



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 26TH DAY OF JULY, 2023

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 203232 OF 2022 (LB-ELE)

BETWEEN:

SMT. ABIDA BEGUM
W/O KHAJA HUSSAIN
AGED ABOUT 36 YEARS,
OCC: MEMBER OF GP & HOUSEHOLD,
R/O NAIKAL VILLAGE,
TQ: WADAGERA,
DIST. YADGIRI

... PETITIONER

(BY SRI. V.K. NAYAK., ADVOCATE)

AND:

1. MOHD. ISMAIL
S/O MAHIBOOSAB CHATNALLI,
AGED ABOUT 46 YEARS,
OCC. AGRICULTURE,
R/O NAIKAL VILLAGE,
TQ: WADAGERA,
DIST. YADGIRI
- 2 . THE DEPUTY COMMISSIONER AND
DISTRICT ELECTION OFFICER, YADGIRI
DIST.YADGIRI-585201
- 3 . THE TAHASILDAR AND
THE TALUKA ELECTION OFFICER, WADGERA
TQ. WADGERA, DIST.YADGIRI-585201





4 . SRI. AYYAPPAGOUDA
THE ASSISTANT ENGINEER,
RETURNING OFFICER,
NAIKAL GRAM PANCHAYAT,
CONSTITUENCY OF NO. 9-NAIKAL
TQ: WADGERA,
DIST. YADGIRI-585201.

... RESPONDENTS

(BY SRI.SHRAVAN KUMAR MATH., ADVOCATE FOR C/R1
SMT. MAYA T.R., HCGP FOR R2 TO R4

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE JUDGEMENT IN ELECTION PETITION NO.11/2021 PASSED BY SENIOR CIVIL JUDGE & JMFC, SHAHAPUR, DATED 31.10.2022 AS PER ANNEXURE-D IN THE INTEREST OF JUSTICE AND EQUITY.

THIS WRIT PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 05.06.2023, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking for the following relief:

To set aside the judgment in Election Petition No.11/2021 passed by Senior Civil Judge & JMFC, Shahapur, dated 31.10.2022 as per Annexure-D in the interest of justice and equity.

2. A notification was published by the respondent No.2
– Deputy Commissioner for election to the Gram



Panchayath on 23.07.2020. The petitioner having contested was declared as elected candidate.

3. Respondent No.1 filed the Election Petition No.11/2021 before the Senior Civil Judge, Shahapur challenging the said election. In the said petition, the following reliefs were sought for:

a) It be declared that, the petitioner is the elected for the seat of General gents in ward No 3 in gram panchayat election of Naikal-9 Tq. Wadgera Dist.Yadgir by setting aside the election of Respondent No.1

b) Award the cost of proceedings to the Petitioner.

c) Any other reliefs be granted to which the petitioner is entitled in the interest of justice.

4. The said petition came to be allowed by way of impugned order and as such, the petitioner is before this Court seeking for the aforesaid reliefs.

5. Sri.V.K.Nayak, learned counsel for the petitioner would submit that the said decision is erroneous on four grounds:



5.1. Apart from questioning the election of the petitioner – respondent No.1, a declaration was sought for to declare respondent No.1 as a returned candidate without making all the contestants as a party and as such, the same is violative of Section 15(2)(a) of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 (for short, hereinafter referred to as 'the Panchayat Raj Act'). In support of this contention he relies upon the decision of the Delhi High Court in the case of **Surinder Kumar vs. Ranjit Singh, MLA & Ors**¹ more particularly Paras 1, 10, 14 and 16 thereof which are reproduced hereunder for easy reference:

1. This election petition has been filed by the petitioner seeking a declaration that election of respondent No. 1 is null and void, thereby setting aside the election result dated 8th December, 2013 to the Assembly Constituency 68, Gokulpur Delhi (NCT Delhi) (hereinafter referred to as the "Gokulpur Constituency"), constituency reserved for schedule caste whereby

¹ (2014) SCC Online Delhi 7455



respondent No. 1 was elected and a declaration that the petitioner is the elected member from Gokulpur Constituency, who contested the said election dated 4th December, 2013 as an independent candidate.

