

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 18TH DAY OF FEBRUARY 2015/29TH MAGHA, 1936

ELECTION PET.No. 7 of 2014

PETITIONER(S):

ELIAS JOHN, AGED 53, S/O.JOHN FERNADEZ,
"JALAKAM", T.C.34/797, VALIYATHOPE,
VALLAKKADAVU P.O., THIRUVANANTHAPURAM,
PIN - 695 008.

BY ADVS.SRI.P.K.IBRAHIM
SMT.K.PAMBIKA
SRI.D.B.BINU
SMT.A.A.SHIBI
SRI.G.KIRAN

RESPONDENT(S):

1. DR.SASI THAROOR,
T.C.26/1592, PULIMOODU,
GOVERNMENT PRESS ROAD,
THIRUVANANTHAPURAM, KERALA 695 001.
- * 2. THE CHIEF ELECTORAL OFFICER,
STATE OF KERALA, LEGISLATIVE COMPLEX,
VIKAS BHAVAN P.O., THIRUVANANTHAPURAM,
PIN - 695 033. (DELETED)
- * 3. THE ELECTION COMMISSION OF INDIA,
NIRVACHAN SADAN, ASHOKA ROAD,
NEW DLHI - 110 001. (DELETED)
- * RESPONDENTS 2 AND 3 ARE DELETED FROM THE PARTY ARRAY
VIDE ORDER DTD.8.8.2014 IN UNNUMBERED E.P. OF 2014.

R1 BY SRI.S.SREEKUMAR, SENIOR ADVOCATE
ADV. SRI.T.MADHU
SRI.B.S.SURAJ KRISHNA

THIS ELECTION PETITION HAVING COME UP FOR ADMISSION ON
18-02-2015,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEXURE A: TRUE COPY OF THE RELEVANT PAGES OF THE ELECTORAL ROLL WHERE THE NAME OF THE PETITIONER APPEAR IN THE THIRUVANANTHAPURAM CONSTITUENCY.

ANNEXURE B: TRUE COPY OF THE PRINT OUT OF THE RELEVANT PAGE OF THE PRESS NOTE DATED 5.3.2014 OF THE ELECTION COMMISSION OF INDIA SHOWING THE NUMBER OF CONSTITUENCIES IN THE STATE AND THE ELECTION SCHEDULE.

ANNEXURE C: TRUE COPY OF THE BIOGRAPHICAL NOTE OF THE 1ST RESPONDENT PUBLISHED IN HIS WEB SITE.

ANNEXURE D: TRUE COPY OF THE NOTICE PRINTED PUBLISHED AND CIRCULATED AMONG THE VOTERS OF THIRUVANANTHAPURAM UNDER THE CAPTION 'ANANTHAPURIYUDE SWANTHAM THAROOR'.

ANNEXURE D1: TRUE COPY OF THE RTI APPLICATION DATED 9.4.2014 AND THE REPLY LETTER NO.11011/162/2014-RTI (MPLADS) DATED 30.5.2014 OF MINISTRY OF STATISTICS, GOVERNMENT OF INDIA.

ANNEXURE E: TRUE COPY OF THE BOOKLET PUBLISHED BY THE 1ST RESPONDENT IN MALAYALAM UNDER THE CAPTION "SAPHALAMAYA SWAPNANGAL SARTHAKAMAYA ANJU VARSHANGAL".

ANNEXURE E1: TRUE COPY OF THE RTI APPLICATION DATED 2.4.2014 AND THE REPLY RECEIVED FROM REGIONAL CANCER CENTRE DATED 16.5.2014.

ANNEXURE E2: TRUE COPY OF LETTER NO.Z17025/29/2014 NCD DATED 5.6.2014 OF THE MINISTRY OF HEALTH, GOVERNMENT OF INDIA.

ANNEXURE E3: TRUE COPY OF THE RTI APPLICATION DATED 2.4.2014 AND THE REPLY COMMUNICATION DATED 5.5.2014 FROM TRIVANDRUM MEDICAL COLLEGE.

ANNEXURE E4: TRUE COPY OF THE RTI APPLICATION DTD.9.4.2014 AND THE REPLY NO.Z.17025/25/2014 NCD DATED 30.4.2014 RECEIVED FROM MINISTRY OF HEALTH AND FAMILY WELFARE ON ENQUIRY UNDER RTI ACT FROM MINISTRY OF HEALTH.

ANNEXURE E5: TRUE COPY OF THE RTI APPLICATION DATED 9.4.2014 AND THE COMMUNICATION FROM MINISTRY OF HEALTH LETTER NO.FNO.A12021/3/2013 NHM FINANCE DTD.8.5.2014.

ANNEXURE E6: TRUE COPY OF THE APPEAL UNDER RTI ACT DATED 7.5.2014 AND THE REPLY RECEIVED FROM NHAI DATED 6.6.2014.

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ANNEXURE E7: TRUE COPY OF THE COMMUNICATION DTD.27.5.2014 FROM LOKH SABHA SECRETARIAT.

ANNEXURE E8: TRUE COPY FO THE RTI APPLICATION DATED 9.4.2014 AND THE REPLY RECEIVED FROM MINISTRY OF HUMAN RESOURCE DEVELOPMENT DTD.29.4.2014.

ANNEXURE E9: TRUE COPY OF THE RTI APPLICATION DATED 4.4.2014 AND THE REPLY RECEIVED FROM AIR PORT OF AUTHORITY OF INDIA DATED 18.6.2014.

ANNEXURE E10: TRUE COPY OF THE RTI APPLICATION DATED 9.4.2014 AND THE REPLY OBTAINED UNDER RTI ACT FROM SOUTHERN RAILWAY DATED 11.6.2014.

ANNEXURE E11(a): TRUE COPY OF THE RTI APPLICATION DATED 2.4.2014 AND THE REPLY FROM THE HIGH COURT OF KERALA DATED 8.5.2014.

ANNEXURE E11(b): TRUE COPY OF THE RTI APPLICATION DATED 9.4.2014 AND THE REPLY FROM NHAI DATED 29.4.2014.

ANNEXURE E12: TRUE COPY OF THE RTI APPLICATION DATED 9.4.2014 AND THE REPLY RECEIVED FROM THE MINISTRY OF ENVIRONMENT AND FOREST DATED 29.4.2014.

ANNEXURE E13(a): TRUE COPY OF THE RTI APPLICATION DTD.9.4.2014 AND THE REPLY FROM CHENKAL GRAMA PANCHAYATH DTD.23.4.2014.

ANNEXURE E13(b): TRUE ENGLISH TRANSLATION OF THE REPLY FROM CHENKAL GRAMA PANCHAYATH DTD.23.4.2014.

ANNEXURE E13(c): A TRUE COPY OF THE RTI APPLICATION DTD.9.4.2014 AND THE REPLY FROM KARODE GRAMA PANCHAYATH DTD.21.4.2014.

ANNEXURE E14: TRUE COPY OF THE RTI APPLICATION DTD.9.4.2014 AND THE REPLY FROM MINISTRY OF URBAN DEVELOPMENT DTD.5.5.2014.

ANNEXURE E15: TRUE COPY OF THE RTI APPLICATION DTD.2.4.2014 AND THE REPLY COMMUNICATION DTD.24.5.2014 FROM THIRUVANANTHAPURAM MUNICIPAL COUNCIL IN RESPONSE TO RTI APPLICATION.

ANNEXURE E15(a): TRUE COPY OF THE ENGLISH TRANSLATION OF ANNEXURE E15.

ANNEXURE E16(a): TRUE COPY OF THE COMMUNICATION BY THE THIRUVANANTHAPURAM CORPORATION ADDRESSED TO URBAN AFFAIRS DIRECTOR, DTD.15.12.2012.

ANNEXURE E16(b): TRUE COPY OF THE ENGLISH TRANSLATION OF ANNEXURE E16(a).

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**ANNEXURE E16(c): TRUE COPY OF THE RTI APPLICATION DATED 2.4.2014 AND THE
REPLY FROM INFORMATION AND PUBLIC RELATIONS
DEPARTMENTS FROM 19.5.2014.**

**ANNEXURE E16(d): TRUE COPY OF THE ENGLISH TRANSLATION OF THE REPLY
FROM INFORMATION AND PUBLIC RELATIONS DEPARTMENTS
DTD.19.5.2014.**

**ANNEXURE E17: TRUE COPY OF THE RTI APPLICATION DTD.29.5.2014 AND THE
REPLY DTD.6.6.2014 FROM TRIVANDRUM DISTRICT PLANNING
OFFICER.**

ANNEXURE E17(a): TRUE COPY OF THE ENGLISH TRANSLATION OF ANNEXURE E17.

