



O.A.Nos.883 & 884 of 2024
& O.A.No.863 of 2024
in Elp.No.1 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

O.A.No.883 of 2024 Reserved on : 10.12.2024	Pronounced on: 21 .12.2024
O.A.Nos.884 & 863 of 2024 Reserved on : 17.12.2024	Pronounced on: 21 .12.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

O.A.Nos.883 & 884 of 2024
& O.A.No.863 of 2024
in
Election Petition No.1 of 2024

O.A.No.883 of 2024

C.Robert Bruce,
No.5-129, Star Cottage, Saral Villai,
Kattathurai Post,
Kanniyakumari District - 629 158.
(Party Indian National Congress Symbol – Hand) ... Applicant/1st Respondent

/versus/

Nainar Nagenthiran,
No.540/1A1B, St.Thomas Street,
Perumalpuram, Palayamkottai Taluk,
Thirunelveli District 627 007.
(Party Bharatiya Janata Party Symbol-Lotus). ... Respondent/Petitioner

PRAYER: Judge's Summon has been filed under order XIV Rule 8 of Madras High Court Original Side Rules, read with Section 86(1) of the Representation of People Act 1951 read with Order VII Rule 11 of C.P.C., to dismiss and reject



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the election petition No.1 of 2024 on the file of this Hon'ble Court under the Representation of the People Act, 1951.

For Applicant : Mr.R.Srinivas, Senior Counsel,
Assisted by for Mrs.Mythili Srinivas &
Mr.D.Prabhu Mukunth Arun Kumar

For Respondent : Mr.T.V.Ramanujam, Senior Counsel,
for Mr.V.R.Shanmuganathan

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C.Robert Bruce,
No.5-129, Star Cottage, Saral Villai,
Kattathurai Post,
Kanniyakumari District - 629 158.
(Party Indian National Congress Symbol – Hand) ... Applicant/1st Respondent

/versus/

Nainar Nagenthiran,
No.540/1A1B, St.Thomas Street,
Perumalpuram, Palayamkottai Taluk,
Thirunelveli District 627 007.
(Party Bharatiya Janata Party Symbol-Lotus). ... Respondent/Petitioner

PRAYER: Judge's Summon has been filed under Order XIV Rule 8 of Madras High Court Original Side Rules, read with Section 195 (1)(b)(i) of Cr.P.C now Section 215 (1)(b)(i) of BNSS and Section 340 of Cr.P.C now Section 379 of BNSS, pleased to conduct a preliminary enquiry and record findings and direct an officer of this Hon'ble Court to make a complaint in writing to the Court of the competent Metropolitan Magistrate, Chennai against the respondent/ Election Petitioner and all the concerned and complicit persons for committing the offences of making a false document and forgery in connection with the



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respondent election petitioners affidavit dated 16.07.2024 filed under proviso to S.83(1) of the Representation of People Act.

For Applicant : Mr.R.Srinivas, Senior Counsel,
Assisted by for Mrs.Mythili Srinivas &
Mr.D.Prabhu Mukunth Arun Kumar

For Respondent : Mr.T.V.Ramanujam, Senior Counsel,
for Mr.V.R.Shanmuganathan

O.A.No.863 of 2024

Nainar Nagentharan
No.540/1A1B,
St. Thomas Street, Perumalpuram,
Palayamkottai Taluk, Tirunelveli District 627 007
(Party - Bharatiya Janata Party Symbol – Lotus)

... Applicant

/versus/

1. C.Robert Bruce,
No.5-129, Star Cottage,
Saral Vilai, Kattathurai Post,
Kanniyakumari District 629 158
(Party Indian National Congress Symbol - Hand)

2. M.Jansi Rani,
No.101A/1B, Manna Raja Kovil Street,
Thisaiyanvilai, Thisaiyanvilai Taluk,
Tirunelveli District 627 657
(Party - All India Anna Dravida Munnetra Kazhagam Symbol - Two Leaves)

3. Sathya,
No.43, Selvalakshmi Nagar,
Krishnapuram, Maharajanagar Post,
Palayamkottai Taluk, Tirunelveli District 627 011.
(Party Naam Tamilar Katchi Symbol - Mike)



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4. Pottal Sundara Muneeswaran
No.35/89, Mariamman Kovil Street,
Tiruvannathapuram,
Keelanatham Post,
Tirunelveli District - 627 353.
(Party - Independent Symbol - Baby Walker)

5. V.Athisayam
No.3/89, Kamaraj Nagar,
Sivanthipatti, Muthur, Palayamkottai taluk,
Tirunelveli District,
Party Independent symbol - Television

6. Balasubramanian
No.33a, South Street,
Kallathi, Moolakaripatti Post,
Nanguneri Taluk,
Tirunelveli District 627354.
(Party Bahujan Samaj Party Symbol Elephant)

7. K.Chinna Maharaja
No.6/82, Rice Mill Street,
Mela Thalaiyuthu,
Sankar Nagar post, Tirunelveli Taluk,
Tirunelveli District 627 357.
(Party - Independent symbol Flute)

8. M. David
No.263-A, Church Street, Pukuli,
Thidiyoor Post, Palayamkottai Taluk,
Tirunelveli District 627 152
(Party Independent Symbol Whistle)

9. Samuel Lawrence Ponniah
No.1/247, 6th Cross Street, Santhi Nagar, Palayamkottai,
Tirunelveli District - 627 002.
(Party Independent Symbol - Bat)



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10. Bishop Dr Godfrey Washington Noble
1/47B, JSM Cathedral Road, Itteri,
Palayamkottai Taluk, Tirunelveli District 627 007.
(Party Aanaithinthiya Jananayaka Pathukappu Kazhagam Symbol - Auto
rickshaw)

11. K. Lenin
No.5, Ashokapuram Street, Mela Karungulam,
Munnirpallam Post,
Palayamkottai taluk, Tirunelveli District 627 356.
(Party - Independent Symbol - Ring)

12. M.Chandran
No.103/16, Ayyankovil, Vallioor,
Radhapuram Taluk,
Tirunelveli District 627 117.
Party Veerath Thiyagi Viswanathadoss Thozhilalarkal Katchi Symbol Pestle
and Mortar

13. S.Selva Kumar
No.1/23, West Street,
Mela sekarakudi,
Thoothukudi District - 628 104
(Party Bahujan Dravida Party Symbol Pen Nib with Seven Rays)

14. V.Kumar
No.1/270, Railway Feeder Road, Nadukallur,
Kodaganallur,
Tirunelveli District - 6270 10.
(Party - Puthiya Makkal Tamil Desam Katchi Symbol - Chappals)

15. A. Muthuraman,
7/163, Perumal Kovil Street,
Thiruvannathapuram, Keelanatham Post,
Palayamkottai Taluk, Tirunelveli District - 627 002.
(Party Aravor Munnerta Kazhagam Symbol Diamond)