10. Respondent No. 1 in the said application has taken mainly two grounds for contending that the present petition is not maintainable. First ground is that challenge, if any, to the said decision of the SDM, Delhi Administration, Shahdara (certifying that respondent No. 1 belongs to a schedule class), ought to have been made by way of a petition under Article 226 of the Constitution of India. Secondly, the petition is not maintainable for non-joinder of necessary parties. It is contended that the other contesting candidates to the said election have not been made party in the present petition as required under Section 82(a) of the Representation of the Peoples Act, 1951 (hereinafter referred to as "the Act") and so the present petition is not maintainable under Section 86 of the Act.

14. Patna High Court in the case of Neelam Kumari @ Neelam Devi v. The State of Bihar AIR 2008 Pat 165 referred to the decision in Comrade Kallappa Laxman Malabade (supra) and observed that:

"In Comrade Kallappa Laxman Malabade (supra) relied upon by the petitioner, with regard to non-joinder of necessary parties under the Representation of the Peoples Act, the High Court quoted the following passage from paragraph 10 of the judgment of the Supreme Court in [1969] 1



SCR 630 (Mohan Raj v. Surendra Kumar Taparia)

10... No doubt the power of amendment is preserved to the Court and Order 1 Rule 10 enables the Court to strike out parties but the Court cannot use Order 6 Rule 17 or Order 1 Rule 10 to avoid the consequences of non-joinder for which a special provision is to be found in the Act. The court can order an amendment and even strike out a party who is not necessary. But when the Act makes a person a necessary party and provides that the petition shall be dismissed if such a party is not joined, the power of amendment or to strike out parties cannot be used at all. The Civil Procedure Code applies subject to the provisions of the Representation of the People Act and any rules made thereunder. When the Act enjoins the penalty of dismissal of the petition for nonjoinder of a party the provisions of the Civil Procedure Code cannot be used as curative means to save the petition. (emphasis added)"

16. Again in the decision K. Venkateswara Rao v. Bekkam Narasimha Reddy, [1969] 1 SCR 679 considering the provisions of Section 82 and 86(1) of the Representation of People Act, 1951, it was held by their Lordships of the Supreme Court as follows:-

"Even though Section 87(1) of the Act lays down that the procedure applicable to the trial of an election petition shall be like that of the trial of a suit, the Act itself makes important provisions of the Code inapplicable to the trial of an election



petition. Under Order 6 Rule 17 CPC a Court of law trying the suit has very wide powers in the matter of allowing amendments of pleadings and amendments which will aid the Court in disposing of the matters in dispute between the parties are as a rule allowed subject to the law of limitation. But Section 86(5) of the Act provides for restrictions on the power of the High Court to allow amendments. The High Court is not to allow the amendment of a petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition. With regard to the addition of parties which is possible in the case of a suit under the provisions of Order 1 Rule 10 subject to the added party's right to contend that the suit as against him was barred by limitation when he was impleaded, no addition of parties is possible in the case of an election petition except under the provisions of Sub-section (4) of Section 86. Section 82 shows who are necessary parties to an election petition which must be filed within 45 days from the date of election as laid down in Section 81. Under Section 86(1) it is incumbent on the High Court to dismiss an election petition which does not comply with the provisions of Section 81 or Section 82. Again the High Court must dismiss an election petition if security for costs be not given in terms of Section 117 of the Act."

"It is well settled that amendments to a petition in a civil proceeding and the addition of parties to such a proceeding are generally possible subject to the Law of Limitation. But an election petition stands on a different footing. The trial of such a



petition and the powers of the Court in respect thereof are all circumscribed by the Act.”