**ANNEXURE E18: TRUE COPY OF THE RTI APPLICATION DATED 11.3.2014 SUBMITTED
BY V.RAJAN AND REPLY DTD.14.3.2014 OF THE TRIVANDRUM
DEPUTY DISTRICT PLANNING OFFICER.**

ANNEXURE E18(a): TRUE COPY OF THE ENGLISH TRANSLATION OF ANNEXURE E18.

ANNEXURE F: COPY OF THE CHALAN RECEIPT NO.114 DTD.28.6.2014.

RESPONDENT(S)' ANNEXURES:

NIL

//TRUE COPY//

P.S.TO JUDGE

P. BHAVADASAN, J.

E.P. No. 7 of 2014

Dated this the 18th day of February, 2015.

ORDER

Petitioner challenges the election of the respondent, Dr. Sasi Tharoor, from Thiruvananthapuram Parliamentary constituency in the election held in 2014 on the ground that he has indulged in corrupt practices.

2. A prominent personality with an enviable educational, occupational and professional achievements entered politics and represented Thiruvananthapuram Parliamentary Constituency in 2009 standing as a candidate sponsored by United Democratic Front. He won that election. In 2014 election again he contested under the same banner and was able to secure more number of votes than other candidates and therefore, he was declared as duly elected.

3. In the petition, it is alleged that after having become successful in the 2009 election from Thiruvananthapuram Parliamentary Constituency, the respondent became a Minister in the Central Government Ministry and he had also Officiated as a Minister of State for External Affairs for some time in 2010-2011. The petitioner refers in detail to the various academic as well as other achievements of the respondent which are not very relevant for the purpose of deciding the issue involved in this petition.

4. The petitioner, being a voter of the constituency, would say that the voters were not happy about the way in which the respondent functioned. There were no visible developments in the constituency though there was lot of expectations from him by the voters. The anti incumbent mood of the people was sensed by the respondent, who thought it necessary to raise his profile by

some means so as to come out successful in the election. He devised a method to boost up his popularity and his acceptance among the voters in the constituency. He brought out two booklets, namely Annexures D and E, claiming that he had done various developmental activities in the constituency. The booklets so printed were circulated among the electorate.

5. The petitioner, a journalist by profession, felt suspicious about the claims made mention of in the booklet. Though it was a time consuming effort, he got information by resorting to Right to Information Act, 2005. To his utter surprise, he found that many of the tall claims made by the respondent in the Annexures are false and he had nothing to do with the same. He had in fact deliberately and dishonestly represented to the people about his achievements which were false to his knowledge with the intention of inducing the voters to vote for him. He knew

that unless he indulges in such practices, he cannot win the election. The petitioner in detail narrates about the bogus claims made in Annexures D and E. Pointing out the rights of a voter in an election, which according to the counsel is constitutionally protected right, the petitioner alleges that the respondent ought not to have made deliberate and dishonest claims in the form of booklets which were circulated among the electorate. He knew when he published and circulated the booklets that he was making false claims and his only intention was to influence the voters in the constituency. The petitioner believes that the voters in the constituency were carried away by the false claims made by the respondent and they voted for him. It is alleged that it was by deceitful means adopted by the respondent to secure votes for him. The petitioner would further say that there was no time available for the voters to ascertain the veracity of the claims made by the

respondent and they never had any reason to disbelieve the claims made by the respondent considering his standing in the society and among the public.

6. Pointing out the rights of an voter to know the truth about the candidate, his antecedents and his activities, it is contended that by making such false claims, he played fraud on the voters and that falls within "any corrupt practice" contained in Section 100(1)(b) of the Representation of the People Act, 1951. The statutory right of a voter to vote according to his choice is materially affected by the deceitful claims made by the respondent and his election, therefore, is vitiated going by Section 100(1)(b) of the Representation of the People Act, 1951.

7. It is therefore prayed that election of the respondent be set aside on the ground that he indulged in corrupt practices vitiating the election.

8. The respondent resisted the petition. He denied the various allegations in the petition and disputed that he had indulged in any corrupt practice attracting Section 100(1)(b) of the Representation of the People Act, 1951. It was contended that the petition itself is not maintainable as there is no triable dispute or issue. Petition does not satisfy the requirements of an election petition under Section 83 of Representation of the People Act, 1951 especially since the necessary material facts and particulars are not furnished in the election petition. It was therefore pointed out that it is liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure. The respondent would further point out that when a corrupt practice is alleged, full particulars will have to be given in the petition itself including the date, place etc., where corrupt practice is alleged to have been committed and the persons who were involved in the corrupt practice. These facts are

conspicuously absent in the petition and that is sufficient to reject the petition.

9. The respondent pointed out that the claim made in the petition that he had unduly influenced the voters by publishing Annexures D and E is without any foundation and each voter was free to make his choice and there was no threat or coercion exerted in any manner by the respondent which compelled the voter to vote in a particular manner. It is also claimed by the respondent that the booklets were published and circulated long before the announcement of the candidature for the Thiruvananthapuram Parliamentary constituency. At the time of publication of Annexures D and E, the respondent had not become a candidate and therefore, the infirmity alleged is not attracted.

10. The respondent denied that he had concealed anything from the voters or that he had made false claims.

He contended that it was open to each candidate to project the achievements made by him and even assuming that he had made certain claims which turned out to be untrue, it would not amount to dishonest or deliberate misrepresentation with the intention to influence the voters in a prejudicial manner and cannot constitute undue influence.

11. It is then contended that even assuming all what the petitioner says is true, the act of publication of Annexures D and E, accepting the contents therein are totally false, that cannot amount to corrupt practice under Section 123(2) of the Representation of the People Act, 1951, and none of the acts complained of by the petitioner fall within the ambit of corrupt practices as contemplated under Section 123 of the Representation of the People Act, 1951. On these grounds, it is prayed that the petition be rejected.

12. On the motion made by the respondent, the maintainability of the petition was heard as a preliminary issue.

13. The substance of the contention raised by the respondent is want of particulars of corrupt practice in the petition. Referring to Section 83 of the Representation of the People Act, 1951, it was contended that the petition should contain a concise statement of the material facts on which the petitioner relies and also set forth the particulars of the corrupt practice committed by the candidate. Referring to Section 83(1)(b) of Representation of the People Act, 1951, it was contended that the petitioner has to disclose the date and place of such corrupt practice and those facts are conspicuously absent in the petition. Therefore, it does not satisfy the requirements of Section 83 of the Representation of the People Act, 1951.

14. Learned Senior Counsel appearing for the respondent pointed out that the core of the complaint of the petitioner is that the respondent, through the publication of Annexures D and E booklets, made false claims of achievements thus winning over the voters in his favour. Even assuming it to be true cannot fall within the ambit of any of the corrupt practices enumerated under Section 123 of the R.P. Act, 1951.

15. Referring to the decisions reported in **Hari Shanker Jain v. Sonia Gandhi** ((2001) 8 SCC 233) and **R.P. Moidutty v. P.T. Kunju Mohammad** ((2000) 1 SCC 481), learned counsel for the respondent contended that the petition is found wanting in many respects. It was also contended that except for saying that the respondent has indulged in corrupt practices, no specific corrupt practice as contemplated under Section 123 of the Representation of the People Act, 1951 is referred to by the petitioner. It is

true that Section 123 of R.P. Act, 1951 is mentioned in the petition, but under which clause of Section 123 does the act alleged to have been committed by the respondent falls is not specified. It appears, according to the learned counsel that the petitioner seems to have a contention that apart from corrupt practices mentioned in Section 123 of R.P. Act, 1951, acts such as one in hand can constitute corrupt practice under general law.

16. Learned Senior Counsel for the respondent reminded this Court that R.P. Act is a self contained Code and one cannot invent grounds which are not specified in the Act. The petitioner ought to have made mention of the actual corrupt practice and merely stating that false statements have been made will not suffice. Learned counsel went on to contend that even assuming all what the petitioner says is true, still no corrupt practice is disclosed. Going by the averments in the petition, one can say that the

claims of the petitioner would come under Section 123(2) of R.P. Act, 1951 which deals with undue influence as one of the corrupt practices mentioned in the Act. In order to constitute undue influence, mere making of false statement is not sufficient. The act committed by the candidate should be such that it leaves the voter with no option but to vote in his favour. In other words, according to the learned Senior Counsel, the voter is precluded from exercising his option on his volition but forced to act in a particular manner. Relying on the decisions reported in **Kunhimohammed v. T.M. Jacob** (1988 KHC 69), **S.K. Singh v. V.V. Giri** (AIR 1970 SC 2097), **Shri Baburao Patel v. Dr. Zakir Husain** (AIR 1968 SC 904) and **Abad Lal v. Kanshi Ram** (1980) 2 SCC 350), learned Senior Counsel for the respondent contended that the issue as to what constitutes undue influence has been discussed in those decisions and even accepting all the allegations to be true, it does not constitute any of the

corrupt practices falling within the ambit of Section 123(2) of R.P. Act, 1951.

