IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 27TH DAY OF MAY 2015/6TH JYAISHTA, 1937

El.Pet.No.1 of 2014

PETITIONER:

S.SURESH, S/O. SREEKUMARAN NAIR,
AGED 42 YEARS, "SREELALITHAM", VELLAYANI,
OOKKODU P.O., THIRUVANANTHAPURAM - 20.

BY ADVS.SRI.K.RAMAKUMAR (SR.)
SRI.P.HARIDAS
SRI.S.M.PRASANTH
SRI.M.MANOJKUMAR (CHELAKKADAN)
SRI.P.C.SHIJIN
SRI.G.RENJITH
SRI.SIKKY RAVISANKAR

RESPONDENTS:
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1. DR.SHASHI THAROOR, SON OF CHANDRAN THAROOR, AGED 58 YEARS, RESIDING AT T.C. 15/1443 (2), KONDOUR - MARY GOLD, VAZHUTHACAUD, OPPOSITE RADIO STATION, THIRUVANANTHAPURAM - 695 014.

2. SRI. O. RAJAGOPAL, SON OF O. MADHAVAN NAIR, AGED 84 YEARS, RESIDING AT D-10, SIVAJI SAPHIRE, JAWAHAR NAGAR, KAWDIAR, THIRUVANANTHAPURAM - 695 003.

3. DR. BENNET ABRAHAM, SON OF JOHN WYCLIFF, AGED 55 YEARS, RESIDING AT 7/457 (554), CSI HOSPITAL, KARAKONAM, KUNNATHUKAL GRAMA PANCHAYAT, THIRUVANANTHAPURAM - 695 504.

4. SHRI.J SUDHAKARAN, SON OF JACOB, AGED 65 YEARS, RESIDING AT CL-6 MILLENNIUM APARTMENT, JAGATHY, THIRUVANANTHAPURAM - 695 014.

5. SHRI AJITH JOY, SON OF K.M. JOY, AGED 45 YEARS, RESIDING AT KUNNUMPURATH HOUSE, INDIRA NAGAR ROAD, PEROORKADA, THIRUVANANTHAPURAM - 695 005.

6. SMT.R. CHANDRIKA, D/O. NESAN, AGED 57 YEARS, RESIDING AT PIRAVILAAKATHU HOUSE, PULLUVILAKAM, MUTHIYAVILA, KATTAKADA P.O., THIRUVANANTHAPURAM - 695 572.

7. SHRI THOMAS JOSEPH, SON OF LATE M. JOSEPH, AGED 50 YEARS, RESIDING AT T.C.46/559 (3), POONTHURA P.O., THIRUVANANTHAPURAM - 695 026.

8. SHRI. O.V. SRIDATH, SON OF K.S. ONE, AGED 35 YEARS, RESIDING AT ARANYALAYAM, CHOZHIYAKKODU P.O., VIA KULATHUPUZHA, KOLLAM DISTRICT - 691 310.

9. SHRI SHAJAR KHAN, SON OF MUHAMMED HANEEFA, AGED 43 YEARS, RESIDING SUCI © (SOCIALIST UNITY CENTRE OF INDIA (COMMUNIST) OFFICE, T.C. 12/1242, VANCHIYOOR P.O., THIRUVANANTHAPURAM - 695 035.

10. SHRI HARIKUMAR, SON OF GOPALAKRISHNAN NAIR, AGED 40 YEARS, RESIDING AT 178, DEVI BHAVAN, CHETTIVILAKAM, KUDAPPANAKUNNU, THIRUVANANTHAPURAM - 695 043.

11. SHRI SHJAHAN, S/O. ABDUL MANAFF, AGED 40 YEARS, RESIDING AT KUNNIL HOUSE, THOLIKUZHI, ADAYAMON P.O., THIRUVANANTHAPURAM - 696 614.

12. SHRI ANIL KUMAR, SON OF YESUDAS, AGED 27 YEARS, RESIDING AT UDINIKADU PUTHENVEEDU, PERUMUKKU, ALAMCODE GRAMA PANCHAYAT, ALAMCODE P.O., THIRUVANANTHAPURAM - 695 102.

13. SHRI JAIN WILSON, SON OF B. WILSON, AGED 54 YEARS, RESIDING AT KUNNUVILA VEEDU, KURADOOR, MUDAVANMUGHAL, POOJAPURA, THIRUVANANTHAPURAM - 695 012.

14. SHRI GEORGE MANKIDIYAL, SON OF LATE KUNHIPALU, AGED 73 YEARS, RESIDING AT M.N. LINE, PATTOM, PLAMUDU, THIRUVANANTHAPURAM - 695 004.

15. SHRI V.S. JAYAKUMAR, SON OF VIJAYA RAJ, AGED 31 YEARS, RESIDING AT VIJAYA BHAVAN, IRAYAMKOODU, CHERIYAKONNI P.O., THIRUVANANTHAPURAM - 695 013.

16. SHRI BENNET BABU B., SON OF V. J. BENJAMIN, AGED 49 YEARS, RESIDING AT T.C. 375/1800, PALLITHARA VEETTIL, VATTIYOORKAVU, KODUNGANOOR, THIRUVANANTHAPURAM - 695 013.

17. SHRI O.M. JYOTHEENDRA NATH, SON OF N.K. MADHAVAN, AGED 45 YEARS, RESIDING AT BINDU BHAVAN, K.R.A. 126, KAVADITHALAKKAL, MANIKANTESHWARAM P.O., THIRUVANANTHAPURAM - 695 013.

18. SMT. SYAMALAKUMARI, D/O. THANKAMMA, AGED 50 YEARS, RESIDING AT PUKAYILATHOPPU COLONY, BLOCK No.7, KURUKKADA P.O., THIRUVANANTHAPURAM - 695 300.

19. FATHER STEPHEN, SON OF THANKAMMA, AGED 48 YEARS, RESIDING AT JAYA BHAVAN, PALLIVILAKAM, PAZHITHIYOOR, POZHIYOOR P.O., THIRUVANANTHAPURAM - 695 513.

20. SHRI S. MANI, SON OF SANKU, AGED 70 YEARS, RESIDING AT T.C.6/614, M.S. VILLA, VATTIYOORKAVU P.O., THIRUVANANTHAPURAM - 695 013.

R1 BY ADV. SRI.S.SREEKUMAR (SR.)
R1 BY ADV. SRI.T.MADHU
R1 BY ADV. SRI.B.S.SURAJ KRISHNA
R1 BY ADV. SRI.JOHN PAX IGNATIUS
R1 BY ADV. SMT.N.T.ROHINI
R1 BY ADV. SRI.P.S.VIJU
R2 BY ADV. SRI.R.D.SHENOY (SR.)
R2 BY ADV. SRI.S.VINOD BHAT
R2 BY ADV. SRI.JOSEPH RONY JOSE
R2 BY ADV. SRI.LEGITH T.KOTTAKKAL
R2 BY ADV. SRI.R.V.SREEJITH
R5 BY ADV. SRI.K.C.ELDHO
R7 BY ADV. SRI.D.KESAVAN NAIR
R7 BY ADV. SRI.RAHUL VENUGOPAL
R7 BY ADV. SMT.N.V.SANDHYA
R7 BY ADV. SRI.V.V.NANDAGOPAL NAMBIAR
R7 BY ADV. SRI. KRISHNA MANI
R12 & 15 BY ADV. SRI.KRISHNADAS P. NAIR
R12 BY ADV. SRI.HARIDAS P.NAIR
R12 & 15 BY ADV. SMT.K.L.SREEKALA
R12 BY ADV. SRI.M.A.VINOD
R12 BY ADV. SRI.M.RAJESH KUMAR
R12 BY ADV. SMT.GIA MATHAI KANDATHIL
R13 & R16 BY ADV. SMT. BINDUMOL JOSEPH
R14 BY ADV. SRI.P.V.ANIL
R19 BY ADV. SRI.AUGUSTINE JOSEPH
R19 BY ADV. SRI.K.S.ROCKEY
R19 BY ADV. SRI.TONY AUGUSTINE

THIS ELECTION PETITION HAVING BEEN FINALLY HEARD ON 27-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

El.Pet.No.1/2014

A P P E N D I X

PETITIONER'S WITNESSES:

PW1 : BIJU PRABHAKAR IAS

PW2 : K.G.SIDHARTHA

PW3 : S. SURESH

PW4 : DANI J. PAUL

PW5 : SHASHI SHEKHAR VEMPATI

PW6 : B. MADHU

PW7 : ASHUTOSH JAIN

RESPONDENTS' WITNESSES:

DW1 : JOTHISH KUMAR

DW2 : R.S. SIMIRANI

DW3 : SHASHI THAROOR

PETITIONER'S EXHIBITS:

EXT.X1	:	COPY OF NOMINATION PAPER SUBMITTED BY RESPONDENT No.1.
EXT. X2	:	COPY OF STATEMENT DTD.4.8.2009 FILED BY RESPONDENT No.1 IN TERMS OF SECTION 75A(1) OF REPRESENTATION OF PEOPLE ACT, 1951 AND RULE 3 OF MEMBERS OF LOK SABHA (DECLARATION OF ASSETS AND LIABILITIES) RULES, 2004.
EXT. X3	:	COPY OF ARTICLE PUBLISHED IN 'NITI CENTRAL' WEBSITE ON 21.01.2014.
EXT. X4	:	COPY OF STATEMENT FILED BY RESPONDENT No.1 SHOWING THE ASSETS POSSESSED BY HIM AS WELL AS HIS WIFE AS ON 30.06.2009.
EXT.X4(a)	:	COPY OF STATEMENT FILED BY RESPONDENT No.1 SHOWING THE ASSETS AND LIABILITIES AS ON 31.03.2013.

EXT. X5 : LETTER DTD.02.02.2015 SENT BY JOINT SECRETARY TO GOVERNMENT OF INDIA, MINISTRY OF HOME AFFAIRS TO REGISTRAR GENERAL, HIGH COURT OF KERALA INFORMING DEPUTATION OF OFFICER TO PRODUCE DOCUMENTS.

RESPONDENTS' EXHIBITS:

EXT. B1 : ORIGINAL SALE DEED DTD.15.04.2008 EXECUTED BY SURAJ SINGH IN FAVOUR OF PUSHKAR NATH.

EXT. B2 : ORIGINAL SALE DEED DTD.18.5.1999 EXECUTED BY KULDEEP SINGH IN FAVOUR OF PUSHKAR NATH.

EXT. B3 : ORIGINAL SALE DEED DTD.4.9.1999 EXECUTED BY KULDEEP SINGH IN FAVOUR OF PUSHKAR NATH.

// True Copy //

P.A. to Judge.

smp

P.BHAVADASAN, J.

Election Petition No.1 OF 2014

Dated this the 27th day of May, 2015.

J U D G M E N T

Under challenge is the election of the 1st respondent from Thiruvananthapuram Parliamentary Constituency held on 10.04.2014, results of which were declared on 16.05.2014. Since the 1st respondent herein secured more number of votes than other candidate he was declared duly elected. Election of the 1st respondent is assailed in this petition under Section 100(1)(d)(i) & (iv) of Representation of People Act, 1951. To be more precise, election is assailed on two grounds. They are, i) improper acceptance of nomination and ii) non compliance of the order issued by the Election Commission that the 1st respondent should truly and fully disclose his assets as well as his spouse's and dependants' assets.

2. The petitioner is a voter of the Constituency. Respondents 1 to 20 contested the election from

Thiruvananthapuram Parliamentary Constituency. 1st respondent came out winner, 2nd respondent came next to him and the 3rd respondent came in the third position. 1st respondent was sponsored by the Indian National Congress, 2nd respondent by Bharathiya Janatha Party and 3rd respondent by Communist Party of India.

3. The main grievance of the petitioner in this Election Petition is that the nomination submitted by the 1st respondent ought not to have been accepted as it was incomplete and it did not contain all the necessary details as are required under law. Nomination submitted by every candidates had to be accompanied by an affidavit and Form No.26 and in Form No.26, each candidate was expected to disclose the assets and liabilities of the candidate, his spouse and the dependants and such other details as are required in the said Form. Law requires that at the time of filing of nomination, an affidavit and Form No.26 will have to be submitted. In fact Form No.26 was designed by Election Commission as per the directions of the Apex Court. Apart from the non disclosure of assets belonging to the 1st respondent,

other complaint voiced by the petitioner was that the 1st respondent has not disclosed the assets inherited by him from his late wife Smt.Sunanda Pushkar consequent on her death. The petitioner alleges that the parties are governed by Sections 15 and 16 of Hindu Succession Act as they are governed by Hindu Law and as per the provisions of Hindu Law, husband is a legal heir. The petitioner would assert in his petition that the 1st respondent is guilty of suppression of materials regarding the assets possessed by him and also inherited by him consequent on the death of his wife Sunanda Pushkar who, admittedly, was immensely rich and owned both movable and immovable assets abroad. At any rate, petitioner would say that it would have been only fair and just for the 1st respondent to mention the assets left behind his late wife. The act of total concealment of assets left behind by his wife late Sunanda Pushkar is contrary to the spirit of law as the right may accrue to the 1st respondent consequent on her death. This non disclosure of assets truly and correctly prevented the voters from getting a fair idea about the candidate for whom they want to vote. The mandate given by

the Apex Court is that the disclosure of complete details regarding the candidate is an essential ingredient of democratic set up and it helps the voters to know the complete details of the candidate who stand for election. In the light of the fact that there has been non disclosure of assets, petitioner would say that the nomination filed by the 1st respondent falls short of the required standards under Sections 33 and 36 of Representation of People Act, 1951. It is asserted that the omission to mention complete details regarding assets was deliberate and it is not an inadvertent one. If the nomination is defective, its acceptance cannot have any support in law. If that be so, if the nomination of the 1st respondent had to be rejected in law, his election automatically becomes void.

4. The petitioner urges this Court to declare the election of the 1st respondent void and also to consequently declare that the 2nd respondent is the duly elected candidate.

5. The 2nd respondent supports the petitioner. In his written statement, he covers almost the same grounds as taken by the petitioner in this petition and also accuses the 1st

respondent of deliberate concealment and omission in disclosing the assets. He too would assert that Sections 33 and 36(2) of Representation of People Act, 1951 have been violated by the 1st respondent. It is pointed out that the Returning Officer ought not to have accepted the nomination especially when objection in that regard had been taken by agent of one of the candidates who contested in the election. He too would pray that election be set aside.

6. Though the 5th respondent has filed a written statement, he does not support either the petitioner or the 1st respondent. But he assails the election of the 1st respondent on a totally different ground which has nothing to do with the Election Petition on hand. Therefore, narration of the contentions in his written statement is not warranted in this order.

7. In the written statement filed by the 1st respondent, he challenges the very maintainability of the petition. According to him, the allegations are vague and general in nature and not specific. He urges that the petition ought to be dismissed at a threshold. It is well settled, according to him, that the pleadings

will have to be precise, definite and concise and it should give such details which will enable the 1st respondent to know what is the case he has to meet and what are the defence he has to take. It is pointed out that there are no details in the petition regarding the assets of either the 1st respondent or Smt.Sunanda Pushkar which have been concealed or which have not been disclosed. The petition is therefore severely handicapped in meeting the allegations.

8. 1st respondent denies all the allegations in the petition. He asserts that he has made true and correct disclosure of all the assets which belongs to him as on the relevant date and the allegations to the contrary are untrue. He disowns any assets having been inherited by him consequent on the death of his wife. He also would point out that as on the date of filing of nomination, he had no spouse and therefore the question of disclosure at that point of time did not arise. He disputes that he and his wife late Sunanda Pushkar are Hindus. The assets which his late wife possessed were acquired by her prior to marriage and there was no joint ownership of assets between the

1st respondent and his wife. Late Sunanda Pushkar was a Citizen of Canada and she died in Delhi on 17.01.2014. He reiterated that whatever he had stated in the affidavit before the Returning Officer and also in Form No.26 are true and correct and he has not concealed anything. He asserts that he had declared his assets as a Minister and of his wife before the authorities concerned. He would say that his late wife was not an Indian Citizen and no part of the assets left behind by his wife late Sunanda Pushkar has come into his hands. The allegation that he had deliberately concealed the details of assets so as to gain a margin over other candidates is without any basis. Even assuming that there was concealment, that does not follow that the 2nd respondent ought to be declared elected. On these grounds, he prayed for dismissal of the petition.

9. On the basis of the above pleadings, following issues were raised:

1. Is the petition bad for non-disclosure of material particulars?
2. Was not the nomination filed by the first respondent valid and is there any illegality in

the acceptance of the nomination filed by the first respondent?