5.2. In this regard, he also relies upon the decision of this Court in ***Khadarsab vs. Munsab and Others***², more particularly para 2, 5 and 6 thereof which are reproduced hereunder for easy reference:

2. The respondents 1 and 2 challenged the election of the petitioner as a successful candidate in the election held on 29.12.1993 for Betadur Grama Panchayat for Ward No. 2 on certain grounds and filed the election petition 1/1994. The revision petitioner-respondent No. 2 in his objections statement took up a plea amongst other grounds that the petitioners have not impleaded all the contesting candidates as respondents in the election petition as required under Section 15 Clause (2-A) of the Karnataka Panchayat Raj Act 1993 (hereinafterwards referred to as the Act), and therefore the election petition is not maintainable. The petitioner (respondent No. 2 in the lower Court) also contended that the said question has to be heard as a preliminary point and decided. The matter was posted for hearing on that point. At that time the respondents 1 and 2 who were the petitioners in the election petition filed an application I.A. No. I praying for impleading the remaining contesting candidates as co-respondents. The petitioner objected to the application. After hearing the

² ILR 1997 KAR 3402



parties the learned Munsiff allowed the application I.A. No. I by an order dated 6.2.1995. Being aggrieved by the said order the petitioner has filed this revision petition.

5. *With regard to the first argument the learned counsel for the petitioner relied upon a decision reported in AIR 1969 SC 677 [???]. In para 10 of the said decision it has been held as follows:—*

"It is argued that the Civil Procedure Code applies and Order 6 Rule 17 and Order 1 Rule 10 enables the High Court respectively to order amendment of a petition and to strike out parties. It is submitted, therefore, that both these powers could be exercised in this case by ordering deletion of reference to Periwal. This argument cannot be accepted. No doubt the power of amendment is preserved to the Court and Order 1 Rule 10 enables the Court to strike out parties but the Court cannot use Order 6 Rule 17 or Order 1 Rule 10 to avoid the consequences of non-joinder for which a special provision is to be found in the Act. The Court can order an amendment and even strike out a party who is not necessary. But when the Act makes a person a necessary party and provides that the petition shall be dismissed if such a party is not joined, the power of amendment or to strike out parties cannot be used at all. The Civil Procedure Code applies subject to the provisions of the Representation of the People Act and any rules made thereunder (see Section 87). When the act enjoins the penalty of dismissal of the petition for non-joinder of a party the provisions of the Civil Procedure Code cannot be used a curative means to save the petition."

This decision fully supports the arguments of the learned Counsel for the petitioner and goes to



show that the provisions under CPC relied upon by the trial Court are not applicable.

6. *With regard to the second contention the learned Counsel for the petitioner relied upon two decisions. In AIR 1969 SC 872 [???.] , it has been held as follows:—*

"(B) Representation of the People Act (1951 as amended in 1966), Sections 81, 82, 86(5), 87, 116A - Election Petition - Necessary party not joined within limitation for filing petition - High Court has no power to allow addition after limitation - Limitation Act does not apply - Civil P.C., Order 6, Rule 17 and) 1 Rule 10 have no application - Application will be dismissed."

In AIR 1971 SC 373 [???.] , it has been held as follows:—

"(A) Representation of the People Act, (1951), Section 83-Amendment of election petition - Rectification of defective petition by way of amendment after expiry of period of limitation for filing it is not permissible."

These decisions also fully support the argument of the learned Counsel for the petitioner.

5.3. In the Election Petition, the allegation being that certain properties owned by the petitioner and her husband had been suppressed in the declaration. The mere suppression of such properties would not amount to a corrupt



practice disqualifying the petitioner. As such, the said finding of the trial Court is required to be set aside.