17. Meeting the above arguments, learned counsel for the petitioner contended that the concept of election has undergone a sea change in the recent years and the voters' rights have been recognized. Each voter is entitled to know the truth about the candidate and his achievements and each candidate is bound to disclose the truth and any act of fraud or deception practiced by the candidate vitiates his election.

18. Learned counsel for the petitioner relied on the decisions reported in **People's Union for Civil Liberties v. Union of India** ((2003) 4 SCC 399) and **People's Union for Civil Liberties v. Union of India** ((2013)10 SCC 1). According to the learned counsel for the petitioner, there are sufficient pleadings contained in the petition to make the respondent aware of the allegations

against him and the contention taken that the petition does not satisfy the requirements of Section 83 of R.P. Act, 1951 is without any basis. After having made utter falsehood statements before the electorate, the respondent cannot be heard to say that he had not indulged in corrupt practices. It amounts to a clear case of fraud or deception thereby unduly influencing the voters to make them vote for him.

19. It was also contended that corrupt practice envisaged by R.P. Act, 1951 is not confined to the ones contained in Section 123 of R.P. Act, 1951. It is not necessary that only on proof of one of the corrupt practices under Section 123 of the R.P. Act election can be set aside under Section 100 but there can be other ground falling outside the scope of Section 123 of the R.P. Act which may amount to corrupt practice like the one on hand. If the court finds that the conduct of the candidate is questionable and is not above board and he has attempted to influence

the voters through undesirable means, then it certainly amounts to corrupt practice and the election is vitiated.

20. Learned counsel for the petitioner also referred to Section 123 (4) of the Representation of People Act and it was contended that on facts the said provision is attracted. Learned counsel then contended that the respondent has not disputed that Annexures D and E booklets were published and circulated. According to the learned counsel that caused prejudice in the mind of the voter and worked to the advantage of the respondent which falls within the ambit of Section 123(4) of the R.P. Act, 1951. It therefore could not be said that petition falls short of the requirements of Section 83 of the R.P. Act, 1951. At any rate, there is a triable issue and the petition cannot be thrown out at the threshold itself.

21. Coming to the first of the arguments of the respondent that there is lack of pleadings, it is well settled

by now that Section 83 of the R.P. Act, 1951 governs the field. Section 83 reads as follows:

“83. Contents of petition.- (1) An election petition-

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

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

© 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.”

The provision stipulates that, the material facts and full particulars will have to be disclosed in the petition and that the date and place of each of the corrupt practice also will have to be disclosed. The trial of the election petition is almost like a criminal trial. The candidate who is accused of corrupt practice must be able to know the charge he has to meet and for that purpose he should know the entire set of facts on the basis of which his election is assailed.

22. In this context, it is useful to refer to the decision reported in **Hari Shanker Jain v. Sonia Gandhi** ((2001) 8 SCC 233), wherein it was held as follows:

"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 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. In the decision reported in **R.P. Moidutty v. P.T. Kunju Mohammad** ((2000) 1 SCC 481), it was held as follows:

“14. It is basic to the law of elections and election petitions that in a democracy, the mandate of the people as expressed at the hustings must prevail and be respected by the Courts and that is why the election of a successful candidate is not to be set aside lightly. Heavy onus lies on the election petitioner seeking setting aside of the election of a successful candidate to make out a clear case for such relief both in the pleadings and at the trial. The mandate of the people is one as has been truly, freely and purely expressed. The electoral process in a democracy such as ours is too sacrosanct to be permitted to be polluted by corrupt practices. If the Court arrives at a finding of commission of corrupt practice by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent then the election of the returned candidate shall

be declared to be void. The underlying principle is that corrupt practice having been committed, the result of the election does not echo the true voice of the people. As the consequences flowing from the proof of corrupt practice at the election are serious, the onus of establishing commission of corrupt practice lies heavily on the person who alleges the same. The onus of proof is not discharged merely on preponderance of probabilities; the standard of proof required is akin to that of proving a criminal or a quasi-criminal charge. Clear cut evidence, wholly credible and reliable, is needed to prove beyond doubt the charge of corrupt practice. (See *Ram Chandra Rai v. State of Madhya Pradesh*, (1970) 3 SCC 647 : (AIR 1971 SC 128); *Manphul Singh v. Surinder Singh*, AIR 1973 SC 2158; *Rahim Khan v. Khurshid Ahmed*, AIR 1975 SC 290; *Bir Chandra Barman v. Anil Sarkar*, AIR 1976 SC 603; *Lakshmi Raman Acharya v. Chandan Singh*, AIR 1977 SC 587; *Amolak Chand Chhazad v. Bhagwandas Arya (Dead)*, AIR 1977 SC 813). The legislature has taken extra care to make special provision for pleadings in an election petition alleging corrupt practice. Under Section 83 of the Act ordinarily it would suffice if the election petition contains a concise statement of the

material facts relied on by the petitioner, but in the case of corrupt practice the election petition must set forth full particulars thereof including as full a statement as possible of (i) the names of the parties alleged to have committed such corrupt practice, (ii) the date, and (iii) place of the commission of each such practice. An election petition is required to be signed and verified in the same manner as is laid down in the Code of Civil Procedure, 1908 for the verification of pleadings. However, if the petition alleges any corrupt practice then the petition has additionally to be accompanied by an affidavit in Form No. 25 prescribed by Rule 94A of the Conduct of Elections Rules, 1961 in support of the allegations of such corrupt practice and the particulars thereof. Thus, an election petition alleging commission of corrupt practice has to satisfy some additional requirements, mandatory in nature, in the matter of raising of the pleadings and verifying the averments at the stage of filing of the election petition and then in the matter of discharging the onus of proof at the stage of the trial.”

24. In the decision reported in **Ananga Uday Singh Deo v. Ranga Nath Mishra** ((2002) 1 SCC 499) it

was held as follows:

“28. It has been held in a number of cases by this Court that the petition lacking in 'material facts' and 'material particulars' as provided under Section 83 is required to be dismissed. Allegations of corrupt practice is a serious allegation which entails serious consequence of disqualifying the candidate from contesting the election for a period which may extend up to six years. The charge of corrupt practice is to be proved like a criminal charge requiring the standard of proof to be beyond reasonable doubt.”

25. In the decision reported in **C.P. John v. Babu M. Palissery** ((2014) 10 SCC 547) it was held as follows:

“18. When we read Section 83, the substantive part of Section 83(1) consists of three important elements, namely, that an election petition should contain a concise statement of material facts which an election petitioner relies upon. The emphasis is on the material facts which should be stated in a concise forum. Under Section 83(1)(b) it is stipulated that the election petition should set forth full particulars of any

corrupt practice which is alleged by the petitioner. A reading of the said Section 83(1)(b) is to the effect that such particulars should be complete in every respect and when it relates to an allegation of corrupt practice it should specifically state the names of the parties who alleged to have committed such corrupt practice and also the date and place where such corrupt practice was committed. In other words, the particulars relating to corrupt practice should not be lacking in any respect. One who reads the averments relating to corrupt practice should in in a position to gather every minute detail about the alleged corrupt practice such as the names of the persons, the nature of the alleged corrupt practice as the names of the persons, the nature of the alleged corrupt practice indulged in by such person or persons, the place, the date, the time and every other detail relating to the alleged corrupt practice."

26. All that the petition on hand discloses is that two booklets were circulated among the voters, namely, Annexures D and E. Even assuming that Annexures D and E form part of the petition itself, the date and place of its

publication are not specified. Except for stating that publication was made after the filing of the nomination, nothing more is stated in the petition. There is no particulars as to when it was published and where it was circulated and by whom it was circulated. If that be so, pleadings certainly fall short of the requirements of Section 83 of the R.P. Act, 1951.

27. Even assuming that one can overlook the above lacuna, there is yet another serious omission. Nowhere in the petition the petitioner has specified as to what exactly is the corrupt practice indulged in by the respondent so as to vitiate his election. At the time of argument, learned counsel for the petitioner placed reliance on Sections 123(2) and 123(4) of the R.P. Act. Those provisions do not find a place in the petition at all. The result is that the respondent is in the dark as to which of the grounds under Section 123 of the R.P. Act, 1951 he has to

meet.