Issue No.2 was recasted as per order dated 30.10.2014 as follows:

Was the nomination filed by the 1st respondent proper and valid and whether the allegation that it was improperly accepted is established?

3. Is the affidavit filed by the first respondent along with the nomination defective and is the first respondent guilty of suppression of details regarding non disclosure of the details of assets he possessed of at the relevant time?

4. Assuming that the affidavit filed by the first respondent along with the nomination does not truly disclose his assets, can the election of the first respondent be set aside under Section 100(1)(d)(i)(iv) unless it is shown that by such suppression, the result of the election, so far as it relates to returned candidate, has been materially affected?

5. In case the election of the 1st respondent, for any reason, is found to be void and invalid and is set aside, can the second respondent be declared as the duly elected candidate?

6. Reliefs and costs.

10. The evidence in the case consists of the testimony of PWs 1 to 7 and documents marked as Exts.X1 to X5 on the side of the petitioner. On the side of defence, DWs 1 to 3 were examined and Exts.B1 to B3 were marked.

11. Before going into the issues, it will be useful to refer to the evidence.

PW1 is the Returning Officer. He proves Ext.X1 document which is the nomination paper submitted by the 1st respondent. He claimed that at the time of scrutiny of nomination, there was objection regarding the acceptance of nomination of 1st respondent to the effect that he had not disclosed the entire assets. He would say that the Returning Officer had given an opportunity to produce document in support of the objection which the objector could not do. Therefore, overruling the objection, nomination was accepted. He denied that he had to personally verify the genuineness of the entries in the document. According to him, even as per the information given to him and the procedure that is being followed, it is virtually impossible to verify the details in Form No.26 and in the affidavit. The scope of

enquiry being considerably limited, a probe into those matters is not warranted by the Returning Officer. He concludes by saying that finding that the nomination of the 1st respondent satisfies the requirements, he accepted the same.

12. PW2 is the Legislative Officer in the Lok Sabha Secretariat. He proves Ext.X2 document. Ext.X2 is a statement said to have been given by the 1st respondent to the Secretariat of Parliament. The witness says that along with the letter, there is a form given by 1st respondent i.e. Form No.1 duly filled by the person concerned which shows the details of properties as disclosed by him and the assets possessed by the person concerned and his spouse.

13. PW3 is the petitioner himself. It is unnecessary to refer to the chief examination for the simple reason that that is nothing but a true replica of the petitioner. He, in his cross examination, stated that he came to know the details of the assets possessed by the 1st respondent and his wife late Sunanda Pushkar from a website which published the statement submitted by the 1st respondent before the authorities concerned.

According to him, the late wife of 1st respondent owned assets worth Rs.112 crores. He speaks about some of the details of assets possessed by late Sunanda Pushkar. He also speaks about the antiques and jeweleries possessed by her. He then goes on to say that both the 1st respondent and his late wife were governed by the Hindu Succession Act and as per the provisions of Hindu Succession Act, consequent on the death of late Smt.Sunanda Pushkar, half of the assets left behind by her falls into the hands of the 1st respondent. 1st respondent has conveniently omitted to include those assets in Form No.26. He would say that that is nothing but a material suppression of facts. He, however, admitted that he was an active worker of BJP. In no less terms he admitted in cross examination that even at the time of filing of petition he had knowledge about the assets which the 1st respondent possessed and also the assets left behind by his wife late Smt.Sunanda Pushkar. He would say that he got those details from the website which was available to the public. He winds up by saying that the 1st respondent deliberately concealed the assets inherited by him since there was rumour

about the mysterious death of his wife Sunanda Pushkar.

14. PW4 is again a sympathizer of BJP. He admitted that he canvassed in the election campaign for the 2nd respondent. He accepts that in the 2009 election wherein the 1st respondent had contested, he was able to win over a margin of about one lakhs votes. He would say that on this occasion, he had a margin of 15000 and odd votes. According to him, one of the issues involved in the current election was with respect to the nomination submitted by the 1st respondent. He would say that LDF candidate had raised strong objection to the acceptance of nomination submitted by 1st respondent. But it was summarily overruled and his nomination was accepted. He says that there was discussion in the media about this issue. He would also say that even though the electorate in the Corporation area were convinced about the falsity of nomination filed by the 1st respondent, it was not so with respect to the electorate in the rural areas. That, according to him, is the reason for the success of the 1st respondent.

15. In cross examination, PW4 would say that whatever

may be the entries in the nomination paper or in Form No.26, he would vote only for the BJP. Discarding the less significant portion of his cross examination, the relevant portion appears in pages 5 and 6 which read as follows:

> ".....Discussion about concealment of assets started at the time of scrutiny of the nomination paper till the day prior to the election..... During several visits in rural areas we were convinced that they are not concerned with the concealment of assets of Dr.Sasi Tharoor in his nomination paper.
>
> .....The main criteria for voting for a candidate are activities in the previous years, his position in the society, his character and what he had done to the society and such other matters..... We did not unnecessarily highlight the follies committed by Dr.Sasi Tharoor because we concentrated on our achievements and capabilities for winning the election".

16. PW5 is a media person. He is the Chief Executive Officer of the Company associated with Niti digital. Though the Company is based at Bombay, it is situated in Delhi. On seeing a document put to him, he accepts that that is the document which showed the assets of late Sunanda Pushkar and he confirms that he has seen the said document before. He narrates how he

happened to come across that document. It is not necessary for the purpose of this petition to narrate those details. PW5 would say that the material based on which publication was made is Ext.X3 which was verified by Mr.Kanchan Gupta, a senior officer of the Company. He admitted in cross examination that he is unable to swear about the authenticity of the document namely, Ext.X3.

17. PW6 was the Additional Chief Election Agent of the 2nd respondent. According to him, had the nomination of the 1st respondent been rejected and had he been precluded from contesting the election, 2nd respondent would have emerged as winner. He would go to the extent of saying that even the members of the party who sponsored the 1st respondent were not in his favour. There was public discussion about the non disclosure of assets by 1st respondent of his wife in his nomination form. This non disclosure and falsity committed by the 1st respondent was properly understood by the urban people and in the urban area, 2nd respondent was able to make gains quite contrary to what transpired in the rural areas. He would

concede that while there was active campaign about the non disclosure of assets in the Corporation area, it could not be effectively carried out in the rural area. He would say as follows:

> "The issue regarding the non-disclosure of assets by Dr.Shashi Tharoor in the nomination paper was a burning issue in Corporation area, and that could not be effectively canvassed in the Village areas and that is how Dr.Shashi Tharoor happened to gain more votes in Village areas. *(Page No.3)*
>
> Had Dr.Shashi Tharoor not a candidate for the election, Shri.O. Rajagopal, the rival candidate, would have won by more than one lakh votes. Out of the total 1080 booths, in 498 booths Shri. O.Rajagopal was leading and in 350 booths, first respondent was leading at the relevant time. The 350 booths in which Dr.Shashi Tharoor, the first respondent, was leading are all concentrated in rural area. First respondent happened to win the election by a margin of little over 15,000 votes. Had the first respondent not been a candidate, out of the 55,000 votes which he gained in the rural areas, most of the votes would have been cast in favour of Shri.O. Rajagopal and he would have been a successful candidate. *(Page No.3)*
>
> ..... Had the first respondent was not a candidate, Shri.O.Rajagopal would have easily won the election". *(Page No.3)*

18. It is not necessary to refer to the entire cross examination of PW6 except the relevant portion. The relevant portion reads as follows:

> "..... From 1947 till date, no candidate from the BJP succeeded in any parliamentary constituency from Kerala. Mostly representations were from UDF and LDF and also independent candidates were elected. .....I deny the suggestion that the main contest in the parliamentary election was between the candidates belonging to UDF and LDF. ..... I had not submitted any written objection regarding the acceptance of the nomination paper of Dr.Shashi Tharoor. But I had orally objected. *(Page No.5)*
>
> .....I am aware that one person had given a written objection. .....We did not highlight the alleged infirmity in the nomination paper submitted by Dr.Shashi Tharoor during the election campaign. While canvassing for Shri.O.Rajagopal in all places including both rural and urban areas, we were aware that the nomination paper of Dr.Shashi Tharoor had the alleged infirmities. We had conducted speeches and affixed banners and posters in almost all booths. In none of those, we had highlighted the alleged infirmities in the nomination paper filed by Dr.Shashi Tharoor. *(Page No.6)*
>
> .....I have no direct knowledge about the assets of Smt. Sunanda Pushkar. I have not

> ventured either directly or indirectly to get the details of the assets of Smt. Sunanda Pushkar. According to me, if there was no LDF candidate, Shri. O. Rajagopal would have won the election". *(Page No.7)*

19. Evidence of PW7 is not very relevant. Then we come to the defence evidence. Though the 2nd respondent did not examine himself as a witness, he examined DWs 1 and 2.