5.4. In this regard, he relies upon the decision of the Hon'ble Bombay High Court in the case of **Narayan vs. Deepak**³, more particularly, Para 13 which is reproduced hereunder for easy reference:

13. Insofar as, the lacuna in the affidavit of the applicant are concerned, the applicant/respondent has fairly conceded the fact that the applicant/respondent has not mentioned the details of his individual agricultural properties but has however, given the total value of the said properties in the annexure to the affidavit. It is contended by the Learned Senior Counsel appearing for the applicant/respondent that since his wife does not own any property, the column has been filled by putting "hyphen" in the column in respect of the properties of the wife. Insofar as the Income Tax Returns are concerned, the return filed for the year 2006-07 which was the previous assessment year was mentioned, as also the PAN number was given, however, he fairly conceded that the tax paid for the assessment year 2007-08 was not mentioned. It is well settled that the affidavits in which the

³ 2011 (2) Maharashtra Law Journal



assets etc. are to be disclosed, have been made a condition pursuant to the directions issued by the Apex Court in the Association for Democratic Reforms case (supra). The object being to disseminate information about the candidate to the voters. The said affidavits, I am informed, are also put up on notice board much in advance and are also on the official website. If the petitioner was aggrieved by the non-disclosure of the information by the applicant/respondent, the petitioner could have filed an affidavit before the returning officer disclosing the details of the properties owned by the wife of the applicant/respondent or could have brought to the notice of the voters any wrong or incomplete information given by the applicant/respondent. It is significant to note that the petitioner has not till the filing of the above Petition taken any exception to the information furnished by the respondent in the affidavits. As indicated hereinabove the Petition is bereft of any material particulars. Now an excuse is sought to be given for the inaction by questioning as to whether the information is on the official website and whether the petitioner could have taken objection to the information furnished by the applicant/respondent in the said affidavits. In my view, in the absence of any statutory backing that furnishing of false or incorrect information or suppressing information would amount to a disqualification as contemplated in section 100(1)(d)(i), even assuming that what has been stated by the petitioner is accepted as true, the same would not entail the disqualification of the applicant/respondent. The grounds mentioned in paragraphs 12 to 18, therefore, do not spell out a cause of action for setting aside the election of the respondent. In my view, since the applicant/respondent has mentioned the total



worth of his agricultural properties which would be one of the material aspect with which a voter would be concerned. Therefore assuming that there are any lacunae/infirmities in the affidavit, the same cannot be said to be of a substantial nature so as to unseat a returned candidate.

5.5. Thirdly, it is contended that there being no allegation as regards in what manner the suppression has affected the election results and there being no evidence led in that regard, a bald allegation made in the Election Petition cannot be taken note of by the trial Court. In this regard, he relies upon the decision of the Hon'ble Supreme Court in the case of **Mangani Lal Mandal vs. Bishnu Deo Bhandari**⁴ more particularly Paras 10, 11 and 12 thereof which are reproduced hereunder for easy reference:

10. *A reading of the above provision with Section 83 of the 1951 Act leaves no manner of doubt that where a returned candidate is alleged to be guilty of non-compliance with the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder and his election is sought to be declared void on such*

⁴ (2012) 3 SCC 314



ground, it is essential for the election petitioner to aver by pleading material facts that the result of the election insofar as it concerned the returned candidate has been materially affected by such breach or non-observance. If the election petition goes to trial then the election petitioner has also to prove the charge of breach or non-compliance as well as establish that the result of the election has been materially affected. It is only on the basis of such pleading and proof that the Court may be in a position to form opinion and record a finding that breach or non-compliance with the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder has materially affected the result of the election before the election of the returned candidate could be declared void.

11. *A mere non-compliance or breach of the Constitution or the statutory provisions noticed above, by itself, does not result in invalidating the election of a returned candidate under Section 100(1)(d)(iv). The sine qua non for declaring the election of a returned candidate to be void on the ground under clause (iv) of Section 100(1)(d) is further proof of the fact that such breach or non-observance has resulted in materially affecting the result of the returned candidate. In other words, the violation or breach or non-observation or non-compliance with the provisions of the Constitution or the 1951 Act or the rules or the orders made thereunder, by itself, does not render the election of a returned candidate void Section 100(1)(d)(iv). For the election petitioner to succeed on such ground viz. Section 100(1)(d)(iv), he has not only to plead and prove the ground but also that the result of the election insofar as it concerned the returned*



candidate has been materially affected. The view that we have taken finds support from the three decisions of this Court in: (1) Jabar Singh v. Genda Lal [AIR 1964 SC 1200 : (1964) 6 SCR 54] ; (2) L.R. Shivaramagowda v. T.M. Chandrashekar [(1999) 1 SCC 666] ; and (3) Uma Ballav Rath v. Maheshwar Mohanty [(1999) 3 SCC 357] .