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16. M. Thalapathy Murugan

No.23/1, Selvi Amman Koil Street, Madurai Road,
Tirunelveli Junction, Tirunelveli District 627 001.
(Symbol Independent Symbol Pressure Cooker)

17. K. Sivaram

No.3/48, North Street, North Karumbanoor, Andipatti Village,
Alangulam Taluk, Tenkasi District 627 851 (Party Independent Symbol
Helmet)

18. N, Ramakrishnan,

No.189/111. East Street, Pudur
Ambasamudram Taluk Tirunelveli District
(Party Naam Indiar Party Symbol Air conditioner)

19. Suresh

No.1, Sathya Moorthy Nagar, Cheran Mahadevi,
Tirunelveli District 627 414. Party - Independent Symbol Balloon)

20. Dr. K. Rajendra Retnam

No.C-78B, 13 Cross Street, Maharaja Nagar,
Tirunelveli District 627 011. (Party Independent Symbol Bangles)

21. B.Seval Kannan Advocate

No.44, Kammakudi Street, Melaseval,
Cheranmahadevi Tirunelveli District - 627 452.
(Party Independent Symbol Almirah)

22. C. M. Raghavan

No.16/A, North Street, Aanandapuram
Thachanallur, Tirunelveli Taluk,
Tirunelveli District - 627 358 (party Independent Symbol - Bucket)

23. The Returning Officer,

No.38, Tirunelveli Parliamentary Constituency,
Tirunelveli District.

.... Respondents



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PRAYER: Judges Summons filed under Order XIV Rule 8 of Original Side Rules read with Order XI Rule 1 and 4 of C.P.C read with Rule 3 of Rules of Madras High Court, Election Petition, 1967, pleased to grant leave to the Applicant to deliver interrogatories to the 1st Respondent more fully given in the annexure.

For Applicant : Mr.T.V.Ramanujam, Senior Counsel,
for Mr.V.R.Shanmuganathan

For Respondents : Mr.R.Srinivas, Senior Counsel,
Assisted by for Mrs.Mythili Srinivas &
Mr.D.Prabhu Mukunth Arun Kumar

COMMON ORDER

The Election Petitioner is Thiru.Nainar Nagendran, who is one of the unsuccessful candidate in the Lok Sabha General Election held on 19/04/2024 for the Tirunelveli Parliament Constituency, Tamil Nadu. The first respondent, Thiru.C.Robert Bruce, is the successful candidate, who was declared elected by the Returning Officer, No.38, Tirunelveli Parliamentary Constituency, Tirunelveli (the 23rd respondent).



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2. The Election Petition is filed;

(i) to declare the election of the first respondent as null and void;

(ii) to declare the petitioner as the duly elected candidate for the

Tirunelveli, Lok Sabha Constituency, 2024 and

iii) to award cost.

3. The petition is filed under Section 100 (1)(b) r/w Section 123

(2) of the Representation of People Act, 1951 and Section 100(1)(d) (i) r/w

section 100(1)(d)(iv) of the Representation of People Act. The cause of action

for the Election Petition, as stated in the petition supported by the Affidavit, as

required under Form 25 of the Act and Rules, together with the verification

affidavit, is as under:-

“The Cause of action for the Election petition arose when the notification for the General Election for Lok Sabha has been announced by the Election Commission of India on 16.03.2024; when the 1st respondent filed his nomination along with Form 26 on 27.03.2024 for contesting in No:38 Tirunelveli Parliamentary Constituency as a Indian National Congress (INC) party candidate; when the 1st respondent suppressed the mandatory information under the provisions of



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Representation of Peoples Act, 1951 and Conduct of Election Rules, 1961, in Form 26; when the 1st respondent failed to disclose the pending Criminal antecedents against him as well as assets owned by him and his spouse in Form 26, on 28.03.2024 when the 1st respondent's nomination was improperly accepted by the 23rd respondent; when the polling in Tirunelveli Parliamentary Constituency held on 19.04.2024; also on 26.04.2024 when the results were declared and the 1st respondent was declared as elected and subsequently all are within the jurisdiction of this Hon'ble Court.”

4. On receipt of the notice, the First Respondent has filed his counter statement through his Counsel on 15th November 2024 and the same is taken on file. Meanwhile, the election petitioner has filed O.A.No.863/2024 under Order XI, Rule 1 and 4 of C.P.C., raising the following interrogatories to be answered by the First Respondent:-

i) Did not you own a property at R.S.No.6/6.5, Nagercoil Village, Agastheeswaram Taluk, Kanniyakumari District on the date of filing your nomination on 27.03.2024 for contesting election to the post of Member of Parliament from No.38 Tirunelveli Constituency, Tamil Nadu.



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ii) *Did not your wife, Helen Bruce, own a property at R.S No.6/6.5, Nagercoil Village, Agastheeswaram Taluk, Kanniyakumari District on the date of filing of your nomination on 27.03.2024 for contesting election to the post of Member of parliament from No.38 Tirunelveli Constituency, Tamil Nadu.*

iii) *Did not you face criminal charges in [C.C.No.1937 of 2019](#) on the file of Judicial Magistrate II, Shivamogga, Karnataka State on the date of filing of your nomination on 27.03.2024 for contesting election to the post of Member of parliament from No.38 Tirunelveli Constituency, Tamil Nadu.*

iv) *Did not you disclose the properties owned by you at R.S No.6/6.5, Nagercoil Village, Agastheeswaram Taluk, Kanniyakumari District in Form- 26 filed along with your nomination paper submitted on 27.03.2024 to contest the election from No.38 Tirunelveli Constituency, Tamil Nadu.*

v) *Did not you disclose the property owned by your wife, Helen Bruce, at R.S No.6/6.5, Nagercoil Village, Agastheeswaram Taluk, Kanniyakumari District in Form- 26 filed along with your nomination paper submitted on*



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*27.03.2024 to contest the election from No.38 Tirunelveli
Constituency, Tamil Nadu.*

*vi) Did not you disclose the pending criminal case
against you in [C.C.No. 1937 of 2019](#) on the file of Judicial
Magistrate II, Shivamogga, Karnataka State in Form-26
filed along with your nomination paper submitted on
27.03.2024 to contest the election from No.38 Tirunelveli
Constituency, Tamil Nadu."*

5. To this interrogatory application, the First Respondent had filed counter stating that, in his counter statement to the election petition the required answers to the interrogatories are provided as documents Nos.8, 15, 18, 19 and 20 of the annexure to the counter statement. This application for interrogatories filed even before filing of the counter statement. The Election petitioner ought to have waited for the first respondent's counter and the documents he rely. The election petitioner has to establish the facts averred in his petition through trial. The interrogatories mentioned in application O.A.No.863/2024 are neither required nor reasonable or relevant in view of the facts disclosed by the first respondent in his counter Statement.