28. One may now refer to the stand of the petitioner in this regard. The petitioner would say that the right to vote and the right to know are constitutional rights. No candidate has a right to propagate false claims about his achievements or developments said to have been effected by him during his tenure. Moral and ethical standard should be of a higher degree and anything which falls short of the same amounts to corrupt practice. If the candidates were allowed to mislead the electorate, that would be the death knell of democracy which has been strongly deprecated by the Apex Court in several decisions.

29. Harping on high democratic tradition and making a fervent plea for sustenance of certain standards and for a clean democratic atmosphere at the time of election, learned counsel for the petitioner contended that the act of making false claims about his achievements

amounts to fraud and deception and that is sufficient to vitiate election. The court is bound to uphold democratic values envisaged by the Constitution and any act against the same amounts to corrupt practice.

30. Before coming to the merits of the argument, at the risk of repetition, one may notice that the petition is totally silent about the actual corrupt practice alleged to have been committed by the respondent. It does not refer to either Section 123(2) or 123(4) of the R.P. Act. Reference to Section 123 of R.P. Act is made in the petition for the purpose of contending that it is not exhaustive and the corrupt practice mentioned under Section 100 of the R.P. Act can take within its fold other corrupt practices which are not covered by Section 123 of the R.P. Act.

31. It will be useful at this juncture to refer to the relevant provisions. Section 100 of the R.P. Act reads as follows:

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

- (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or
- (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
- (c) that any nomination has been improperly rejected; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

- (i) by the improper acceptance or any nomination, or
- (ii) by any corrupt practice committed in the interests of the returned candidate 4 [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 7 [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 R.P. Act reads as follows:

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

((1) omitted as unnecessary.)

(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 ex-communication 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.”

(Rest is omitted as unnecessary.)

A plain reading of the above provision will show that the corrupt practice referred to in Section 100 of the R.P.Act can only be one of the corrupt practices made mention of in Section 123 of the R.P. Act. Section 123 of the R.P.Act stipulates corrupt practice for the purpose of the Act. There can be no manner of doubt that unless and until the petitioner is able to bring the act complained of within the fold of one of the corrupt practices made mention of in Section 123 of the R.P. Act, the election cannot be assailed on that ground. It is difficult to accept the contention of the learned counsel for the petitioner that apart from Section 123 of the R.P. Act, there may be other grounds of corrupt practices which are available to the court. The assertion suggests that the court is free to invent grounds. The

person who has to meet the allegation should know as to what exactly is the case he has to defend. It cannot be left to the whims and fancies of the court as it will cause serious prejudice to the candidate who is alleged to have indulged in corrupt practices.

32. The situation would be more precarious if it is otherwise. The petitioner has to disclose the exact corrupt practice the candidate is alleged to have indulged in. As has already been held, it is in the form of a criminal trial. The candidate is called upon to meet the charge of corruption which is indeed a serious one and therefore it is necessary that he should be in the full know of the allegations against him. The contention that apart from Section 123 of the R.P. Act, there can be other grounds of corruption cannot therefore be countenanced. It is by now well settled that the R.P. Act, 1951 is a complete Code in itself governing the conduct of election and one cannot go outside the said Act

for any matter relating to election. If therefore as a matter of fact the act complained of does not fall within the ambit of any of the provisions of the Act, the Court may not, however objectionable or unpalatable the act alleged to have been committed by the candidate may be, and even if it is found contrary to the moral or ethical standards, will not be justified in interfering with the electoral mandate.

33. In the decision reported in **Mohd. Alauddin Khan v. Karam Thamarjit Singh** ((2010) 7 SCC 530) it was held as follows:

“29. In view of the fact that there is a pronouncement of the Constitution Bench of this Court in Jabar Singh and also the decision of this Court in T.A. Ahammed Kabeer which on an interpretation of Section 97 of the Act, has carved out a settled position of law, a different view cannot be taken. So long the legislature does not change the law to obliterate the discrepancy, if any, the court cannot do so on its own. It would not be appropriate for the court to go beyond the legislative intent as derived

from the existing provisions and lay down its views on a particular matter although such a view could be a possible view. The judiciary does not have any power to legislate and that is to be strictly adhered to.”

34. In the decision reported in **Thampanoor Ravi v. Charupara Ravi** ((1999) 8 SCC 74) it was held as follows:

“12. Under Article 329(b) of the Constitution no election to a Legislature shall be called in question except by an election petition presented to such authority and in such manner as may be provided by or made by the appropriate Legislature. Under Section 80-A of the R. P. Act, the forum for adjudication of an election petition is the High Court. The scope of this provision is considered by this Court in *Upadhyaya Hargovind Devshankar v. Dhirendrasinh Virbhadrasinhji Solanki*, AIR 1988 SC 915. In that decision, the question was whether an order made on interlocutory application in election petition could be the subject of a Letters Patent Appeal. It was observed in that decision that conferment of power under R.P. Act to try an election petition does not amount to enlargement of existing jurisdiction of the High Court.

The jurisdiction exercisable under the R. P. Act is a special jurisdiction conferred on the High Court by virtue of Article 329(b) of the Constitution. Therefore, even though the High Court may otherwise exercise ordinary and extraordinary jurisdiction it would be difficult to envisage a situation that while trying an election petition in exercise of the jurisdiction conferred by the R. P. Act it can adjudicate upon vires of the R. P. Act or any rule or order made thereunder and the election petition has to be tried in accordance with the provisions of the R. P. Act and thus the Court cannot entertain and pronounce upon matters which do not fall within the ambit of Section 100 of the R. P. Act. Even an ordinary Civil Court will not have jurisdiction to decide questions arising under insolvency enactments; much less a Special Authority like the High Court when it is not invested with such power under the Insolvency Act. The Court in *Bhagwati Prasad Dixit 'Ghorewala' v. Rajeev Gandhi*, (1986) 2 SCR 823 : (AIR 1986 SC 1534), reversed the view taken in 1985 All Weekly Cases 682 on which reliance was placed by respondent that the High Court can decide whether a person has acquired citizenship or lost citizenship. In that case a question arose as to

whether in an election petition the High Court had jurisdiction to determine the citizenship of a person. The High Court had taken the view that notwithstanding the statutory bar contained in Section 9(2) of the Citizenship Act that wherever a question arises as to whether when and how a person has acquired the citizenship of another country it shall be determined by such authority in the manner prescribed by the rules of evidence as may be prescribed in that behalf; that since by virtue of Article 329(b) of the Constitution all questions arising in an election petition filed under the R. P. Act were exclusively triable in an election petition, it had jurisdiction to decide the question whether a candidate had ceased to be an Indian citizen. This Court took the view that when such a question arises it would be a matter to be decided by the authority constituted under the Citizenship Act and when no decision is given by the competent authority under the Citizenship Act, the question whether he ceased to be a citizen of India could not be adjudicated in an election petition.

16. Under what circumstances and subject to what limitations a person could be declared to have incurred disqualification is a matter of policy of law

and the Courts have cautioned themselves by stating that right to vote, right to elect or contest an election is a creature of statute and circumscribed by the limitations contained therein. Therefore, as long as the Constitution or the R. P. Act indicates in clear terms as to what its policy is, it would not be open to a Court to interpret such a provision by trying to find out what the intent could be by ignoring the actual expressions used. Therefore, the supposed scheme of the provisions would not afford sufficient guidance to take the view that the expression "undischarged insolvent" should be understood as meaning an insolvent who is a person who is in impecunious circumstances as is unable to repay the debt."

35. In the decision reported in **Manoj Narula v. Union of India** ((2014) 9 SCC 1) it was held as follows:

"It is not for this Court to lay down any guidelines relating to who should or should not be entitled to become a legislator or who should or should not be appointed a Minister in the Central Government."

36. As regards the contention based on Section 123(4) of the R.P. Act, it has to be said that the contention raised by the learned counsel for the petitioner is least impressive. A reading of Section 123(4) of the R.P. Act will clearly indicate that it refers to an act committed by the candidate in respect of another candidate and not in respect of himself. The argument is that by making tall claims of false achievements, a prejudice has been caused in the minds of the voters to vote for him and therefore the act falls under Section 123(4) of the R.P. Act cannot be accepted. The provision does not envisage such a situation at all. The provision relates to the attack on the personal character or conduct etc. of another candidate whose election prospectus have been affected by the acts committed by the returned candidate. In the decision reported in **Manharibhai Muljibhai Kakadia v. Saileshbhai Mohanbhai Patel** ((2012) 10 SCC 517) it

was held as follows:

“Black's Law Dictionary (8th Edn.) explains “prejudice” to mean damage or detriment to one's legal rights or claims. Concise Oxford English Dictionary (10th Edn. Revised) defines “Prejudice” as under:

“Prejudice.- n.(1) preconceived opinion that is not based on reason or actual experience .. unjust behaviour formed on such a basis (2) chiefly Law harm or injury that results or may result from some action or judgment. .. v. (1) give rise to prejudice in (someone);make biased. (2) cause harm to (a state of affairs).”

