a lexicographer, but with the realization that they occur in "a single complex instrument, in which one part may throw light on another", so that "the construction must hold a balance between all its parts Per Lord Wright in *James v. Commonwealth of Australia* (1936) A.C. 578, 613. Such words,

having so significant an impact on a power as important as the power to amend the Constitution cannot be read in vacuo. The implication of the social philosophy of the instrument in which they occur and the general scheme of that instrument under which the very object of the conferment of freedoms entrenched in Part III is the attainment of ideals set out in Part IV, must play an important role in the construction of such words. "A word, is not a crystal, transparent and unchanged; it is the skin of living thought and may vary greatly in colour and content according to circumstances and the time in which it is used Per Holmes J. in Towne v. Eisner 62 L. ed. 372, 376".

79. From perusal of the aforesaid judgment it is apparent that Hon'ble Supreme Court has nowhere held that a person put up by a political party cannot contest the elections. As already observed above, one of the grounds over which the election of respondent has been challenged is that he was a person/candidate who was put up by a political party and considering the provisions of the Act, 1950, Act, 1951 and Article 173 of the Constitution of India he could not have contested the said election.

80. As already observed above, Hon'ble Supreme Court has nowhere held that a person put up by a political party cannot contest the election and as such the aforesaid judgment would have no applicability in the present case.

81. Likewise, reliance has been placed by the petitioner on the judgment of Hon'ble Supreme Court in the case of **Smt. Indira Nehru Gandhi (supra)** on the following observations of the Hon'ble Supreme Court after considering the Constitution Bench judgment of **Kesavananda Bharati Sripadagalvaru (supra)** which for the sake of convenience are reproduced below:-

"...All the seven Judges who constituted the majority were also agreed that democratic set up was part of the basic structure of the Constitution. Democracy postulates that there should be periodical elections, so that people may be in a position either

to re-elect the old representatives or, if they so choose, to change the representatives and elect in their place other representatives. Democracy further contemplates that the elections should be free and fair, so that the voters may be in a position to vote for candidates of their choice. Democracy can indeed function only upon the faith that elections are free and fair and not rigged and manipulated, that they are effective instruments of ascertaining popular will both in reality and form and are not mere rituals calculated to generate illusion of deference to mass opinion.....

.....A definition clause in a statute is a legislative device with a view to avoid making different provisions of the statute to be cumbersome. Where a word is defined in the statute and that word is used in a provision to which that definition is applicable, the effect is that wherever the word defined is used in that provision, the definition of the word gets substituted. Reading the word "candidate" in Section 123(7) of the RP Act in the sense in which it has been defined as a result of the amendment made by Act 40 of 1975. I find that the only reasonable inference is that the person referred to as a candiideate in that clause should be a person who has been or claims to have been duly nominated as a candidate at an election and not one who is yet to be nominated...."

82. There can be no dispute to the aforesaid observations as made by Hon'ble Supreme Court pertaining to the democratic setup as part of the basic structure of the Constitution and that the elections should be free and fair.

83. However, there is no bar either in the Constitution of India or the Act, 1950 or Act, 1951 whereby a candidate put up by a political party cannot contest the elections rather the Hon'ble Supreme Court in the case of **Rama Kant Pandey (supra)** and **Dr. P.N. Thampy Terah (supra)** has found no fault or rather approved putting up of a candidate by a political party and thus it is apparent that the aforesaid judgment would have no applicability in the facts of the instant case inasmuch as it cannot be said that putting up of a candidate by a political party would render the election unfair.

84. Even otherwise, keeping in view the law laid down by Hon'ble Supreme Court in the cases of **Anoop Barnwal (supra)** and **Kuldeep Nair (supra)**, the right to elect, right to vote and right to contest the elections is a statutory right and there is no bar anywhere that a candidate cannot be put up by a political party.

85. Keeping in view the aforesaid discussion, the application filed by the respondent under Order 7 Rule 11(a) and (d) CPC is allowed. The election petition is **dismissed**.

86. The Court records the assistance of Mr. Mohd. Azam Siddiqui, Research Associate of this Court.

Order Date :13.11.2024
Pachhere/Prateek/A. Katiyar

(Abdul Moin, J.)