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6. In this counter, the First Respondent has also mentioned that he had taken out an applications to dismiss/reject the election petition and to initiate criminal proceedings against the election petitioner and all others concerned for perjury and forgery.

7. These two applications were taken on file by this Court in O.A.No.883 of 2024 and O.A.No.884 of 2024 respectively. The election petitioner has filed common counter for these two applications. In response to the common counter, reply affidavit is filed on behalf of the First Respondent/Returned candidate.

8. O.A.No.883 of 2024 and O.A.No.884 of 2024:

The Applicant/first respondent, Mr.C.Robert Bruce, the elected Member of the Parliament for the Tirunelveli Constituency, seeks dismissal of the election petition *in limine* for non-compliance of the mandatory provisions of the Representation of People Act, 1951, more particularly, Section 81(3) of the said Act.



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a) According to the applicant, the election petition alleges corrupt practise. In support of the petition, a supporting affidavit is filed by the petitioner, Thiru.Nainar Nagendran, as required under Section 81(3) of the RP Act. In the said affidavit, the petitioner states that he is a resident of Tirunelveli. However, the affidavit does not state that he has temporarily come down to Chennai, but the jurat portion of the affidavit states that the deponent had sworn before an Advocate namely, K.P.Suresh Kumar at Royapettah, Chennai on 16th July 2024. The affidavit was filed in the High Court Registry on 18/07/2024. In the said affidavit, the seal and signature of the notary public, namely, K.Ravi Kumar, High Court Law Chamber, Chennai -104 and the seal of the Advocate, K.Ravi kumar, overlapping the seal of Advocate K.P.Suresh Kumar is affixed. This shows that the sign and seal of the notary public is subsequent to that of the Advocate.

b) For the said reason, the applicant/first respondent alleges that the election petition and the affidavit were filed in the Court on 18/07/2024 without the sign and seal of the notary. Thereafter, during scrutiny and compliance, a notary public has been brought in and made to sign and affix his seal on the affidavit to satisfy the mandatory requirement of proviso to Section



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83(1) of the RP Act. The act of the Notary Public signing and sealing the affidavit additionally amounts to a dishonest and fraudulent act.

c) The contention of the applicant is that the location of the Advocate, K.P.Suresh Kumar, who attested the Affidavit, is Balaji Nagar, Royapettah, Chennai. Whereas, the location of the Notary Public is No.160, New Law Chambers, High Court Building, Chennai. Therefore, the election petitioner could not have been present at both the places. The Notary Public has not put any date for his attestation. He has not mentioned the Volume Number, Serial Number, Page Number and Number of corrections and total number of pages attested, as required by the Rules framed under the Notaries Act. The deliberate omission shows that the attestation of the notary in the affidavit of the election petitioner is not done bonafide and is done dishonestly and fraudulently.

d) The applicant contends that the Notary Public, the Election Petitioner and other persons have dishonestly and fraudulently acted in concert and conspiracy and without authority, altered the material part of the affidavit to show as if he (notary public) attested the affidavit signed by the election



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petitioner in his presence. The entire exercise has been done to cause damage/injury to the applicant.

e) According to the applicant, such an act amounts to playing fraud on the Court. It amounts to making false document and using it as real one and committing forgery. Therefore, the act of crime attracts Section 227 and Section 228 of BNS, punishable under Sections 335 and 336 of BNS.

f) The Applicant/first respondent alleges that the affidavit of the election petitioner been altered, fabricated and brought on record by committing criminal offences as mentioned above. Therefore, same has to be eschewed and jettisoned. Even assuming, without admitting that the act of fraud and dishonest alteration of the affidavit happened outside the Court, it will still amount to offences under Sections 335 and 336 of Bharatiya Nyaya Sanhita besides Section 227 and 229 of Bharatiya Nyaya Sanhita.

g) That apart, the applicant further contends that, the affidavit filed along with the election petition contains the signature and seal of the notary public every page. However, the copy of the said affidavit furnished by the



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election petitioner to the respondent does not even mention that the affidavit was sworn to before or attested by a notary. The copy served to the applicant/first respondent does not contain the notary's name, or his seal and signature. Therefore, there is substantial variation between the affidavit filed before the Court and the copy served to him by the election petitioner. There is a gross violation and non-compliance of Section 81(3) of RP Act. The said lapse is not curable. Therefore, the Election Petition has to be dismissed under Section 86 (1) (a) of the Representation of People Act.

9. The gist of the common counter filed by the respondent/Election Petitioner:

a) According to the respondent/Election petitioner, on 16/07/2024 at his Counsel's office at No: 4/40, Masilamani Road, Balaji Nagar, Royapettai, Chennai he signed the Election Petition and the Supporting Affidavit. He also signed the 23 sets of documents, petitions and affidavits meant to be served to the respondents in the Election Petition. In all, he subscribed more than 3000 signatures on that day. The attesting Counsel Mr.K.P.Suresh Kumar, Advocate is attached to office of his counsel. The Notary Public Mr.K.Ravikumar, Advocate, at 160, New Law Chamber, High Court Building, Chennai, is none



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other than the father of second counsel Mr.Sai Manohar, Advocate. On that day, the Notary Public was requested to come to his counsel's office to notarise the affidavit. In the presence of the Notary Public and the attesting advocate he signed the Affidavits. Thereafter, both the affidavits were signed by the attesting counsel and the notary public and presented before the Court.

b) There is nothing wrong in getting attestation in the affidavit by the Counsel as well as notary public to term it as invalid or redundant. The fact that the affidavits contain attestation of Advocate and the Notary Public is blown out of proportion. Likewise the omission to mention in the jurat that "I have come down to Chennai" is hyper technical, when the jurat contains the word, 'solemn affirmed at Chennai'. While the jurat says, it was solemnly affirmed at Chennai, it goes without saying that the deponent had come down to Chennai to affirm the affidavit.

c) The allegations against the election petitioner is on assumptions and presumptions. There is no non compliance of mandatory provisions under Section 81(3) of RP Act. The Election Petition has been accompanied by copies of petition, annexures and other affidavits duly signed as 'true copy'. The



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allegation that the election petition and affidavit have been filed before Court on 18/07/2024 without signature and seal of the Notary Public is false and invented allegations. The allegation that during the scrutiny the Notary Public was brought in and made to sign and seal in the Affidavit is false and an allegation made deliberately without any basis.

d) The omission to put the date of attestation by the Notary Public does not mean that it was deliberate and done dishonestly. The said omission does not cause any damage or injury to the applicant who is called upon to disprove the allegation that he had suppressed the assets held by his wife and also suppressed the pendency of a criminal case while making declaration under Form 26.

e) Without advertng to the alleged corrupt practise mentioned in the election petition, the first defendant purely on assumption repeatedly alleges fraud, dishonest and fabrication of false document. These allegations are baseless and unsustainable. They are raised to divert the issue under consideration in the Election Petition. The Applicant on assumption had raised uncharitable allegations against every one. When the Election Petition and