37. Learned counsel appearing for the petitioner contended that prejudice need not be against a person it can be in favour of a person also. May be so. But to say that Section 123(4) of the R.P. Act relates to the candidate himself is too far fetched and is not contemplated by the Section at all.

38. Mere expression or statement, even assuming it to be false, is not sufficient to constitute undue influence. The statement should be of such a nature that they should induce the person to act in a particular manner leaving him no choice at all. It may be out of fear, coercion or some other vitiating element. The standard set forth is that act committed by the returned candidate is such that a voter is not free to exercise his franchise, but he is compelled to act in a particular manner.

39. As to what constitutes undue influence was dealt with in the decisions reported in **Aad Lal v. Kanshi Ram**(AIR 1980 SC 1358) in which it was held as follows:

"11. It has to be remembered that it is an essential ingredient of the corrupt practice of "undue influence" under sub-sec. (2) of S. 123 of the Act, that there should be 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 agent, "with the free exercise of

any electoral right". There are two provisions to the sub-section but they are obviously not applicable to the controversy before us. It was therefore necessary, for the purpose of establishing the corrupt practice of "undue influence", to prove that there was any direct or indirect interference or attempt to interfere with the exercise of any electoral right. There is, however, no such allegation in the election petition in paragraph 11 which was the subject-matter of issue No.3 in the trial Court. A mere allegation that false figures were supplied or distributed in the form of a handbill (or poster) even if true, cannot be said to fall within the mischief of sub-s. (2) of S. 123, for that would not, by itself, amount to interference or attempt at interference with the free exercise of an electoral right. It cannot therefore be said that the appellant has succeeded in alleging or proving the commission of the corrupt practice which was the subject-matter of issue No. 3."

40. In the decision reported in **Kunhimohammed v. T.M. Jacob** (1988 K.H.C. 69), it was held as follows:

"6. In a democratic set up when people elect the persons to govern them every individual is entitled to have his own choice to select his candidate and canvass for him. That right is as important as the right to vote. It becomes a violation only when it transgresses certain limits provided by law. So far as the right to canvass is concerned there may be some restrictions imposed on Government officers by the conduct rules or otherwise. If they are guilty of any violation they may be liable for action. But that cannot become a corrupt practice coming under S. 123(7) unless it is established by proper allegations of material facts and full particulars that their assistance was procured or obtained by the candidate or his election agent or any other person with the consent of the candidate or the election agent and that too for the furtherance of the election prospects. The only allegation in ground (1) is that certain Government officers worked for the respondent. The nature of the assistance is not stated. Apart from the question of material facts or full particulars there is not even an allegation that their assistance was procured or obtained by anybody, much less the respondent or his election agent. The petitioner does not seem to be

aware of the requirements of S. 123(7) and it appears that he is under the impression that even any voluntary assistance by a Government Officer to a candidate in election without his knowledge or consent will form a corrupt practice vitiating the election. The allegation in this respect is without any requisite material facts or particulars and hence lacking in cause of action. The allegations regarding the charge under S. 123(b) is also without any material facts or particulars.

7. Then what remains are only the charges under S.123(2). If at all anything is disclosed by these allegations it is only something done by the respondent or on his behalf by somebody else at his request with the unilateral intention of getting some advantage in election using his official position as a Minister. It is true that purity of election is important and on the eve of election public money should not be spent even for developmental activities with the object of influencing the voters. But such practices are only evil practices and not corrupt practices. They will become grounds for challenging an election only when it becomes undue influence. Doing something even by a Minister in his Constituency with the object of

enhancing his election prospects by itself will not become a corrupt practice. Simply because election is going to come Governmental activities or programmes or developmental activities need not be placed at a standstill.

8. Election process involves canvassing which is the right of every candidate or his supporters. Canvassing will involve influencing the minds of electors also. That is an essential feature allowed by law. Only thing is that it should not transgress the limits and reach the stage of tyranny over the mind interfering with the free exercise of his electoral right and leaving him no choice in the matter. Something more than influencing is required. It is the essence of the ingredient of S. 123(2) that a unilateral intention or act on the part of the candidate or his election agent or any other with their consent is not sufficient to constitute the charge. Undue influence requires consensus of mind. A promise of a gift or an offer is equally a corrupt practice. But the gift or offer or promise must be made to an elector to vote or refrain from voting and it must act as an interference with the free exercise of the electoral right. A unilateral act of saying something, doing something

or promising something, whatever may be the intention or object can have the maximum only a persuasive and not compelling effect leaving no choice. It cannot be undue influence. Offer, acceptance, influencing and submitting are necessary. The material facts in these respects and the full particulars are to be alleged and the court must be satisfied that if these ingredients are proved the corrupt practice will be established showing that the elector or electors were left without any choice but to vote for the respondent. If it is by any another person the consent of the candidate or his election agent and their details are also factors to be alleged.”

41. In the decision reported in **Shri Baburao Patel v. Dr. Zakir Husain** (AIR 1968 SC 904) it was held as follows:

“28. It will be seen from the above review of the cases relating to undue influence that it has been consistently held in this country that it is open to Ministers to canvass for candidates of their party standing for election. Such canvassing does not amount to undue influence but is proper use of the Minister's right to ask the public to support candidates

belonging to the Minister's party. It is only where a Minister abuses his position as such and goes beyond merely asking for support for candidates belonging to his party that a question of undue influence may arise. But so long as the Minister only asks the electors to vote for a particular candidate belonging to his party and puts forward before the public the merits of his candidate it cannot be said that by merely making such request to the electorate the Minister exercises undue influence. The fact that the Minister's request was addressed in the form of what is called a whip is also immaterial so long as it is clear that there is no compulsion on the electorate to vote in the manner indicated. It is in the light of these principles that we have to see whether the four allegations made in this case, assuming them to be correct, make out a case of undue influence."

42. In the decision reported in **Ananga Uday Singh Deo v. Ranga Nath Mishra** (JT 2001 (8) SC 574) it was held as follows:

"33. In a recent decision this Court in *V. Narayanaswamy v. C. P. Thirunavukkarasu*, (2000) 2 SCC 294 after analysing the entire case law on the

subject has held that exercise of undue influence is also deemed to be a corrupt practice. Under subsection (2) of Section 123 "undue influence" means 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. "Material facts" and "material particulars" certainly connote two different things. Material facts are those facts which constitute the cause of action. In a petition based on the allegation of corrupt practices the cause of action cannot be equated with the cause of action as is normally understood because of the consequences that follow in a petition based on the allegations of corrupt practices. An election petition seeking a challenge to the election of a candidate on the allegation of corrupt practices is a serious matter, if proved, not only does the candidate suffer ignominy, he also suffers disqualification from standing for election for a period that may extend to six years."

43. In the decision reported in **Ramachandran v. K.P. Noordeen** (AIR 1988 Kerala 141) it was held as

follows:

“23. Anything done by a candidate before his candidature for gaining popularity in the constituency with an eye on the ultimate candidature will not come within the provision. In what the successful candidate is alleged to have done there must be an element of bargaining. If a Minister, as alleged in this case, redresses the grievances of the people of his constituency or renders them any help on the eve of election, it is not a corrupt practice unless it is alleged and proved that he obtained promises from the voters in return as a condition for his help. There is no such allegation here. The allegations and evidence must show it clearly that there was a promise or gift directly or indirectly made to an elector to vote or refrain from voting at an election. In order to constitute corrupt practice the influence or threat must be calculated to interfere with the free exercise of electoral right and to leave no choice to the electors in the matter. Some developmental works alone in the constituency by a Minister on the eve of election will not attract S.123(2) without other allegations.”

44. In the decision reported in **Charan Lal v. Giani Zail Singh** (AIR 1984 SC 309) it was held as follows:

"33. If the mere act of canvassing in favour of one candidate as against another were to amount to undue influence, the very process of a democratic election shall have been stifled because, the right to canvass support for a candidate is as much important as the right to vote for a candidate of one's choice. Therefore, in order that the offence of undue influence can be said to have been made out within the meaning of S. 171C of the Penal Code, something more than the mere act of canvassing for a candidate must be shown to have been done by the offender. That something more may, for example, be in the nature of a threat of an injury to a candidate or a voter as stated in sub-s. 2 (a) of S. 171C ,of the Penal Code or, it may consist of inducing a belief of divine displeasure in the mind of a candidate or a voter as stated in sub-s. 2 (b). The act alleged as constituting undue influence must be in the nature of a pressure or tyranny on the mind of the candidate or the voter. It is not possible to enumerate exhaustively the diverse categories of acts which fall within the

definition of undue influence. It is enough for our purpose to say, that of one thing there can be no doubt : The mere act of canvassing for a candidate cannot amount to undue influence within the meaning of S. 171C of the Penal Code."