20. DW1 was a voter of the Constituency. According to him, while nomination paper was being scrutinised, he was standing outside the office concerned and he could hear about the objection raised regarding the acceptance of nomination of 1st respondent. His evidence is to the effect that for the election campaign, BJP members formed groups and each group had 8 members. He further says that in the campaign, two main points were urged and they were i) development and achievements obtained by 2nd respondent and ii) non disclosure of assets by 1st respondent mainly regarding the share inherited by him consequent on the death of his wife Sunanda Pushkar. He would say as follows:

"We focused attention on two aspects namely, the development that was brought about by Shri.O.Rajagopal when he was the Railway Minister and Defence Minister and the other was that Dr.Shashi Tharoor had not disclosed half the assets which fell on him consequent upon the death of his wife in January 2014..... *(Page No.2)*

Q. What was the reaction of the elector for whom you campaigned when you disclosed this omission in the affidavit of Dr.Shashi Tharoor? *(Page No.2)*

A. Dr.Shashi Tharoor was influenced among Nair upper caste in the Constituency and that electorate said that they did not believe that Dr.Shashi Tharoor did not disclose the assets and if it was true, they would not vote for him.*(Page No.3)*

Those persons who said that they would not have voted for Dr.Shashi Tharoor had he disclosed the entire assets then would have voted for Shri.O.Rajagopal". *(Page No.3)*

21. DW1 deposes that the impression gathered by him from the people when he disclosed about the non disclosure of assets by 1st respondent was that had the 1st respondent ventured to disclose those assets, people would have got the idea that he would have more interested in safeguarding the assets

abroad rather than discharging his duty as a Member of Parliament.

22. DW1 says that he became a BJP worker only on 09.01.2014. He deposes as follows:

> "..... I became a member of BJP. only last year. I became a member on 09.01.2014. I was not a member of any other party before that. .....I have not directly enquired about the assets of late wife of Dr. Shasi Tharoor. I am not very sure to which nationality she belonged. But I think she is a Canadian citizen. I got the information from public domain. I did not verify the veracity of that information. I have not seen any documents showing the citizenship of late wife of Dr.Shasi Tharoor. I do not know the details of the assets owned by late wife of Dr. Shasi Tharoor in India. With my legal knowledge I presume that half the assets of late wife of Dr.Shashi Tharoor would have fallen on Dr. Shasi Tharoor. *(Page No.6)*
>
> ..... I have come to court to give evidence in favour of Shri.O.Rajagopal". *(Page No.6)*

He says that he deposes as per the instructions of the 2nd respondent. He however concedes that he had not discussed about the non disclosure of assets by 1st respondent with the 2nd

respondent. In pages 8, 9 and 10, he deposes as follows:

> "We conducted meetings and power screening as part of our campaign. The party gave us funds for the campaign. The amount would come about Rs.40,000/- to Rs.50,000/-. They must have accounts for the amount given to us. I am not sure about it. I do not possess any documents to show that that amount was given by BJP. Shri.O.Rajagopal did not give us any funds.
>
> ..... We did not prepare the list of those persons who told us that if they knew the truth about the assets of Dr.Shashi Tharoor, they would not have voted for him. We have not given this information officially or in writing to the office of the BJP but we have informed the office bearers. We have no documents to show the above fact.
>
> ..... I agree that it is based on the assessment of the capacity, ability and the working of the parties that the people elect the candidate".

23. DW2 is also a voter of the Constituency. She would say that the main contest in the election in 2014 was between UDF and BJP. 2nd respondent was sponsored by BJP and 1st respondent by UDF. She claims to be an organizer of the women wing of BJP. DW2 speaks about the three projects promised by the 1st respondent to the people of Thiruvananthapuram which

were neither fulfilled nor materialised. She would say that at the time when the election was conducted, wife of 1st respondent was no more and she had come to know about the non disclosure of assets from the media. She deposes as follows:

> "..... The common people in our campaign did not know the legal nuances but when we told them about the omission to mention the assets, they asked for proof and they also told us that if it was true, they would not vote for Dr.Shashi Tharoor". *(Page No.2)*

24. In cross examination, DW2 would say that it has not come to her notice that the 2nd respondent had not agitated the question of non disclosure of assets by 1st respondent as part of his election campaign. She deposes as follows:

> "..... It has not come to my notice that Shri.O.Rajagopal had mooted the omission of Dr.Shashi Tharoor to declare the assets of his late wife. I do not know if either the notices published contain the allegations mentioned above. It had not come in the media at all.....*(Page No.4)*
>
> I do not know whether groups other than our group had campaigned about the non disclosure of assets left behind by late wife of Dr.Shashi Tharoor. I have not assessed the literacy percentage of

> Thiruvananthapuram Parliamentary Constituency. I do not know if party had directed any such census to be taken. I said that 60% illiterate persons as per the information gathered by me through print and visual media. *(Page Nos.5 & 6)*
>
> ..... I do not know which law insists for the disclosure of the assets of candidates. I have no direct knowledge of the assets of late wife of Dr.Shashi Tharoor. I have not enquired whether any assets left behind by late wife of Dr.Shashi Tharoor has devolved on him. It has not come to my notice that Shri.O.Rajagopal had filed written complaint against the acceptance of nomination filed by Dr.Shashi Tharoor".*(Page No.6)*

25. Coming to the documentary evidence. Ext.X1 is the nomination form filed by the 1st respondent. Ext.X2 dated 04.08.2009 is a statement filed by the 1st respondent in terms of Section 75A(1) of the Representation of People Act, 1951 and Rule 3 of Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004. Ext.X3 is a copy of the article published in a website named Niti Central. Ext.X4 is a statement filed by 1st respondent while he was a Minister of State for External Affairs regarding the assets possessed by him as well as his wife.

Ext.X4(a) dated 28.10.2012 contains a similar statement of assets for the previous year.

26. Now coming to the issues involved in the case. The first issue relates to the failure on the part of the petitioner to provide material particulars. One aspect may be immediately noticed. What is contemplated under the Act is disclosure of material facts and not material particulars. But the mere fact that this Court has raised an issue regarding material particulars cannot be taken aid of by the petitioner for the simple reason that he ought to know what he required to plead as per the provisions of the Act.

27. Learned Senior Counsel appearing for the petitioner as well as the 2nd respondent joined hands in very vehemently attacking the contention raised by the 1st respondent that the petition is devoid of material facts and does not disclose a cause of action. According to them, it has been stated in the petition that the 1st respondent has not disclosed his assets as well as the assets inherited by him consequent on the death of his wife. Learned Senior Counsel referred to a series of documents and

contended that a perusal of those documents and a comparison of same with Ext.X1 will clearly reveal that there has been material suppression of facts and that all assets have not been disclosed. Apart from the above fact, as admitted by the 1st respondent, he has not disclosed the assets of his wife in Form No.26. According to the petitioner, both 1st respondent and his wife late Sunanda Pushkar were Hindus and they lived as Hindus and the wife died as a Hindu and therefore, Hindu Succession Act applies. Even assuming that the share available to the 1st respondent could not be properly ascertained, it would have been only fair and just, according to the learned Senior Counsel, that the assets of Smt.Sunanda Pushkar be disclosed in Form No.26 and then indicate that the 1st respondent inherits only a portion thereof. The claim of the 1st respondent that he inherited no assets of Sunanda Pushkar cannot be readily accepted.