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Affidavit in support of the petition presented before the Court on 18.07.2024 it was with the sign and seal of the Notary public. There is no truth in the allegation that the Notary was brought to the court and his signature and seal obtained in the court. The applications are based on surmises and conjunctures. The applicant wants to make a mountain out of molehill. On hyper technical reason wants the election petition to be rejected since the applicant has to otherwise face the inevitable consequence for suppressing his family assets and criminal antecedent.

f) In his counter statement filed in Election Petition the Returned Candidate had admitted about the pendency of the criminal case against him before Judicial Magistrate Court, Shivamogga, Karnataka and issuance of Non-Bailable Warrant against him. Later on filing of quash petition, the NBW was recalled in view of the stay of proceedings. However, he claims ignorance of all these facts. The applicant's claim of ignorance of all these proceedings which is pending against him for nearly five years is false.

g) The respondent/election petitioner in his common counter had asserted that he had not made any alteration of document when it was in the



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custody of the court. He claims that the said allegation is wholly baseless. The copy furnished to the First Respondent/Returned Candidate is only a true copy and not the exact copy of the petition or affidavit. The absence of signature, name and seal of the Notary Public is not a violation of Section 81(3) of the Representation of People Act. For the said reason, the election petition cannot be rejected or dismissed under section 86 of the RP Act.

h) Nonetheless, the true copy of the petition and affidavit in Form 25 read with Rule 94 A which contains the details of the notary public and seal is served to the counsel for the first respondent. Absence of Notary seal and signature in the copy of the affidavit served to the applicant is a curable defect, by furnishing the copy with the notary signature and seal before hearing the application, the defect if any, thereby cured. When there is no prejudice caused by the said omission and when there is substantial compliance of the provision of the Act, the frivolous application making false and baseless acquisition has to be dismissed.

10. The Applicant/First Respondent, in response to the counter, has filed a reply affidavit reiterating that the advocate office of the election



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petitioner reputed in the field of election petitions and the Notary public, who has the domain expertise, need not have obtained the attestation of an Advocate in the election petition which is redundant and unnecessary. This creates basic doubt about the manner, date and place the notary affixed his signature and seal and to claim that the notary's signature was obtained after 18/07/2024 at the High Court. If the defect is in respect of non-compliance of Section 83(1) of RP Act, such defects are curable, whereas if the defect is in respect of Section 81(3) of Representation of People Act, it is not curable. Serving a defective true copy to the respondents and filing an altered affidavit cannot be cured by serving a fresh true copy of the affidavit to the respondent subsequently. The true copy served does not contain the words “signed before me etc., & “before me - Notary Public”. Without such an indication in the affidavit is not an affidavit within the meaning of Section 83(1) of Representation of People Act read with Rule 94-A of the Rules and Form 25 therein.

11. The criminal case instituted and pending against him at Shivamogga Court, Karnataka state is a trivial, frivolous and vexatious. It was never within his knowledge much less special knowledge at any point of time till the elections were over. He never had any notice or knowledge of the said



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criminal case. The respondent/Election petitioner has filed a memo of objection to this reply by stating that the reply affidavit contains new and false averments which does not find place in the original affidavit.

Heard the Learned Senior Counsels representing the Election petitioner and the Returned Candidate/First Respondent. The pleadings of both sides and the citations are taken into consideration.

12. The Petition is filed against the Returned Candidate/First Respondent alleging that he had suppressed about the asset held by his spouse and the criminal case pending against him. The counter filed by the returned candidate states that the allegation of suppressing the asset is wrong. The said asset which stood in the name of the first respondent's wife was settled in favour of the married daughter in the year 2015. The documents are filed along with reply statement to prove the factum of settlement. Whereas, the allegation about pendency of a criminal case, the returned candidate claims that the said criminal complaint is frivolous and vexatious. He further claims that so far no notice served on him about this criminal case and he was not aware of the case at the time of filing his nomination and till the end of the election.



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**O.A.No.863 of 2024 filed under Order XI Rule 9 of C.P.C., by
the Election Petitioner.**

13. The O.A.No.863 of 2024 by the election petitioner, is interrogatories to the first respondent. The First Respondent has filed his counter. According to the returned candidate/First Respondent, his Counter Statement to Election Petition No.1 of 2024, dated 15th November 2024 and the documents annexed to the said Counter Statement provides necessary answers to the interrogatories raised.

14. Therefore, insofar as Original Application No.863 of 2024 filed under Order XI, Rule 9 of C.P.C., is concerned, since the first respondent has filed counter Statement in which he claims that he had explained about the interrogatories, the Court has to decide during the trial whether the interrogatories been answered through his Counter Statement and the documents relied by the first respondent. On completion of trial, this will be decided by the Court. Hence, no further adjudication is required in O.A.No.863/2024, except recording the fact that Counter Statement of the first



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respondent, dated 15/11/2024 and the documents filed along with the Counter Statement is to be treated as the answers to the interrogatories. Accordingly, on the above terms O.A.No.863 of 2024 is disposed.

15. Original Application No.883 of 2024 filed under Section 86(1)(a) of Representation of People Act by the Returned Candidate:

This application is filed to dismiss and reject the election petition on the ground:-

i) The Affidavit filed under Section 83(1) of Representation of People Act contains the signature and seal of the Notary Public in every page. However, the copy of the said affidavit furnished by the election petitioner to the respondent does not even mention that the affidavit was sworn to before attested by the Notary.

ii) It does not contain the Notary's name or his seal and signature; therefore, there is substantial variation to the affidavit filed before the Court by the election petitioner and the copies of the same furnished by the election petitioner. The lapse is not curable, hence, the petition has to be dismissed under section 86(1)(a) of Representation of People Act.



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16. To consider the merit of the above submission, it is necessary to check whether the copy of the affidavit filed along with the petition varies substantially from the copy furnished to the first respondent. On comparison of the true copy initially served to the first respondent and the original filed before the Court, this Court find the seals, signatures and the names of the attesting counsel as well as the Notary Public. Whereas in the true copy served to the respondent does not reflect these seals and signatures. Insofar as the content of the Affidavit (Form 25), both in the original and in the true copy, there is no change.

The point therefore to be considered is that whether this omission is a substantial variation and whether or not curable in view of Section 81(3) of Representation of People Act and Section 83 (1) of Representation of People Act.

17. The Learned Senior Counsel for the Applicant/first respondent strongly relies upon the decision of the Hon'ble Supreme Court of India in ***T.M.Jacob v. C.Poulose and others*** reported in ***1999 (4) SCC 274***, as well as



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two other judgments of three Judges Bench in ***Dr.Shipra (SMT) and others -vs- Shanti Lal Khoiwal and others*** reported in ***1996 (5) SCC 181*** and ***Anil R.Deshmukh -vs- Onkar N.Wagh and others*** reported in ***1999(2) SCC 205***.