12. *Although the impugned judgment runs into 30 pages, but unfortunately it does not reflect any consideration on the most vital aspect as to whether the non-disclosure of the information concerning the appellant's first wife and the dependent children born from that wedlock and their assets and liabilities has materially affected the result of the election insofar as it concerned the returned candidate. As a matter of fact, in the entire election petition there is no pleading at all that the suppression of the information by the returned candidate in the affidavit filed along with the nomination papers with regard to his first wife and dependent children from her and non-disclosure of their assets and liabilities has materially affected the result of the election. There is no issue framed in this regard nor is there any evidence let in by the election petitioner. The High Court has also not formed any opinion on this aspect.*

5.6. Lastly, he submits that the affidavit in support of the Election Petition is as bland as it could be. The same is not in compliance with Form 25 of the Conduct of Election Rules, 1961. The



said form is reproduced hereunder for easy reference:

FORM 25

(See rule 94A)

AFFIDAVIT

I.....the petitioner in the accompanying election petition calling in question the election of Shri/Shrimati. (respondent No in the said petition) make solemn affirmation/oath and say-

(a) that the statements made in paragraphs of the accompanying election petition about the commission of the corrupt practice of..... and the particulars of such corrupt practice mentioned in paragraphs. paragraphs.....of the same petition and in paragraphsof the Schedule annexed thereto are true to my knowledge,

(b) that the statements made in paragraphs..... of the said petition about the commission of the corrupt practice of..... and the particulars of such corrupt practice given in paragraphs..... of the said petition and in paragraphs of the Schedule annexed thereto are true to my information;

(c)

(d)

etc.

Signature of deponent



*Solemnly affirmed/sworn by Shri/Shrimati..... at
..... this.....dayof20.....*

*Before me, Magistrate of the first class/
Notary/Commissioner of Oaths*

5.7. The Form being in terms of Rule 94A of the Conduct of Election Rules, 1961 (for short, hereinafter referred to as 'the Rules, 1961'), the said Rule reads as under:-

94A. Form of affidavit to be filed with election petition.—

The affidavit referred to in the proviso to subsection (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.

5.8. A perusal of Rule 94A of Conduct of Election Rules, 1961, makes it mandatory that any affidavit referred to in the proviso of Sub-Section (1) of Section 83 of the Representation of Peoples Act, 1951 (for short, hereinafter



referred to as 'the RP Act') shall be sworn before the Magistrate of First Class or a notary or a Commissioner on oath and shall be in Form 25. The usage of the word 'shall' in Rule 94A of the Rules, 1961 makes it mandatory.

5.9. Section 83 of the Representation of Peoples Act, 1951, reads as under:-

83. Contents of petition.— (1) *An election petition—*

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

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

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings: 6[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.



5.10. The proviso to Sub-Section (1) of Section 83 of the Act mandates that whenever there is a corrupt practice alleged, the petition shall be accompanied by an affidavit in the prescribed form in support of the allegations of such practice which is to be in terms of Form 25 as per Rule 94A of the Rules, 1961. The affidavit not being in such form, the petition was required to be rejected. In this regard, he relies upon the decision of **V. Narayanaswamy vs. C.P. Thirunavukkarasu**⁵, more particularly para 23 thereof which is reproduced hereunder for easy reference:

23. It will be thus seen that an election petition is based on the rights, which are purely the creature of a statute, and if the statute renders any particular requirement mandatory, the court cannot exercise dispensing powers to waive non-