28. Relying on the decision in ***Krishnamoorthy*** *vs.* ***Sivakumar and others*** ((2015) 3 Supreme Court Cases 467), learned Senior Counsel appearing for the 2nd respondent contended that if the 1st respondent had a case that it was not

Hindu Law that was applicable but some other provisions of law, it was for him to plead and prove the same and in the absence of pleadings, he cannot be heard to say that inheritance is governed by Foreign Law. It is contended that in all fairness the assets of late Smt.Sunanda Pushkar ought to have been disclosed in Form No.26 with a rider that the 1st respondent at best would inherit only a portion thereof. Learned Senior Counsel appearing for the petitioner and the 2nd respondent contended that it was with a purpose and object that Form No.26 was designed and that could be discerned from the decisions in ***Union of India*** *vs.* ***Association for Democratic Reforms and another*** ((2002) 5 Supreme Court Cases 294) and in ***Peoples Union for Civil Liberties (PUCL) and another*** *vs.* ***Union of India and another*** (AIR 2003 Supreme Court 2363). A comparison of Form No.26 produced before this Court with Exts.X2, X3 and X4 series would clearly show that what is stated in Form No.26 is untrue. There has been deliberate concealment of assets and that, according to the learned Senior Counsel, is fatal going by the decision in ***Kisan Shankar Kathore*** *vs.* ***Arun Dattatray***

Sawant and others (2014 KHC 4374).

29. Learned Senior Counsel appearing for the petitioner and the 2nd respondent contended that it is clear from a perusal of Form No.26 produced along with Ext.X1 that there was no compliance with the statutory requirement and if that be so, nomination of the 1st respondent is clearly defective. The mere fact that the said nomination has been accepted by the Returning Officer is not a ground to come to a conclusion that there is no infirmity attached to the nomination paper submitted by the 1st respondent. Referring to the decision of the Apex Court, it is pointed out that it may not be possible for the Returning Officer to verify the details furnished in Form No.26 at the time of scrutiny of nomination paper and all that the Returning Officer is called upon is to conduct a summary enquiry to satisfy himself that the requirements have been met. The veracity, genuineness and scrutiny of the entries is postponed to a later stage namely, when an Election Petition is filed disputing the election and Election Tribunal goes deep into the matter. That exercise is to be undertaken by this Court in an Election Petition.

30. Learned Senior Counsel appearing for the 1st respondent referring to Section 83 of Representation of People Act contended that what is required is only mention of material facts and material facts means those facts which furnish the cause of action. For the above proposition, learned Senior Counsel relied on the decisions in ***Kisan Shankar Kathore*** *vs.* ***Arun Dattatray Sawant and others*** (ILR 2014 (2) Kerala 717), ***Virender Nath Gautam*** *vs.* ***Satpal Singh and others*** ((2007) 3 Supreme Court Cases 617), ***Ram Sukh*** *vs.* ***Dinesh Aggarwal*** ((2009) 10 Supreme Court Cases 541) and in ***Mahendra Pal*** *vs.* ***Ram Das Malanger and others*** ((2000) 1 Supreme Court Cases 261).

31. It may be mentioned here that the decisions relied on by the learned Senior Counsel appearing for the 2nd respondent in this regard may not be of much relevance in the context as those relate to pleadings in civil proceedings and its importance therein.

32. The complaint of lack of mention of material facts, according to learned Senior Counsel appearing for the petitioner, is devoid of merit for the simple reason that the 1st respondent

has answered all the allegations in his written statement knowing fully what he had to meet and what he had to defend. There is no substance in the contention that the petition lacks material facts.

33. Learned Senior Counsel appearing for the petitioner supplemented his arguments and pleadings by pointing out that as far as the question of election being material fact, the small margin by which the 1st respondent was able to gain a margin over the 2nd respondent itself is sufficient to show that had the nomination of the 1st respondent been rejected, 2nd respondent would have emerged as winner.

34. Learned Senior Counsel appearing for the 2nd respondent contended that going by the averments made by the 1st respondent himself, late Smt.Sunanda Pushkar left assets in Ontario and in UAE. He has also pleaded that the assets in UAE are governed by Shariat Law. Learned Senior Counsel pointed out that as per Shariat Law, husband is the natural heir. Learned Senior Counsel referred to page 111 of International Succession edited by Louis Garb regarding Law of Succession of Ontario and

therein it is seen mentioned as follows:

> "**3. Intestacy**
>
> (a) Intestate succession is governed by Part II of the *SLRA*. The *SLRA* provides that where a person dies intestate and is survived by a spouse and not survived by issue, then the spouse is entitled to the property absolutely. If the deceased is survived by both a spouse and issue, then the surviving spouse is entitled to receive the payment of the preferential share before the estate is distributed. In Ontario the preferential share is CAD 200,000. The surviving spouse is also entitled to a distributive share. Under the SLRA, where a person dies intestate and leaves a spouse and one child, the spouse and child are each entitled to one-half of the residue of the property that remains after payment of the preferential share. If a person dies leaving a spouse and more than one child, then the spouse is entitled to one-third of the residue of the property that remains after payment of the preferential share and the children of the deceased equally share the remaining two-thirds. If a child has predeceased in intestate, leaving surviving issue at the date of the intestate's death, the spouse's share is the same as if the child had been living at the date of the intestate's death and the deceased child's share would then be divided among his or her issue equally. If all of the intestate's children have predeceased him or her,

after the surviving spouse's share has been paid, the intestate's issue who are in the nearest degree in which there are issue surviving him or her are entitled to the remainder of the estate.

International Succession

If a person dies intestate and leaves no spouse or issue, then the property is distributed between the parents of the deceased equally or where only one parent survives to that surviving parent absolutely. If no spouse, issue or parent survives then the property is distributed among the deceased's siblings equally. If any sibling predeceases the intestate the deceased sibling's share will be distributed among the deceased sibling's children equally. If no spouse, issue, parent, or sibling survives the intestate, then the property is to be distributed among the nephews and nieces of the intestate equally. If none of the above survive the intestate, the estate will be distributed among the highest level/degree of next-of-kin equally. Where a person dies intestate and there is no surviving spouse, issue, parent, sibling, nephew or niece, or next-of-kin, the property becomes the property of the provincial Crown.

'Issue' refers to any lineal descendant of a person whether born within or outside of marriage and includes issue conceived before and born after the death of the person. Adopted children are to be regarded as the children of the adoptive parents, as

> if they were natural parents. Therefore, illegitimate (including adulterine children), adopted and unborn children share the same rights as do natural children born within marriage.
>
> (b) There is no difference under Ontario Law in the manner in which movable and immovable estate devolves on an intestacy".

Learned Senior Counsel therefore pointed out that even assuming that Hindu Succession Act could not be applicable, the 1st respondent cannot escape from being the legal heir to the assets left behind by late Sunanda Pushkar as even going by the Law of Succession Act applicable to the area where the assets are situated, he will be a heir. If that be so, he is bound to disclose the assets left behind his wife. Having not done so, he is bound to fail.

35. Replying to the above contention, learned Senior Counsel appearing for the 1st respondent contended that this is a typical case which should have been thrown out at a threshold itself as it discloses no material facts and allegations made are vague and general in nature. According to the learned Senior Counsel, it is well established that the pleadings in the election

petition must be precise and must contain all the details which are essential to assail the election of a returned candidate. If the pleadings did not disclose the cause of action, it is the discretion of the court to reject the petition under Order VII Rule 11 of the Code of Civil Procedure.

36. Referring to the petition, as far as non disclosure of assets by the 1st respondent is concerned, there is an allegation that the 1st respondent has not disclosed details of assets. But there is no whisper in the petition as to what are the assets that have not been disclosed. Equally vague is the assertion made with reference to inheritance of assets left behind by the late wife of 1st respondent. No details what so ever are available from the petition regarding the assets of the 1st respondent or his late wife and the petitioner relies on the provisions of Hindu Succession Act to thrust inheritance on the 1st respondent.

37. Relying on the decisions in ***Dhartipakar Madan Lal Agarwal*** *vs.* ***Shri Rajiv Gandhi*** (AIR 1987 SC 1577), ***Hari Shanker Jain*** *vs.* ***Sonia Gandhi*** ((2001) 8 Supreme Court Cases 233), ***Nandiesha Reddy*** *vs.* ***Kavitha Mahesh*** (2011 (3)

KLT S.N 53 (C.No.50)), ***Jitu Patnaik*** *vs.* ***Sanatan Mohakud & Ors.*** (AIR 2012 Supreme Court 913), ***L.R.Shivaramagowda and others*** *vs.* ***T.M. Chandrashekar (dead) by Lrs and others*** ((1999) 1 Supreme Court Cases 666), learned Senior Counsel appearing for the 1st respondent pointed out that if the standards laid down in the above decisions regarding pleadings are to be adopted in the present case, it can be easily seen that the petition has to be immediately thrown out. Even though it is alleged that there has been non disclosure of assets, a careful reading of facts will show that the petitioner in this petition had not specified the assets which were not disclosed by the candidate concerned. Without doing so, making a general statement cannot provide any advantage to the petitioner. The attempt in the present case is to show that the assets have not been disclosed. Even after the documents had been produced before this Court, there was no effort made by the petitioner to ascertain what are the assets which have not been disclosed earlier.