45. In the decision reported in **S.K. Singh v. V.V.**

Giri (AIR 1970 SC 2097), it was held as follows:

"293. It will be noted that the words used in sub-sec. (1) of Sec. 171-C are very wide and sub-sec. (2) though illustrative of sub-section (1) does not purport to comprehend all the facets of undue influence under sub-section (1). The statement of objects and reasons of the Act of 1920 makes the intention of the legislature clear. It reads:

"The second sub-clause is merely explanatory of the general definitions in the first sub-clause and does not restrict the generality of the words used there. We have considered the criticisms of this clause based on the generality of the words employed but we are satisfied that any attempt at specific enumeration would be open to serious danger of loopholes in what we regard as a most salutary provision."

On the facts of this case the vital question before us is,

whether the mere publication of a false statement highly derogatory of the personal conduct or character of a candidate or the dissemination of a scurrilous pamphlet depicting a candidate as one of lecherous character will fall under sub-section (1) of Section 171-C or whether in order to prove the commission of the offence the election petitioner must go farther and establish that there was an attempt on the part of some persons to interfere with the free choice of a candidate on the part of the voters by making use of the pamphlet so as to deflect their will and restrict their choice to persons other than the one defamed.

301. Coming now to our Indian law, Section 16 of the Contract Act which came on the statute book in 1872 laid down by sub-section (1) that:

"A contract is said to be induced by "undue influence" where the relations subsisting between the parties are, such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other."

In substance our law of contract with regard to undue influence stresses upon the domination of the will by another to obtain an unfair advantage by the exercise thereof. So far as our election law is concerned the

earliest attempt seems to have been the codification in 1919 under Chapter IX-A of the Indian Penal Code. This was followed by the Government of India (Provincial Elections) Corrupt Practices and Election Petitions Order, 1936 which will be shortly described as the Corrupt Practices Order. This law was passed after the Government of India Act of 1935. Corrupt practice in relation to an election by the members of a Provincial Legislature to fill seats in Provincial Legislative Council, meant one of the practices specified in Parts I and II of the First Schedule to the Order, and in relation to any other election, meant one of the practices specified in Parts, I, II and III of that Schedule. Part I of the First Schedule defined undue influence in Clause 2 in the following terms:-

"Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of a candidate or his agent, or of any other person with the connivance of the candidate or his agent, with the free exercise of any electoral right:

Provided that-

(a) without prejudice to the generality of the provisions of this paragraph, any such person as is referred to therein who-

(i) threatens any candidate or elector, or any person in whom a candidate or elector is interested, with any injury of any kind; 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 that candidate or elector within the meaning of this paragraph:

(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 paragraph."

302. It will be noticed that there is a good deal of similarity between this provisions and that in Section 171-C of the Indian Penal Code. There is greater similarity between undue influence as defined in Section 171-C and the definition of that expression in Section 123 of the Representation of the People Act, 1951 -another Parliamentary Act. Under the Act of 1951 undue influence is defined as follows in Section 123 (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 an elector or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication 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."

This Act contains a further provisions in clause (4) of Section 123 laying down that "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 conduct or character of any candidate in relation to the candidature or withdrawal, of any candidate being a statement reasonably calculated to prejudice the election of that candidate at an election" will be deemed to be a corrupt practice for the purpose of that Act."

46. In the decision reported in **Bachan Singh v. Prithvi Singh** (AIR 1975 SC 926) it was held as follows:

"19. Doubtless the definition of 'undue influence' in sub-s. (2) of Section 123 is couched in very wide terms, and on first flush seems to cover every conceivable act which directly or indirectly interferes or attempts to interfere with the free exercise of electoral right. In one sense even election propaganda carried on vigorously, blaringly and systematically

through chrismal leaders or through various media in favour of a candidate by recounting the glories and achievements of that candidate or his political party in administrative or political field, does meddle with and mould the independent volition of electors, having poor reason and little education, in the exercise of their franchise. That such a wide construction would not be in consonance with the intendment of the legislature is discernible from Proviso to this Clause. The Proviso illustrates that ordinarily interference with the free exercise of electoral right involves either violence or threat of injury of any kind to any candidate or an elector or inducement or attempt to induce a candidate or elector to believe that he will become an object of divine displeasure or spiritual censure. The prefix 'undue' indicates that there must be some abuse of influence. 'Undue influence' is used in contra distinction to 'proper influence.' Construed in the light of the Proviso, Clause (2) of S. 123 does not bar or penalise legitimate canvassing or appeals to reason and judgment of the voters or other lawful means of persuading voters to vote or not to vote for a candidate. Indeed such proper and peaceful persuasion is the motive force of our democratic

process.”

47. Of course, the standing and the status of the person making the statement has certainly a role to play in the issue involved.

48. In the decision reported in **Manubhai v. Popatlal** (AIR 1969 SC 734) it was held as follows:

“8. Respondent No. 1 proved six speeches of Shambhu Maharaj. He did not rely in the trial Court on the speeches at Laxmipura, Bhabhar and Tharad. Mr. Gokhale stated that he did not rely on these speeches for any purpose whatsoever. Accordingly, those speeches were not read in this Court. There is no charge against the appellant on the ground of appeal to the electors on the ground of religion. The only charge against him is that in his speeches at Ikbalgadh, Amirgadh and Wav, Shambhu Maharaj with the consent of his election agent Punambhai told the electors that "if they voted for the Congress Party candidates the voters would commit the sin of cow slaughter (gau-mata vadh)". Respondent No. 1 has not proved the charge that the electors were urged in the name of mother cow to take a vow not to vote for the

Congress Party candidates, with the result that several members of the audience publicly took the vow. The Ikbalgadh speech (Ex. B-1) and the Amirgadh speech (Ex. B-3) were delivered on February 8, 1967. The Wav speech (Ex. B-4) was delivered on February 9, 1967. There was then an acute political controversy with regard to the total ban on cow slaughter. Section 5 (1) of the Bombay Animal Preservation Act. 1954 (Bombay Act. No. LXXII of 1954) as amended by Gujarat Act No. XVI of 1961, there was a total ban on cow slaughter in Gujarat (sic). But there was no absolute ban on cow slaughter in several other States. The Swatantra Party was agitating for a total ban on cow slaughter throughout India. Public criticism of the Congress Party for not abolishing cow slaughter throughout the country was permissible and legitimate. But the criticism ceases to be legitimate if the speaker commits the corrupt practice of undue influence under Section 123 (2), that is, if he interferes or attempts to interfere with the free exercise of electoral right. Under Section 123 (2), Proviso (a), clause (ii) there is such undue influence if any person with the consent of the candidate or his election agent "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". The actual effect of the speech is not material. Corrupt practice is committed if the speech is calculated to interfere with the free exercise of electoral right and to leave no choice to the electors in the matter, see *Ram Dial v. Sant Lal*, 1959 Supp (2) SCR 748, 758 and 760 = (AIR 1959 SC 855 at pp. 859 and 860).

9. In considering the speeches the status of the speaker and the character of the audience are relevant considerations. Shambhu Maharaj was Kirtankar of repute and well known and respected for his lectures on Hindu religion. The audience consisted mostly of illiterate and orthodox Hindus of the rural areas, Adivasis and Rabaris belonging to the Scheduled Tribes and Scheduled Castes. In this background, let us now consider the speeches. Respondent No. 1 charges corrupt practice in respect of 4 passages in the Ikbalgadh speech (Ex. B-1), 3 passages in the Wav speech (Ex. B-4) and 3 passages in the Amirgadh speech (Ex. B-3). The learned trial Judge found that the corrupt practice was not committed by the 1st and

2nd passage in Ex. B-1, the 1st, 2nd and 3rd and 6th passages in (Ex. B-4) and the 1st passage in Ex. B-3.”

49. In the decision reported in **Z.B. Bukhari v. B.R. Mehra** (AIR 1975 SC 1788) it was held as follows:

“11. Our Constitution makers certainly intended to set up a Secular Democratic Republic the binding spirit of which is summed up by the objectives set forth in the preamble to the Constitution. No democratic political and social order, in which the conditions of freedom and their progressive expansion for all make some regulation of all activities imperative, could endure without an agreement on the basic essentials which could unite and hold citizens together despite all the differences of religion, race, caste, community, culture, creed, and language. Our political history made it particularly necessary that these differences, which can generate powerful emotions, depriving people of their powers of rational thought and action, should not preservation of democratic freedoms are disturbed.