18. According to the Learned Senior Counsel for the applicant/first respondent, Section 81(3) of the Representation of People Act, mandates every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be true copy of the petition. The Five Judges Bench of the Hon'ble Supreme Court has held that non-compliance with Section 81(3) of Representation of People Act is a substantial defect which will attract Section 86(1) of the Act, requiring the High Court to dismiss the petition. The case of the applicant/first respondent, the doctrine of substantial compliance and doctrine of curability will not apply to the case in hand since the defect found in the true copy of the Affidavit is not mere absence of the name of the notary or his seal or name, but complete absence of 'notarial endorsement' of the verification. It is a fatal defect and incurable. In *Dr.Shipra case cited supra*, where the facts are identical, the Supreme Court has held that the attestation of the Affidavit and its certification to be a true copy is an



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integral parts of the pleadings in the Election Petition. Section 81, 83(1) (c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme.

19. Per contra, the Learned Senior Counsel for the Election Petitioner submitted that the omission of the name, signature and seal of Notary Public in the true copy served to the applicant/first respondent is not a vital omission. The object mandating the Affidavit in Form 25 to be attested by a Notary Public is to ensure that the returned candidate is not misled in his understanding about the imputation of corrupt practices. In the instant case, the returned candidate i.e., the applicant/respondent has understood the imputation against him. He has filed counter statement providing his explanation about the undisclosed wealth and the criminal prosecution pending against him. The Affidavit, with the name, seal and signature of Notary public has been furnished to the applicant/first respondent, who is the candidate returned. The judgment in *Dr.Shipra* case was subsequently held no longer good law in ***T.Phungzathang v. Hangkhanlian and others* reported in 2001 (8) SCC 358**, since, in the *Dr.Shipra* case, the court omit to take note of the earlier Constitution Bench judgment rendered in ***Murakka Radhey Shyam case***,



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reported in AIR 1964 SC 1545.

20. The Hon'ble Supreme Court in *A.Manju v. Prajwal Revanna* reported in **2022(3) SCC 269** has held that election petition cannot be thrown out at the threshold on a pleas that the petition is not supported by an affidavit in Form 25, as prescribed under Rule 94 A of the Conduct of Election Rules 1961, even in case the petition is based on allegations of corrupt practices. In *Siddeshwar v. Prasanna Kumar reported in 2013(4) SCC 776*, the Hon'ble Supreme Court has held that as long as there is substantial compliance with the Form-25, there is no reason to dismiss the election petition summarily. Opportunity must be given to the election petitioner to cure the defect. Following *Murarka Radhey Shyam Ram Kumar* case, the Supreme Court in *Ponnala Lakshmaiah v. Kommuri Pratap Reddy reported in 2012(7) SCC788* had observed that, the format of the affidavit is at any way not a matter of substance. What is important and at the heart of the requirement is whether the election petitioner has made averments which are testified by him on oath, no matter in a form other than the one that is stipulated in the Rules.



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21. Further, the Learned Senior Counsel for the election petitioner relying upon the observation made in *Murarka Radhey Shayam* case state that the word “copy” in sub-section (3) of Section 81 of RP Act does not mean an absolutely exact copy, but means that the copy shall be so true that nobody can by any possibility misunderstand it. In *T.M.Jacob* case the Five Judges Bench after referring the *Dr.Shipra* case, in which one of them was a party, had distinguished the facts and observed that the said ruling is confined to fact situation in that case. Taking into consideration, the true copies of the affidavits served to respondent before arguments were heard by the Court, on the preliminary objection as in this case, the Five Judges Bench had held that they have no doubt that there was sufficient compliance of the provision of section 81(3) r/w Section 83(1) (c) of the Act, even if it could be said that the copies served in the first instance on the first respondent were not in conformity with the provisions of the Act.

22. The marches of law reveals, Chapter I to V of Part-VI of the Representation of People Act which covers Sections 79 to 122 deals with “Disputes regarding Elections”. Part-VII of the Representation of People Act which covers Sections 123 to 136 deals with Corrupt practices and Electoral



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Offences. In the year 2002, Section 33-A (Right to information) was inserted in the Representation of People Act and same was came into effect from 24/08/2002. Section 169 of the Representation of People Act empowers the Central Government to make rules for carrying out the purpose of the Act in consultation with the election commission. The Rule making power includes to provide Form of Affidavit under sub-section 33-A.

23. Rule 4 of Conduct of Election Rules, 1961 says every nomination paper presented under Section 33(1) shall be completed in such one of the Forms 2-A to 2-E as may be appropriate. In this case, it is Form 2-A which is meant for election to the House of People i.e., Lok Sabha. Rule 4-A which was inserted by an amendment with effect from 03/09/2002 mandates, the candidate or his proposer, as the case may be, at that time of delivering to the Returning Officer, the nomination paper under Section 33(1) of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the First Class or a Notary in Form 26.

24. Form 26 is framed in tune with the spirit of the Right to Information as envisaged under Section 33A . The Form been amended time to



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time and on the date of the returned candidate filed his nomination i.e., 27/03/2024, in column (5) [w.e.f. 10/10/2018] he should have declared that there is no pending criminal case against him or if any criminal case pending, should have disclosed the details as required in the Form 26, in column (7) he is supposed to declare the details of assets held by him, his spouse and dependants. HUF (if the candidate is Karta or coparcener).

25. The Election Petitioner has made a specific allegation against the returned candidate that he has suppressed facts in respect of vital information sought under Form 26 and had mislead the voters. According to him, the Returning Officer/23rd respondent ought to have rejected the nomination. The improper acceptance of the nomination by the returning officer attracts Section 100(1) (d) (i) of the RP Act and by non-compliance of the provisions of the Act i.e., Section 33A(1), his election is void under Section 100(1)(d)(iv) of the Act. According to the election petitioner, the deliberate misinformation to the voters amounts to corrupt practise of 'undue influence'.

26. The defence in the counter of the returned candidate is that, the property mentioned as omitted or suppressed is in fact settled to his daughter,



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who got married in the year 2015 and she is not his dependant. In respect of the criminal case, he pleads ignorance of the pending case and only after the election petition he came to know about it and taking all steps to face it.

27. This Court while disposing O.A.No.863 of 2024 supra has held the above defence of the returned candidate whether sustainable or not has to be tested in the trial and must be established by the returned candidate, having admitted that he has not disclosed these two details in Form 26 by assigning reasons.

28. In response of the application to reject the petition, the relevant provision of law and the judicial interpretations are extracted below for better and easy appreciation.

29. The application to dismiss the election petition is filed under Section 86(1) of the Representation of People Act for the alleged non-compliance of Section 81(3) of the Act.