38. As far as inheritance is concerned, learned Senior

Counsel appearing for the 1st respondent pointed out that the only averment is that the parties are governed by Hindu Succession Act. Learned Senior Counsel pointed out that Hindu Succession Act can have no application to the assets left behind by the late wife of 1st respondent as they were not situated in India.

39. Learned Senior Counsel appearing for the 1st respondent drew the attention of this Court to the purpose to be achieved by the disclosure of assets as laid down by the Apex Court in ***People's Union for Civil Liberties (PUCL) and another*** vs. ***Union of India and another*** ((2003) 4 Supreme Court Cases 399). If that test is to be applied, there is no infirmity in the nomination filed by the petitioner. Relying on the decision in ***Hari Shanker Jain*** *vs.* ***Sonia Gandhi*** ((2001) 8 Supreme Court Cases 233), learned Senior Counsel went on to point out that it was not the case of the petitioner that subsequent to the election in 2009, 1st respondent had amassed considerable wealth in his capacity as an elected candidate and that he has deliberately omitted to disclose those assets. In fact,

learned Senior Counsel went on to point out that going by the series of documents it could be seen that there is no concealment of assets at all.

40. It will be useful at this point of time to refer to the statutory provision relevant for the purpose of this case. Section 75A of Representation of People Act, 1951 requires that every elected candidate for a House of Parliament shall, within 90 days from the date on which he makes and subscribes an oath or affirmation, give details of his assets and liabilities. Section 75A of the Act in fact deals with the returned candidate and not with the proposed candidate. Section 33 of the Act deals with presentation of nomination paper and requirements for a valid nomination. Section 33(1) of the Act specifies that on issuance of public notice under Section 31 of the Act, candidate has to deliver to the Returning Officer at the place specified in this behalf the nomination paper completed in the prescribed form and signed by the candidate and by an elector of the Constituency as proposer. A mere reading of the above provision would show that the Law insists for furnishing of complete details

as is required under the relevant provisions of the Act while submitting the nomination form.

41. Section 36 of the Representation of People Act, 1951 deals with the scrutiny of nomination. On the date fixed by the Returning Officer for scrutiny of nomination paper, the Returning Officer is obliged to take up each of the nominations and scrutinize the objections raised regarding acceptance of nominations. He is called upon to decide by the said provision all objections though in a summary manner.

42. Section 38 of the Representation of People Act, 1951 deals with the publication of list of contesting candidates. Section 83 of the Act deals with the contents of an Election Petition which read as follows:

> "**83. Contents of petition.**-(1) An election petition-
> (a) shall contain a concise statement of the material facts on which the petitioner relies;
> (b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice;

and

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

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

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

43. Of course, as rightly pointed out by the learned Senior Counsel for the petitioner, on going through Section 83 of Representation of People Act, 1951, it can be seen that as per Section 83(1)(a) what is required is only mention of concise statement of material facts.

44. Next comes Section 100 of Representation of People Act, 1951 which provides the grounds for declaring election to be void. Section 100 reads as follows:

"**100. Grounds for declaring election to be void.**-(1) Subject to the provisions of sub-section (2) if the High Court is of opinion-

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) .....

(c) .....

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.

(2) .....".

45. Election in the present case is assailed on the ground that there has been improper acceptance of nomination and also that there has been non compliance of the provisions of the

Constitution or provisions of Rules, to be more precise, Section 100(1)(a) and (d) of Representation of People Act. The requirement of furnishing details regarding assets of a candidate, his/her spouse, his/her dependants is not a statutory requirement. By a judicial legislation, Election Commission was directed to bring out a prescribed form so as to provide complete disclosure regarding the bio data of the candidate and his assets which would enable the electorate to know the details of the candidate who stand for election.

46. Though in the decision in ***Union of India*** *vs.* ***Association for Democratic Reforms and another*** ((2002) 5 Supreme Court Cases 294), the Apex Court held that non disclosure of assets would enable the Returning Officer to reject the nomination, that was reviewed in the subsequent decision in ***Peoples Union for Civil Liberties (PUCL) and another*** *vs.* ***Union of India and another*** (AIR 2003 Supreme Court 2363).

47. It is interesting to note here that no sooner than the decision in ***Union of India*** *vs.* ***Association for Democratic Reforms and another*** ((2002) 5 Supreme Court Cases 294)

was pronounced by the Apex Court, the Legislature set in with an amendment to the Representation of People Act and brought into force Sections 33A and 33B of the Act. Section 33A had the effect of virtually nullifying the decision rendered in ***Union of India*** *vs.* ***Association for Democratic Reforms and another*** ((2002) 5 Supreme Court Cases 294). In the subsequent decision in ***Peoples Union for Civil Liberties (PUCL) and another*** *vs.* ***Union of India and another (AIR 2003 Supreme Court 2363)***, the Apex Court observed that it may not be proper to insist that the Returning Officer is given the power to reject the nomination for any infirmity in Form No.26 filed along with the nomination. So, that observation made by the Apex Court in the earlier decision was deleted in the subsequent decision.

48. In the decision in ***Kisan Shankar Kathore*** *vs.* ***Arun Dattatray Sawant and others*** (2014 KHC 4374), it was held that the observation in ***Peoples Union for Civil Liberties (PUCL) and another*** *vs.* ***Union of India and another*** (AIR 2003 Supreme Court 2363) did not mean that under no circumstances the Returning Officer is empowered to reject the

nomination in case of infirmity attached to Form No.26 or defective affidavit. The Apex Court cautioned that if the affidavit is totally silent or vague and From No.26 does not contain any details, then the Returning Officer is entitled to reject the nomination.

49. Before going further, it will be useful to observe that the burden to prove the facts and establish the grounds to assail an election is on the petitioner. If any authority or proposition is required, they are furnished by the decisions in ***Santosh Yadav*** *vs.* ***Narender Singh*** ((2002) 1 Supreme Court Cases 160), ***Anil*** *vs.* ***Babu M. Palissery*** (2006 (4) KLT 809) and in ***P.C. Thomas*** *vs.* ***P.M. Ismail & others*** (AIR 2010 Supreme Court 905). It is well settled that the nature of proof required is not that of preponderance of probabilities. It is trite that there must be proof to establish the case beyond reasonable doubt as is in a criminal trial. When viewed from that angle, necessity to provide necessary facts in the pleadings assumes importance.

50. Though Section 86 of the Representation of Peoples Act, 1951 enables the court to reject the election petition at the

threshold only on certain grounds, by now it is well settled that if on the materials available in the petition, it is seen that no cause of action is disclosed, the court, notwithstanding Section 86 of the Act is empowered to reject the petition under Order VII Rule 11 of the Code of Civil Procedure.

51. Having thus understood the importance of pleadings and the provisions of the Act, one may now embark upon the necessity to ascertain whether the grievance voiced by the 1st respondent is justified or not.

52. At the risk of repetition, the allegations are two fold. They are 1) 1st respondent had not disclosed all his assets and 2) he has not disclosed the assets inherited by him. In the decision in ***Krishnamoorthy*** *vs.* ***Sivakumar*** ((2015) 3 Supreme Court Cases 467) it was held in paragraphs 81, 86 and 92 as follows:

> "81. In *Manoj Narula* the Court, while discussing about democracy and the abhorrent place the corruption has in a body polity, has observed that a democratic polity, as understood in its quintessential purity, is conceptually abhorrent to corruption and, especially corruption at high places,

and repulsive to the idea of criminalisation of politics as it corrodes the legitimacy of the collective ethos, frustrates the hopes and aspirations of the citizens and has the potentiality to obstruct, if not derail, the rule of law. Democracy, which has been best defined as the Government of the people, by the people and for the people, expects prevalence of genuine orderliness, positive propriety, dedicated discipline and sanguine sanctity by constant affirmance of constitutional morality which is the pillar stone of good governance. While dealing with the concept of democracy, the majority in *Indira Nehru Gandhi* v. *Raj Narain*, stated that "democracy" as an essential feature of the Constitution is unassailable. The said principle was reiterated in *T.N. Seshan* v. *Union of India* and *Kuldip Nayar* v. *Union of India*. It was pronounced with asseveration that democracy is the basic and fundamental structure of the Constitution. There is no shadow of doubt that democracy in India is a product of the rule of law and also an embodiment of constitutional philosophy.