12. It seems to us that S. 123, sub-ss. (2), (3) and (3A) were enacted so as to eliminate, from the electoral process, appeals to those divisive factors

which arouse irrational passions that run counter to the basic tenets of our Constitution, and, indeed, of any civilized political and social order. Due respect for the religious beliefs and practices, race, creed; culture, and language of other citizens is one of the basic postulates of our democratic system. Under the guise of protecting your own religion, culture, or creed you cannot embark on personal attacks on those of others or whip up low herd instincts and animosities or irrational fears between groups to secure electoral victories. The line has to be drawn by the Courts, between what is permissible and what is prohibited, after taking into account the facts and circumstances of each case interpreted in the context in which the statements or acts complained of were made.

13. Section 123 (2) gives the "undue influence" which could be exercised by a candidate or his agent during an election a much wider connotation than this expression has under the Indian Contract Act. "Undue influence", as an election offence under the English law is explained as follows in Halsbury's Laws of England, Third Edition, Vol. 14, pp. 223-224 (para 387):

"A person is guilty of undue influence, if he directly or indirectly, by himself or by any other person on his

behalf, makes use of or threatens to make use of any force, violence or restraint, or inflicts, or threatens to inflict by himself or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting, or on account of that person having voted or refrained from voting.

" A person is also guilty of undue influence if, by abduction, duress or any fraudulent device or contrivance, he impedes or prevents the free exercise of the franchise of an elector or proxy for an elector, or thereby compels, induces or prevails upon an elector or proxy for an elector either to vote or to refrain from voting".

14.

15. We have to determine the effect of statements proved to have been made by a candidate, or, on his behalf and with his consent, during his election, upon the minds and feelings of the ordinary average voters of this country in every case of alleged corrupt practice of undue influence by making statements. We will, therefore, proceed to consider the particular facts of the case before us."

50. The observation that the statements made by persons of eminence will carry considerable weight will have to be understood in the facts and circumstances of the case.

51. Even though it may be said that undue influence as contemplated under the Representation of the People Act, 1951 is not so onerous as contained under the Contract Act, the basic elements will have to be satisfied under the Representation of People Act also. Influence is different from undue influence. A candidate by his statements can certainly influence the voters and it is seldom considered as a vitiating element. The act becomes objectionable when the candidate dominates the will of the voters and leaves them with no choice but to act in a particular manner. In other words, there is compulsion involved forcing the voters to vote for a candidate.

52. Here one may refer to the stand of the petitioner. Calling attention of this Court to the decision

reported in **People's Union for Civil Liberties v. Union of India** ((2003) 4 SCC 399) and **People's Union for Civil Liberties v. Union of India** ((2013) 10 SCC 1) it is contended that the principle laid down in those decisions will have to be followed and if those statements are applied the conduct of the respondent is certainly objectionable.

53. In the decision reported in **People's Union for Civil Liberties v. Union of India** ((2003) 4 SCC 399) it was held as follows:

"25. Even with regard to telecasting of events such as cricket, football and hockey etc., this Court in *Secretary, Ministry of Information and Broadcasting, Govt. of India v. Cricket Association of Bengal*, (1995) 2 SCC 161, held that "the right to freedom of speech and expression also includes right to educate, to inform and to entertain and also the right to be educated, informed and entertained". The Court further held as under (Para 17):-

"82. True democracy cannot exist unless all citizens have a right to participate in the affairs of the

polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. One-sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolised either by a partisan central authority or by private individuals or oligarchy organisations. This is particular so in a country like ours where about 65 per cent of the population is illiterate and hardly 1? per cent of the population has an access to the print media which is not subject to pre-censorship....."

26. The aforesaid passage leaves no doubt that right to participate by casting vote at the time of election would be meaningless unless the voters are well informed about all sides of the issues, in respect of which they are called upon to express their views by casting their votes. Disinformation, misinformation, non-information all equally create an uninformed citizenry which would finally make democracy a mobocracy and farce. On this aspect, no further discussion is required. However, we would narrate

some observations made by Bhagwati, J. (as he then was) in *S.P. Gupta v. Union of India*, 1981 Supp SCC 87, while dealing with the contention of right to secrecy that - "there can be little doubt that exposure to public gaze and security is one of the surest means of achieving a clean and healthy administration." Further, it has been explicitly and lucidly held thus :-

"64. Now it is obvious from the Constitution that we have adopted a democratic form of Government. Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government. It is only if people know how government is functioning that they can fulfil the role which democracy assigns to them and make democracy a really effective participatory democracy. "Knowledge" said James Madison, "will for ever govern ignorance

and a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of obtaining it, is but a prologue to a farce or tragedy or perhaps both." The citizens right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State. And that is why the demand for openness in the Government is increasingly growing in different parts of the world.

65. The demand for openness in the Government is based principally on two reasons. It is now widely accepted that democracy does not consist merely in people exercising their franchise once in five years to choose their rules and, once the vote is cast, then retiring it passivity and not taking any interest in the Government. Today it is common ground that democracy has a more positive content and its orchestration has to be continuous and pervasive. This means inter alia the people should not only cast intelligent and rational votes but should also exercise sound judgment on the conduct of the Government and the merits of public policies, so that democracy does not remain merely sporadic exercise in voting but

becomes a continuous process of Government - an attitude and habit of mind. But this important role people can fulfil in a democracy only if it is an open Government where there is full access to information in regard to the functioning of the Government."

29. In our view, this contention is totally misconceived. Article 19(1)(a) is interpreted in numerous judgments rendered by this Court. After considering various decisions and following tests laid therein, this Court in *Association for Democratic Reforms* (supra) arrived at the conclusion that for survival of the democracy, right of the voter to know antecedents of a candidate would be part and parcel of his fundamental right. It would be the basis for free and fair election which is a basic structure of the Constitution. Therefore, the question relating to interpretation of Art. 19(1)(a) is concluded, and there is no other question which requires interpretation of Constitution."

54. In the decision reported in **People's Union for Civil Liberties v. Union of India** ((2013) 10 SCC 1) it was held as follows:

"21. A three-Judge Bench of this Court comprising M.B Shah, P. Venkatarama Reddi and D.M. Dharmadhikari, JJ. expressed separate but concurring opinions in the People's Union for Civil Liberties (AIR 2003 SC 2363) (supra). In para 97, Reddi, J. made an observation as to the right to vote being a Constitutional right if not a fundamental right which reads as under:

"97. In Jyoti Basu v. Debi Ghosal [1982] 3 SCR 318 : (AIR 1982 SC 983) this Court again pointed out in no uncertain terms that:

8 "a right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple a statutory right."

With great reverence to the eminent Judges, I would like to clarify that the right to vote, if not a fundamental right, is certainly a constitutional right. The right originates from the Constitution and in accordance with the constitutional mandate contained in Article 326, the right has been shaped by the statute, namely, R.P. Act. That, in my understanding, is the correct legal position as regards the nature of the right to vote in elections to the House of the

People and Legislative Assemblies. It is not very accurate to describe it as a statutory right, pure and simple. Even with this clarification, the argument of the learned Solicitor General that the right to vote not being a fundamental right, the information which at best facilitates meaningful exercise of that right cannot be read as an integral part of any fundamental right, remains to be squarely met."

Similarly, in para 123, point No. 2 Reddi, J., held as under:-

"(2) The right to vote at the elections to the House of the People or Legislative Assembly is a constitutional right but not merely a statutory right; freedom of voting as distinct from right to vote is a facet of the fundamental right enshrined in Article 19(1)(a). The casting of vote in favour of one or the other candidate marks the accomplishment of freedom of expression of the voter."

Except the above two paragraphs, this aspect has nowhere been discussed or elaborated wherein all the three Judges, in their separate but concurring judgments, have taken the pains to specifically distinguish between right to vote and freedom of voting as a species of freedom of expression. In

succinct, the ratio of the judgment was that though the right to vote is a statutory right but the decision taken by a voter after verifying the credentials of the candidate either to vote or not is his right of expression under Article 19(1)(a) of the Constitution.

22. As a result, the judgments in Association for Democratic Reforms (AIR 2002 SC 2112) (supra) and People's Union for Civil Liberties (AIR 2003 SC 2363) (supra) have not disturbed the position that right to vote is a statutory right. Both the judgments have only added that the right to know the background of a candidate is a fundamental right of a voter so that he can take a rational decision of expressing himself while exercising the statutory right to vote.