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30. The provisions required to be considered for the decision of the above application are:-

Section 86(1) of Representation of People Act:-

(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

Explanation.—An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of section 98.

Section 81 of Representation of People Act:-

This section deals about presentation of Election Petition and the relevant enclosures to be filed along with the election petition. Subsection (3) of Section 81 reads as under:-

Section 81 (3):- Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.



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Rule 94-A of the Election Rules:-

This rule which deals about the form of affidavit to be filed with election petition says, the affidavit referred to in the proviso to Sub-section (1) of Section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25.

Section 83 of Representation of People Act:-

This section list out what should contain in the election petition. This section mandates an election petition;

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

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

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

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied



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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.

31. In the present case, the Election Petition filed before the Court on 18.07.2024. The Registry after satisfaction of the compliance of the above provisions on scrutiny had taken it on file and assigned Election Petition No.1/2024. The allegation now made is that the copy served to the First Respondent is not the true copy of the original filed in the Court. It varies from the original. It does not disclose the vital fact whether the affidavit was sworn before a notary public, as required under law.

32. What is meant by “*attested by the petitioner*” and “*true copy*” is explained by the Hon’ble Supreme court in ***Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore***, reported in ***AIR 1964 SC 1545*** as below:-

“11.....Sub-section (3) of Section 81 requires that the copy shall be attested by the petitioner under his own signature and this was done. As to the second defect,



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*the question really turns on the true scope and effect of the word “copy” occurring in sub-section (3) of Section 81. On behalf of the appellant the argument is that sub-section (3) of Section 81 being mandatory in nature all the requirements of the sub-section must be strictly complied with and the word “copy” must be taken to be an absolutely exact transcript of the original. On behalf of the respondents the contention is that the word “copy” means that which comes so near to the original as to give to every person seeing it the idea created by the original. Alternatively, the argument is that the last part of sub-section (3) dealing with a copy is merely directive, and for this reliance is placed on the decision of this Court in *Kamaraja Nadar v. Kunju Thevar* [(1959) SCR 583] . We are of the view that the word “copy” in sub-section (3) of Section 81 does not mean an absolutely exact copy, but means that the copy shall be so true that nobody can by any possibility misunderstand it (see *Stroud's judicial Dictionary*, 3rd Edn., Vol. 4, p. 3098). In this view of the matter it is unnecessary to go into the further question whether any part of sub-section (3) of Section 81 is merely directory. Several English decisions were cited at the Bar. The earliest decision cited to us is the decision in *Pocock v. Mason* [131 ER 1111] where it was held that the omission of the words “the” and “by” in the copy of the writ of *capias* prescribed by the Schedule 2 W. 4, c. 39 did not invalidate an arrest. The reason given was thus*



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expressed:

“To ascertain whether or not an unfaithful copy produces any alteration in the meaning, supposes an exertion of intellect which it may be inconvenient to require at the hands of those who serve the copy. It was to obviate this inconvenience, that the legislature has given a form, and required that it should be pursued. Nothing but ordinary care is necessary for taking the copy.”

In a later decision Sutton v. Mary and Burgess [149 ER 1291] , the copy of the writ served on the defendant omitted the letter “s” in the word “she”. It was held that the omission was immaterial as it could not mislead anybody. In Morris v. Smith [150 ER 51] there was a motion to set aside the service of the writ of summons for irregularity, on the ground that the defendant being an attorney, he was only described as of Paper Buildings in the Inner Temple, London and the addition of “gentleman” was not given. It was held that the form in the Statute 2 Will. 4, c. 39 Section 1 did not require the addition of the defendant to be inserted in the writ and it was sufficient to state his residence. The writ of summons was therefore valid. In another case in the same volume Cooke v. Vaughan [150 ER 1346] it was held that where a writ of capias described the defendant by the addition of “gentleman”, but that addition was omitted in the copy served, the copy was not a copy of the writ, in compliance with the Statute 2 Will. 4, c. 39, S. 4. On



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behalf of the respondents a number of decisions under the Bills of Sale Act, 1878 and the Amendment Act, 1882 (45 and 46 Vict. c. 43) were cited. The question in those cases was whether the bill was “in accordance with the form in the schedule to this Act annexed” as required by Section 9 of the Bills of Sale Act 1878, and Amendment Act 1882. In re Hewer. Ex parte Kahen [(1882) 21 Ch D 871] it was held that a “true copy” of a bill of sale within the Bills of Sale Act 1878, Section 10, sub-section 2, must not necessarily be an exact copy, so long as any errors or omissions in the copy filed are merely clerical and of such a nature that no one would be thereby misled. The same view was expressed in several other decisions and it is unnecessary to refer to them all.

Having regard to the provisions of Part VI of the Act, we are of the view that the word “copy” does not mean an absolutely exact copy. It means a copy so true that nobody can by any possibility misunderstand it. The test whether the copy is a true one is whether any variation from the original is calculated to mislead an ordinary person. Applying that test we have come to the conclusion that the defects complained of with regard to Election Petition No. 269 of 1962 were not such as to mislead the appellant; therefore there was no failure to comply with the last part of sub-section (3) of Section 81. In that view of the matter sub-section (3) of Section 81 was



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not attracted and there was no question of dismissing the election petition under that sub-section by reason of any failure to comply with the provisions of Section 81.

The above view of the Constitution Bench was agreed by the subsequent Constitution Bench of the Hon'ble Supreme Court in ***Ch.Subbarao v. Member, Election Tribunal, Hyderabad*** reported in ***AIR 1964 SC 1027***.

33. However, in ***Dr.Shirpa v. Shantilal Khoiwal*** reported in ***1996 (5) SCC 181***, the three Judges Bench of Supreme Court based on the factual circumstance of the case opined that, “affirmation before the prescribed authority in the affidavit and the supply of its true copy should also contain such affirmation so that the returning candidate would not be misled in his understanding that imputation of corrupt practices was solemnly affirmed and duly verified before the prescribed authority.

34. Later, the Hon’ble Supreme Court in ***Anil Deshmukh v. Onkar N.Wagh JT 1999 (1) SC 135***, distinguished Dr.Shirpa case cited supra. After perusing the copy of the affidavit served to the returned candidate, the Bench observed that, the copy contains endorsement that the affidavit had been duly



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affirmed, signed and verified by Respondent (Election Petitioner) before a Notary. Under the affirmation by the Notary, the words, “sd/- Notary” were also written. What was however, found missing in the copy of the Affidavit was the name and address of the Notary as well as the stamp and seal of the Notary before whom the affidavit had been affirmed and who had attested the affidavit.