86. From the aforesaid, it is luculent that free exercise of any electoral right is paramount. If there is any direct or indirect interference or attempt to interfere on the part of the candidate, it amounts to undue influence. Free exercise of the electoral right after the recent pronouncements of this Court and the amendment of the provisions are to be perceived

regard being had to the purity of election and probity in public life which have their hallowedness. A voter is entitled to have an informed choice. A voter who is not satisfied with any of the candidates, as has been held in *People's Union for Civil Liberties*, can opt not to vote for any candidate. The requirement of a disclosure, especially the criminal antecedents, enables a voter to have an informed and instructed choice. If a voter is denied of the acquaintance to the information and deprived of the condition to be apprised of the entire gamut of criminal antecedents relating to heinous or serious offences or offence of corruption or moral turpitude, the exercise of electoral right would not be an advised one. He will be exercising his franchisee with the misinformed mind. That apart, his fundamental right to know also gets nullified. The attempt has to be perceived as creating an impediment in the mind of a voter, who is expected to vote to make a free, informed and advised choice. The same is sought to be scuttled at the very commencement. It is well settled in law that election covers the entire process from the issuance of the notification till the declaration of the result. This position has been clearly settled in *Hari Vishnu Kamath v. Ahmad Ishaque*, *Election Commission of Indira v. Shivaji* and *V.S. Achuthanandan* v. *P.J. Francis*. We have also culled out the principle that corrupt practice can take place

prior to voting. The factum of non-disclosure of the requisite information as regards the criminal antecedents, as has been stated hereinabove is a stage prior to voting.

92. Having held that, we are required to advert to the factual matrix at hand. As has been noted hereinbefore, the appellant was involved in 8 cases relating to embezzlement. The State Election Commission had issued a notification. The relevant part of the said notification reads as under:

> "1. Every candidate at the time of filing his nomination paper for any election or casual election for electing a member or members or Chairperson or Chairpersons of any panchayat or municipality, shall furnish full and complete information in regard to all the five matters referred to in Para 5 of the Preamble, in an affidavit or declaration, as the case may be, in the format annexed hereto:
>
> Provided that having regard to the difficulties in swearing an affidavit in a village, a candidate at the election to a Ward Member of Village Panchayat under the Tamil Nadu Panchayats Act, 1994 shall, instead of filing an affidavit, file before the Returning Officer a declaration in the same format annexed to this order.
>
> 2. The said affidavit by each candidate shall be duly sworn before a Magistrate of the First

Class or a Notary Public or a Commissioner of Oaths appointed by the High Court of the State or before an officer competent for swearing an affidavit.

3. Non-furnishing of the affidavit or declaration, as the case may be, by any candidate shall be considered to be violation of this order and the nomination of the candidate concerned shall be liable for rejection by the Returning Officer at the time of scrutiny of nomination for such non-furnishing of the affidavit/declaration, as the case may be.

4. The information so furnished by each candidate in the aforesaid affidavit or declaration as the case may be, shall be disseminated by the respective Returning Officers by displaying a copy of the affidavit on the noticeboard of his office and also by making the copies thereof available to all other candidates on demand and to the representatives of the print and electronic media.

5. If any rival candidate furnished information to the contrary, by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with the affidavit of the candidate concerned in the manner directed above.

6. All the Returning Officers shall ensure that the copies of the affidavit/declaration, prescribed herein by the Tamil Nadu State Election Commission in the Annexure shall be delivered to

> the candidates along with the forms of nomination papers as part of the nomination papers"."

53. One may at once notice here that there is no whisper in the petition as to the assets which the 1st respondent deliberately concealed or not disclosed in Form No. 26 at all. As already stated, there is only a vague statement that the 1st respondent has not disclosed all his assets. To be more precise, the only sentence in the petition reads as follows:

> "....The first respondent has clearly omitted details regarding the properties owned by him and gained by him ....".

54. A reading of the petition leaves one in no doubt that more emphasis was laid on the fact that the 1st respondent was guilty of non-disclosure of assets inherited by him consequent on the death of Smt. Sunanda Pushkar, wife of the first respondent. Here also, one does not get the entire details of the assets left behind by late Smt.Sunanda Pushkar. It is significant here to note that when examined as PW3, petitioner disclosed that long before the filing of the petition, he was aware of the disclosure made by the 1st respondent through website. If that be so, one

fails to understand as to what prevented him from disclosing those facts in the petition itself and point out that such and such assets as disclosed in the website have not been disclosed by the 1st respondent in Form No.26.

55. It is true that the 1st respondent was confronted with Ext.X4 series of documents and cross-examined at length. Much emphasis was laid on the fact that in the statement filed by the 1st respondent before the authorities concerned, they make mention of two items of property, one an agricultural property and another ancestral property in which the 1st respondent has only 1/11th share. It was on the basis of that document that a contention is now raised that the 1st respondent is guilty of non-disclosure of his assets.

56. The 1st respondent has asserted in his evidence that as far as he is concerned, he has only a partial share in only one item of property and has no other immovable property. One may recall here the evidence of PW3 to the effect that in the website, the assets of the 1st respondent have been published. If the petitioner had a case that any one of the assets sworn in Ext.X4

series of documents has not been disclosed in Form No.26, it should have been mentioned in the petition to enable the 1st respondent to answer the said allegation. By not disclosing the assets which was deliberately alleged to have been concealed, the 1st respondent is deprived of an opportunity to meet the allegations.

57. Therefore, the 1st respondent was taken by surprise when it was suggested to him that there are two different properties and he had no occasion to verify the details though it is clear that for a long time he was abroad and he had returned only in 2009 and he was little concerned about his ancestral property. This infirmity in the pleadings cannot be omitted to be noticed. Without proper pleadings it would be imprudent on the part of the court to expect the 1st respondent to answer the issue.

58. Next is regarding the inheritance issue. The petitioner asserts in the petition that the 1st respondent is governed by Sections 15 and 16 of the Hindu Succession Act. 1st respondent in his written statement has specifically pointed out that the

assets which were owned and possessed by late Smt. Sunanda Pushkar were acquired long before the marriage and situated in Canada and UAE. Even after such disclosure, the petitioner did not feel it necessary to ascertain the Law of Succession. The 2nd respondent took pains to ascertain the Law of Succession. There is no pleading as of now on record that even if the assets are at abroad, consequent on the death of Smt.Sunanda Pushkar, 1st respondent is the heir.

59. It is well settled that the Law of Succession as regards movable property is governed by lex domicilli and immovable property is governed by lex rei situs.

60. A contention was raised that the petitioner could not be expected to be in the know of assets possessed by the 1st respondent and it was within the personal knowledge of the 1st respondent and therefore the lack of pleadings in that regard cannot be taken serious note of.

61. In the decision in ***Kisan Shankar Kathore*** *vs.* ***Arun Dattatray Sawant*** (ILR 2014(2) Kerala 717) it was held as follows:

"35. Even if it is so, in respect of the aforesaid aspects, on other non-disclosures, the case of the appellant has to fail. We find clear case of non-disclosure of bungalow NO. 866 in the name of the appellant's wife, which is a substantial lapse. So is the case about the non-disclosure of vehicle in the name of appellant's wife. Likewise, non-disclosure of the appellant's interest/share in the partnership firm is a very serious and major lapse. On all these aspects, we find that the defence/explanation furnished by the appellant does not inspire any confidence. It is simply an afterthought attempt to wriggle out of the material apse on the part of the appellant in not disclosing the required information, which was substantial. We, therefore, are of the view that in the affidavits given by the appellant along with the nomination f0rm, material information about the assets was not disclosed and, therefore, it is not possible to accept the argument of the appellant that information contained in the affidavits be treated as sufficient/substantial compliance."

62. In the decision in ***Virender Nath Gautam*** *vs.* ***Satpal Singh*** ((2007) 3 Supreme Court Cases 617), it was held as follows:

"30. All material facts, therefore, in accordance with the provisions of the Act, have to be set out in the election petition. If the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would

be covered by clause (a) of sub-section (1) of Section 83 of the Act read with clause (a) of Rule 11 of Order VII of the Code.