23. In People's Union for Civil Liberties (supra), Shah J., in para 78D, held as under:-

"..However, voters' fundamental right to know the antecedents of a candidate is independent of statutory rights under the election law. A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution."

P. Venkatrama Reddi, J., in Para 97, held as under:-

"...Though the initial right cannot be placed on the

pedestal of a fundamental right, but, at the stage when the voter goes to the polling booth and casts his vote, his freedom to express arises. The casting of vote in favour of one or the other candidate tantamounts to expression of his opinion and preference and that final stage in the exercise of voting right marks the accomplishment of freedom of expression of the voter. That is where Article 19(1)(a) is attracted. Freedom of voting as distinct from right to vote is thus a species of freedom of expression and therefore carries with it the auxiliary and complementary rights such as right to secure information about the candidate which are conducive to the freedom."

Dharmadhikari, J., in para 127, held as under:-

"...This freedom of a citizen to participate and choose a candidate at an election is distinct from exercise of his right as a voter which is to be regulated by statutory law on the election like the RP Act."

25. After a careful perusal of the verdicts of this Court in *Kuldip Nayar (supra)*, *Association for Democratic Reforms (supra)* and *People's Union for Civil Liberties (supra)*, we are of the considered view that *Kuldip Nayar (supra)* does not overrule the other

two decisions rather it only reaffirms what has already been said by the two aforesaid decisions. The said paragraphs recognize that right to vote is a statutory right and also in People's Union for Civil Liberties (supra) it was held that "a fine distinction was drawn between the right to vote and the freedom of voting as a species of freedom of expression". Therefore, it cannot be said that Kuldip Nayar (AIR 2006 SC 3127) (supra) has observed anything to the contrary. In view of the whole debate of whether these two decisions were overruled or discarded because of the opening line in Para 362 of Kuldip Nayar (supra) i.e., "we do not agree with the above submissions?" we are of the opinion that this line must be read as a whole and not in isolation. The contention of the petitioners in Kuldip Nayar (supra) was that majority view in People's Union for Civil Liberties (AIR 2003 SC 2363) (supra) held that right to vote is a Constitutional right besides that it is also a facet of fundamental right under Article 19(1)(a) of the Constitution. It is this contention on which the Constitution Bench did not agree too in the opening line in para 362 and thereafter went on to clarify that in fact in People's Union for Civil Liberties (supra), a fine distinction was

drawn between the right to vote and the freedom of voting as a species of freedom of expression. Thus, there is no contradiction as to the fact that right to vote is neither a fundamental right nor a Constitutional right but a pure and simple statutory right. The same has been settled in a catena of cases and it is clearly not an issue in dispute in the present case. With the above observation, we hold that there is no doubt or confusion persisting in the Constitution Bench judgment of this Court in Kuldip Nayar (supra) and the decisions in Association for Democratic Reforms (supra) and People's Union for Civil Liberties (PUCL) (supra) do not stand impliedly overruled.

28. The decision taken by a voter after verifying the credentials of the candidate either to vote or not is a form of expression under Article 19(1)(a) of the Constitution. The fundamental right under Article 19 (1)(a) read with statutory right under Section 79(d) of the RP Act is violated unreasonably if right not to vote effectively is denied and secrecy is breached. This is how Articles 14 and 19(1)(a) are required to be read for deciding the issue raised in this writ petition. The casting of the vote is a facet of the right of expression of an individual and the said right is provided under

Article 19(1)(a) of the Constitution of India (Vide: Association for Democratic Reforms (AIR 2002 SC 2112) (supra) and People's Union for Civil Liberties (AIR 2003 SC 2363) (supra). Therefore, any violation of the said rights gives the aggrieved person the right to approach this Court under Article 32 of the Constitution of India. In view of the above said decisions as well as the observations of the Constitution Bench in Kuldip Nayar (AIR 2006 SC 3127) (supra), a prima facie case exists for the exercise of jurisdiction of this Court under Article 32.

39. A perusal of Section 79(d) of the RP Act, Rule 41(2) and (3) and Rule 49-O of the Rules make it clear that a right not to vote has been recognized both under the RP Act and the Rules. A positive 'right not to vote' is a part of expression of a voter in a parliamentary democracy and it has to be recognized and given effect to in the same manner as 'right to vote'. A voter may refrain from voting at an election for several reasons including the reason that he does not consider any of the candidates in the field worthy of his vote. One of the ways of such expression may be to abstain from voting, which is not an ideal option for a conscientious and responsible citizen. Thus, the

only way by which it can be made effectual is by providing a button in the EVMs to express that right. This is the basic requirement if the lasting values in a healthy democracy have to be sustained, which the Election Commission has not only recognized but has also asserted.

51. However, correspondingly, we should also appreciate that the election is a mechanism, which ultimately represents the will of the people. The essence of the electoral system should be to ensure freedom of voters to exercise their free choice. Article 19 guarantees all individuals the right to speak, criticize, and disagree on a particular issue. It stands on the spirit of tolerance and allows people to have diverse views, ideas and ideologies. Not allowing a person to cast vote negatively defeats the very freedom of expression and the right ensured in Article 21 i.e., the right to liberty.”

55. No doubt the electorate is entitled in law, apart from the Constitutional provision, to know about the antecedents and character of the candidate. There can be no quarrel with the proposition that there should be a

complete disclosure of the details regarding the candidate.

56. It is precisely because of the reason that election commission has instructed that a form filled up by the candidate is to be presented along with the nomination. But the principle laid down in above decisions can be of little help in construing Section 123 of the R.P. Act, 1951.

57. Even assuming that the claims made by the respondent were false, it is still difficult to hold that those acts amount to exerting undue influence on the voters. It is interesting to note at this juncture that even the petitioner has no case that he was carried away by the tall claims made by the respondent and had voted for him on that basis. One may also refer to the fact that nowhere in the petition it is stated that any particular person or voter was carried away by the tall claims made by the respondent and was forced to exercise his franchise on that basis alone. The petitioner seems to presume and assume that the

respondent might have been able to achieve votes on that basis without any foundation or material in that regard. Nowhere in the petition it is stated that the voters were unduly influenced by the tall claims made by the respondent or that the voters were induced or forced to vote for the respondent by such claims which otherwise they would not have done. In other words, there is no plea to show that the respondent had dominated the will of the voters leaving them with no choice.

58. A voter must be free to exercise his electoral rights. It is well settled by now that making of false claims itself does not amount to exerting undue influence. All influences need not be undue influences. Legitimate exercise of influence by a party or associate or even an individual concerned cannot be treated as undue influence. Persuasion may be quite legitimate and may influence a voter. But only when it takes the colour of threat or

interference with the right of free franchise of voter leaving him with no option but to act in a particular manner, or when the act is such that it dominated the will of the voter and it precludes him from exercising his free volition in voting, then alone the provision is attracted. It creates a situation where the free will of the voter is dominated and his wishes are compelled to be overlooked and he had to act in a particular manner which he would not have otherwise done.

59. The petition is conspicuously silent about even a single incident of a voter who was induced to vote for the respondent based on the so-called false claims or achievements made by him. All that is stated in the petition is that people might have been misguided and they might have voted for him. The petitioner speculates about the victory of the respondent.

60. As already noticed, pleadings in this regard is also wanting. There is no definite averment in the petition as to any particular group of persons or class of persons were persuaded by the publications namely Annexures D and E to vote for the respondent quite contrary to their volition to vote for any other candidate and they were induced or forced to vote for the respondent.

61. The want of necessary pleadings and also any absence of grounds to vitiate election could be considered as preliminary issue. In the decision reported in **Santhosh George v. Mathai** (2006 (4) K.L.T. 584) it was held as follows:

"22. So the legal position is clear. The Election Tribunal has got power to decide the maintainability of the Election Petition as a preliminary issue. But it shall consider whether it is desirable to consider the maintainability as a preliminary issue. If the defect pointed out is so patent and can be decided without

any enquiry the court shall consider the same as a preliminary issue. Otherwise the Election Tribunal shall consider all issues together within the time limit fixed under the Statute. In the ordinary course this Court shall be very reluctant to entertain a Writ Petition filed against an order disposing a preliminary issue."

62. In the decision reported in **Ishwardas Rohani v. Alok Mishra** ((2012) 7 SCC 309) it was held as follows:

"Though the failure to give the "material particulars" has not been held to be fatal, the failure to material facts" has always been held to be fatal to the election petition."

63. In the light of these facts, learned counsel appearing for the respondent is well justified in his submission that there is no triable issue involved in the petition.

E.P.7/2014.

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This petition is therefore rejected under Order VII
Rule 1 of the Code of Civil Procedure.

P. BHAVADASAN,
JUDGE

sb.