35. In *Anil Deshmukh* case, the Learned Judge expressed his reservation on the correctness of the principle indicated in *Dr.Shirpa* case, that “true copy” of the election petition furnished to the respondent had not been duly sworn and verified by the election petition before the Notary, who also had not attested the same thereby rendering that document as “ No Affidavit” at all in the eye of law. However, without dwelling further, the Anil Deshmukh case was decided distinguishing the case on facts. The Apex Court held that, ‘ we have no doubt that there was sufficient compliance of the provision of Section 83(1) (c) of the Act, even if it could be said that the copies served in the first instance on the first respondent were not in conformity with the provision of the Act. Meaning that, the election petition had cured the defect by serving a copy which contain the details of attestation by the Notary.



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36. In *T.M.Jacob v. C.Poulose 1999 (4)SCC 274*, occasion arose to the Supreme Court to reconcile the views expressed in *Dr.Shirpa case* and *Anil.R Deshmukh v. Onkar N. Wagh*, hence the matter was referred to a larger Bench consisting of five Judges, in this case, the Constitution Bench clarified and reiterated that the principle of substantial compliance was not accepted in *Dr.Shirpa case* on the factual circumstances. This cannot be considered to be of general application divorced from the fact situation of a given case. Wide observation made therein in the context of the facts of that case only, it cannot be applied to the established facts of the present case.

37. In *T.M.Jacob case*, we also find at paragraph No.33 of the judgement, the court interpretation of the word 'copy' occurring in Section 81(3) of the Act. Relying and referring the earlier Constitution Bench judgment rendered in *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore* cited supra, the Constitutional Bench has observed that this matter is no longer *res integra*. The word 'copy' occurring in Section 81(3) of the Act does not mean an absolutely exact copy. It must be so true that nobody could by any possibility misunderstand it. The test whether the copy is a true one is



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whether any variation from the original is calculated to mislead an ordinary person. At paragraph No.35, it is observed that the object of serving a ‘true copy’ of an election petition and the affidavit filed in support of the allegations of corrupt practice on the respondent in the election petition is to enable the respondent to understand the charge against him so that he can effectively meet the same in the written statement and prepare his defence. The requirement is thus, of substance and not of form.

38. The Learned Counsel for the first respondent/returned candidate strongly harp on the fact that the copy served to him initially does not contain any information or detail about attestation by a ‘Notary’ This amounts to misleading the respondent.

39. On examination find, the copy served to the first respondent is identical to the original as far as the substance. No variation or change in the substance relating to the petition averments. In the Jurat portion it is specifically mentioned as ‘solemnly affirmed at Chennai’. It is palpable there is no reference about attestation of notary or his seal and signature or an endorsement as “Signed Before Me, Notary”.



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40. The Apex Court had held that the omission or defect has to be looked based on the fact situation. The test is whether the returned candidate anyway misled by the omission of the details about the Notary attestation. More so the defect is rectified before hearing the parties. In this regard, it is suffice to cite the recent judgment of the Hon'ble Supreme Court, which has capsulized the earlier judgments and held as under:-

A.Manju v. Prajwal Revanna reported in **2022 (3) SCC 269.**

“22.We must begin at the inception by stating that intrinsically, election law is technical in nature. In the present matter, an election conducted under an independent body like the Election Commission is sought to be assailed, where the mandate of the public has gone in a particular way. The allegations must strictly fall within the parameters of the manner in which such a mandate can be overturned. The primary plea taken by the appellant is largely that success in the elections was obtained by concealment of material, which would have been germane in determining the opinion of the electorate. In effect, were such material to be available with the electorate, they would have exercised another option on the basis of it. However, while the requirements to be met in the election petition may be technical in nature, they



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are not hyper-technical, as observed in Ponnala Lakshmaiah case [Ponnala Lakshmaiah v. Kommuri Pratap Reddy, (2012) 7 SCC 788] . We have considered the aforesaid aspect by quoting the observations made therein which have received the imprimatur of a larger Bench.

23. In the conspectus of the aforesaid, if we examine the facts of the present case, the hyper-technical view sought to be taken of non-signing and verification of the index and the synopsis has been rightly rejected by the High Court.

24. Thus, the real and core question before us is that in view of the allegations of the alleged non-disclosure of assets in Form 26 by Respondent 1 being cited as “corrupt practice”, would it be mandatory for the election petitioner to file an affidavit in Form 25 and what would be the consequences of not filing such an affidavit.

25. We may take note of the Constitution Bench judgment of this Court in Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore [Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore, (1964) 3 SCR 573 : AIR 1964 SC 1545] which opined that the defect in verification of an affidavit cannot be a sufficient ground for dismissal of the petitioner's petition summarily and



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such an affidavit can be permitted to be filed later. This Constitution Bench judgment was also referred to in G.M. Siddeshwar case [G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776 : (2013) 2 SCC (Civ) 715] to come to a conclusion that non-compliance with the proviso to Section 83(1) of the RP Act was not fatal to the maintainability of an election petition and the defect could be remedied i.e. even in the absence of compliance, the petition would still be called an election petition. We cannot say that the High Court fell into an error while considering the election petition as a whole to come to the conclusion that the allegations of the appellant were not confined only to Section 33-A of the RP Act, but were larger in ambit as undue influence and improper acceptance of nomination of Respondent 1 were also pleaded as violation of the mandate under Sections 123 and 100 of the RP Act.

26.However, we are not persuaded to agree with the conclusion arrived at by the High Court that the non-submission of Form 25 would lead to the dismissal of the election petition. We say so because, in our view, the observations made in Ponnala Lakshmaiah case [Ponnala Lakshmaiah v. Kommuri Pratap Reddy, (2012) 7 SCC 788] which have received the imprimatur of the three-Judge Bench in G.M. Siddeshwar case [G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776 : (2013) 2 SCC



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*(Civ) 715] appear not to have been appreciated in the correct perspective. In fact, G.M. Siddeshwar case [G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776: (2013) 2 SCC (Civ) 715] has been cited by the learned Judge to dismiss the petition. If we look at the election petition, the prayer clause is followed by a verification. There is also a verifying affidavit in support of the election petition. Thus, factually it would not be appropriate to say that there is no affidavit in support of the petition, albeit not in Form 25. This was a curable defect and the learned Judge trying the election petition ought to have granted an opportunity to the appellant to file an affidavit in support of the petition in Form 25 in addition to the already existing affidavit filed with the election petition. In fact, a consideration of both the judgments of the Supreme Court referred to by the learned Judge i.e., Ponnala Lakshmaiah [Ponnala Lakshmaiah v. Kommuri Pratap Reddy, (2012) 7 SCC 788] as well as G.M.Siddeshwar [G.M. Siddeshwar v. Prasanna Kumar, (2013) 4 SCC 776 : (2013) 2 SCC (Civ) 715], **ought to have resulted in a conclusion that the correct ratio in view of these facts was to permit the appellant to cure this defect by filing an affidavit in the prescribed form. (emphasis added)***

41. The facts of the case show that the copy served to the first respondent earlier without details about attestation before Notary and the



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second set of copies served with details about attestation before Notary, had not disclosed any substantial or material variation of vital nature. In the absence of material variation of vital nature, it has to be construed as substantial compliance of Section 81(3) of the Representation of People Act. Any omission or variation not substantial or vital can be cured by furnishing fresh copy.