31. The expression 'material facts' has neither been defined in the Act nor in the Code. According to the dictionary meaning, 'material' means 'fundamental', 'vital', 'basic', 'cardinal', 'central', 'crucial', 'decisive', 'essential', 'pivotal', indispensable', 'elementary' or 'primary'. [Burton's Legal Thesaurus, (Third edn.); p.349]. The phrase 'material facts', therefore, may be said to be those facts upon which a party relies for his claim or defence. In other words, 'material facts' are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be 'material facts' would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party."

63. In the decision in ***Ram Sukh*** ***vs.*** ***Dinesh Aggarwal*** ((2009)10 Supreme Court Cases 541), it was held as follows:

"15. At this juncture, in order to appreciate the real object and purport of the phrase "material facts", particularly with reference to election law, it would be appropriate to notice distinction between the phrases

"material facts" as appearing in clause (a) and "particulars" as appearing in clause (b) of sub-section (1) of Section 83. As stated above, "material facts" are primary or basic facts which have to be pleaded by the petitioner to prove his cause of action and by the defendant to prove his defence. "Particulars", on the other hand, are details in support of the material facts, pleaded by the parties. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Unlike "material facts" which provide the basic foundation on which the entire edifice of the election petition is built, "particulars" are to be stated to ensure that opposite party is not taken by surprise.

16. The distinction between "material facts" and "particulars" and their requirement in an election petition was succinctly brought out by this Court in Virender Nath Gautam v. Satpal Singh and Ors.5, wherein C.K. Thakker, J., stated thus :

(2007) 3 SCC 617.

"*50. There is distinction between facta probanda (the facts required to be proved i.e., material facts) and facta probantia (the facts by means of which they are proved i.e., particulars or evidence). It is settled law that pleadings must contain only facta probanda and not facta probantia. The material facts on which the party relies for his claim are called facta probanda and they must be*

stated in the pleadings. But the facts or facts by means of which facta probanda (material facts) are proved and which are in the nature of facta probantia (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue.""

64. The contention of the learned Senior Counsel for the petitioner that if at all there is any deficiency in the pleadings, there is no prejudice caused to the 1st respondent cannot be countenanced.

65. The fact that in the written statement the 1st respondent had denied the allegations, cannot be put against him and it could not be said that he understood what he had to meet and what defences he had to take.

66. The mere fact that nomination form is stated to be a document in the case on hand falling short of the requirements by itself is not a ground to presume that there are sufficient pleadings in that regard. Referring to Form No.26, learned Senior Counsel for the petitioner pointed out that the 1st respondent was aware of what he had to disclose and that he had

not done so goes against him. Learned Senior Counsel for the petitioner also drew the attention of this Court to the fact that the 1st respondent had no difficulty in answering the allegations in the petition in the written statement and he knew what he had to meet, and it is too late in the day to contend that the pleadings are found wanting.

67. A reading of the decision in ***Krishnamoorthy*** *vs.* ***Sivakumar*** ((2015) 3 Supreme Court Cases 467) would show that there was definite allegation in the petition regarding the particulars which the candidate failed to disclose. In that context, it was held that any omission is fatal. So is the case in the decision in ***Kisan Shankar Kathore*** *vs.* **Arun *Dattatray Sawant*** (ILR 2014 (2) Kerala 717).

68. The upshot of the above discussion is that the petition does not contain any particulars of the assets which was deliberately concealed by the 1st respondent from disclosing in Form No.26 even though going by the evidence now on record petitioner was aware of the assets possessed by the 1st respondent. If that be so, in the petition, the petitioner has to

point out that a particular asset has not been disclosed in Form No. 26.

69. As regards the question of inheritance, there is conflict of interests between the petitioner and the 2nd respondent. Of course, the petitioner only says that the law governing intestate succession is the Hindu Succession Act which obviously cannot be correct going by the principles of Private International Law. The 1st respondent in his written statement has clearly stated that he had not inherited any portion of the asset left behind by late Sunanda Pushkar and they are not governed by the Hindu Succession Act. There was no attempt from the side of the petitioner to ascertain the true law applicable and pleaded in his petition. At the risk of repetition, he was satisfied with the allegation that the parties are governed by the Hindu succession Act which obviously cannot be correct.

70. In the decision in ***Dhartipakar*** *vs.* ***Rajiv Gandhi*** (AIR 1987 SC 1577), it was held as follows:

> "Allegations of corrupt practice are in the nature of criminal charges, it is necessary that there should be no vagueness in the allegations so that the returned candidate

may know the case he has to meet. If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving inquiry. It is therefore necessary for the Court to scrutinise the pleadings relating to corrupt practice in a strict manner. (para 14)"

71. In the decision in ***Hari Shanker Jain*** ***vs.*** ***Sonia Gandhi*** ((2001) 8 Supreme Court Cases 233), it was held as follows:

"22. 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 the 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. Balakrishna, etc. v. George Fernandez, (1969) 3 SCR 603; Jitender 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.

23. It is the duty of the Court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a Court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings."

72. In the decision in ***Santosh Yadav*** *vs.* ***Narender Singh***((2002) 1 Supreme Court Cases 160), it was held as follows:

> "15. A word about the pleadings, Section 83 of the Act mandates an election petition to contain a concise statement of the material facts on which the petitioner relies. The rules of pleadings enable a civil dispute being adjudicated upon by a fair trial and reaching a just decision. A civil trial, more so when it relates to an election dispute, where the fate not only of the parties arrayed before the Court but also of the entire constituency is at a stake, the game has to be played with open cards and not like a game of chess or hide and seek. An election petition must set out all material facts wherefrom inferences vital to the success of the election petitioner and enabling the Court to grant the relief prayed for by the petitioner can be drawn subject to the averments being substantiated by cogent evidence. Concise and specific pleadings setting out all relevant material facts, and then cogent affirmative evidence being adduced in support of such averments, are indispensable to the success of an election petition. An election petition, if allowed, results in avoiding an election and nullifying the success of a returned candidate. It is a serious remedy. Therefore, an election petition seeking relief on a ground under section 100 (1) (d) of the Act, must precisely allege all material facts on which the petitioner relies in support of the plea that the result of the

election has been materially affected. Unfortunately in the present case all such material facts and circumstances are conspicuous by their absence."

73. In the decision in ***Sandiesha Reddy*** *vs.* ***Kavitha Mahesh*** (2011) 7 Supreme Court Cases 721) it was held as follows:

> "37. The phrase 'material fact' as used in Section 83(1)(a) of the Act or Order VI, Rule 2 of the Code of Civil Procedure has not been defined in the Act or the Code of Civil Procedure. In our opinion all specific and primary facts which are required to be proved by a party for the relief claimed are material facts. It is settled legal position that all material facts must be pleaded by the party on which the relief is founded. Its object and purpose is to enable the contesting party to know the case which it has to meet. An election petition can be summarily dismissed if it does not furnish the material facts to give rise to a cause of action. However, what are the material facts always depend upon the facts of each case and no rule of universal application is possible to be laid down in this regard."

74. The petitioner cannot absolve himself of the obligation to give facts and details by pointing out that details of the assets possessed by the first respondent are within his exclusive knowledge and therefore, the petitioner had no obligation to give

the details. Unfortunately, for the petitioner, his evidence shows that he was aware of the particulars and he had details with him long before the filing of the petition. In all cases where it has been held that non-disclosure is fatal and election is liable to be set aside on that ground, a close reading of the decisions would reveal that in all those cases the petitioner disclosed the assets which were not mentioned in Form No. 26 which the returned candidate had to answer in challenge to his election. Such details are conspicuously absent in the present case.

For the above reasons, it is only to be held that the objection raised by the first respondent regarding want of pleadings is only to be upheld. The petition is devoid for want of material facts and it is liable to be rejected under Order VII Rule 11 of Code of Civil Procedure. I do so.

Sd/-

P.BHAVADASAN
JUDGE

smp/sb

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The sentence **"He disputes that he and his wife late Sunanda Pushkar are Hindus"** occurring in the 8th paragraph of the judgment dated 27/05/2015 in E.P No.1/2014 is deleted as per order dated 22/06/2018 in I.A No.5/2018 in E.P No.1/2014.

Sd/-
Registrar (Judicial)