42. In the humble view of this Court, from examination of the copy served to the first respondent and the original filed in the court, the doctrine of substantial compliance and the doctrine of curability squarely applies. This Court also hasten to add that, besides these two doctrines, it is also necessary to apply the doctrine of prejudice. The first respondent unable to place before this Court how the omission to furnish detail about the attestation by Notary in the copy served to him, has been unduly prejudiced and forced to face irreparable hardship. Except to say that if the petition is dismissed *in limine*, he will be get rid of the grave allegation of suppression of facts and misconduct, he can have no better justification for sustaining the application to dismiss the petition on hyper-technical grounds, as held in *Prajwal Revanna* case cited supra.



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43. In this context, this Court is duty-bound to weigh not only the cause of the parties before it, but also the interest of the public, who had voted the returned candidate based on his declaration and disclosure of information necessary under Section 33-A of the Act. In an election petition alleging suppression of vital details, which attracts disqualification, the interest of the nation in general and the interest of the residence of the concerned Constituency in particular have to prevail over all other persons. The voters have a right to know their representative credential and if there is any wanton non-disclosure, the consequence to be followed. After the intervention of the Hon'ble Supreme Court, the Representation of People Act was amended and Section 33-A was introduced in the Act. The said section reads as follows:-

Section 33-A. Right to information.—(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made there under, in his nomination paper delivered under subsection (1) of Section 33, also furnish the information as to whether;

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent



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jurisdiction;

(ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of Section 8 and sentenced to imprisonment for one year or more.

44. Section 100(1)(d)(i),(ii) and (iv) of Representation of People Act, mentions that improper acceptance of nomination or non-compliance of the provisions of the Act will attract declaration of the election is void.

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)...

(b) ...

(c) ...

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

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

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



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*(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.]*

45. Furnishing a declaration under Form 25 is one of the mandatory requirements for accepting the nomination. From the provisions of law and the interpretation of the Hon'ble Supreme Court discussed supra, it is a settled principle of law that defective filing of an election petition in respect of verification and signatures by the election petitioner in the petition and annexure to the petition, as contemplated under Section 83(1) and 83(2) of the Representation of People Act, the defects are curable. The petition cannot be rejected at the threshold.

46. Application No.884 of 2024:-

This Application by the Returned Candidate under Order XIV of Madras High Court, Original Side Rules read with Sections 215 (1)(b)(i) of BNSS and Section 340 of Cr.P.C., (Section 379 of BNSS), is to conduct a



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preliminary enquiry and direct an officer of the Court to make a complaint in writing to the Court of competent Metropolitan Magistrate, Chennai, against the election petitioner and all the concerned and complicit persons for committing the offences of making a false document and forgery in connection with the affidavit dated 16/07/2024, filed by the Election Petitioner under Section 83(1) of the Representation of People Act. It is needless to repeat the facts and the allegations.

47. While in O.A.No.883 of 2024, the returned candidate averred defect in the copy of the affidavit served to him initially, in O.A.No.884 of 2024, he alleges that the original Affidavit presented before the Court is a false and forged document.

48. It is contended by the Learned Counsel for the returned candidate/First Respondent that the office of the Advocate who attested the affidavit and the office of the Notary Public, who alleged to have attested the affidavit are located at different place. The deponent (election petitioner) could not have been present at both the place. The notary public's seal overlaps the seal of the advocate and the date of attestation is not mentioned by the Notary.



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Therefore, it has to be assumed that the Notary was brought to the Court to affix his seal and signature. The conspicuous omission to mention the volume number, number of pages and number of corrections, which are essentially to be mentioned as per Notaries Act, fortifies the allegation that the document, namely the affidavit of the election petition filed before the Court is a false and forged document. In the jurat portion of the affidavit, the date of solemnisation is mentioned as 16th July, 2024. The date is handwritten. The election petition was presented in the Registry of High Court Original Side on 18/07/2024. The petition taken on file only on 23/08/2024. The time taken between the date of presentation and date of numbering, after compliance of necessary mandatory requirements prescribed under the Rules of the Madras High Court Election Rules, 1997 indicates that the petition was filed defectively and later rectified. Therefore, there is an alteration in the affidavit after presenting it in the Court. Such alteration attracts the offence of making false document, as defined under Section 335 of BNS Act read with Section 2(8) of the said Act.

49. In the common counter, the election petitioner has put it clearly how and when the affidavit was sworn. The facts placed in the common counter are in conformity with the apparent examination of the affidavit as filed in the



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Court on 18/07/2024. The averments and allegations made in O.A.No.884 of 2024 are not supported by any material evidence to entertain any doubt about the execution of the affidavit in the presence of the Notary public. Merely on assumption and surmises, the Court cannot initiate proceedings under Section 379 of BNSS read with Section 215 of BNSS. A roving enquiry is not permissible under Section 379 of BNSS. The Court should have reasonable material to form an opinion that it is expedient, in the interest of justice, that an enquiry should be made into any offence referred to in clause (b) of Sub-section 215, which appears to have committed in or in relation to a proceedings in that Court or in respect of a document produced or given in evidence in a proceeding in that court.

50. The reading of the supporting affidavit filed along with the O.A.No.884 of 2024 does not disclose any substantive information which could provide material to form an opinion that, in the affidavit of the Election Petition the Notary affixed his seal and signature elsewhere and on a different date than what is mentioned in the jurat portion of the Affidavit. If at all, there is any omission in compliance of Rule 11 of the Notary Act or any other provision under the Notary Act, it will only attract action under the Notary Act by the



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competent authority prescribed under that Act and not a case for the High Court to conduct preliminary enquiry exercising its power under Section 379 of BNSS.

51. To say the least, O.A.No.884 of 2024 is not only devoid of merit but also filed with an oblique intention to detract and delay the main litigation.

52. In fine, for the reasons stated above,

i) Original Application No.863 of 2024 is disposed of without costs.

ii) Original Application No.883 of 2024 is dismissed without costs.

iii) Original Application No.884 of 2024 is dismissed with cost of Rs.10,000/- payable to the Election Petitioner by the first respondent/Returned candidate on or before 15/01/2025.

53. List the Election Petition for further proceedings on 20/01/2025.

21.12.2024

Index :Yes.
Internet :Yes.
bsm



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To,
1. The Returning Officer,
No.38, Tirunelveli Parliamentary Constituency,
Tirunelveli District.



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Dr.G.JAYACHANDRAN,J.

bsm

Pre-delivery common order made in
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& O.A.No.863 of 2024
in
Election Petition No.1 of 2024

21.12.2024