⁵ 2000(2) SCC 294



compliance. For the purpose of considering a preliminary objection as to the maintainability of the election petition the averments in the petition should be assumed to be true and the court has to find out whether these averments disclose a cause of action or a triable issue as such. Sections 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. When so read if the court finds non-compliance it has to uphold the preliminary objection and has no option except to dismiss the petition. There is difference between "material facts" and "material particulars". While the failure to plead material facts is fatal to the election petition the absence of material particulars can be cured at a later stage by an appropriate amendment. "Material facts" mean the entire bundle of facts, which would constitute a complete cause of action and these must be concisely stated in the election petition, i.e., clause (a) of sub-section (1) of Section 83. Then under clause (b) of sub-section (1) of Section 83 the election petition must contain full particulars of any corrupt practice. These particulars are obviously different from material facts on which the petition is founded. A petition levelling a charge of corrupt practice is required by law to be supported by an affidavit and the election petitioner is obliged to disclose his source of information in respect of the commission of corrupt practice. He must state which of the allegations are true to his knowledge and which to his belief on information received and believed by him to be true. It is not the form of the affidavit but its



substance that matters. To plead corrupt practice as contemplated by law it has to be specifically alleged that the corrupt practices were committed with the consent of the candidate and that a particular electoral right of a person was affected. It cannot be left to time, chance or conjecture for the court to draw inference by adopting an involved process of reasoning. Where the alleged corrupt practice is open to two equal possible inferences the pleadings of corrupt practice must fail. Where several paragraphs of the election petition alleging corrupt practices remain unaffirmed under the verification clause as well as the affidavit, the unsworn allegation could have no legal existence and the court could not take cognizance thereof. Charge of corrupt practice being quasi-criminal in nature the court must always insist on strict compliance with the provisions of law. In such a case it is equally essential that the particulars of the charge of allegations are clearly and precisely stated in the petition. It is the violation of the provisions of Section 81 of the Act which can attract the application of the doctrine of substantial compliance. The defect of the type provided in Section 83 of the Act on the other hand can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure. Non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure. Where neither the verification in the petition nor the affidavit gives any indication of the sources of information of the petitioner as to the facts stated in the



petition which are not to his knowledge and the petitioner persists that the verification is correct and the affidavit in the form prescribed does not suffer from any defect the allegations of corrupt practices cannot be inquired and tried at all. In such a case the petition has to be rejected on the threshold for non-compliance with the mandatory provisions of law as to pleadings. It is no part of the duty of the court suo motu even to direct furnishing of better particulars when objection is raised by the other side. Where the petition does not disclose any cause of action it has to be rejected. The court, however, cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action. The petition has to be considered as a whole. There cannot be a partial rejection of the petition.

5.11. Learned counsel submits that in terms of Section 17 of the Panchayat Raj Act, more particularly Sub-section (1) of Section 17, the designated Court shall dismiss an Election Petition which does not comply with the provisions of Section 15, thereby there being no compliance with Section 15(2)(a) of the Panchayat Raj Act, would require the designated Court to dismiss the petition in its



entirety and mere non grant of the relief is not in compliance with Section 17 of the Panchayat Raj Act.

6. *Per contra*, Sri.Shravan Kumar Math, learned counsel for respondent No.1 would submit,

6.1. That the reliefs which had been sought for were for declaration of results of the petitioner as null and void and for declaring respondent No.1 as the returned candidate, the latter relief was not awarded by the trial Court and was rejected on account of the other contestant not being made a party, as such the said relief being denied being in compliance with Section 15(2)(a) of the Panchayat Raj Act, there being no injury caused to the petitioner and no violation of the said proviso inasmuch as no order declaring respondent No.1 as the returned candidate was made, there is



sufficient compliance of Section 15(2)(a) of Panchayat Raj Act.

6.2. As regards suppression of assets of the petitioner and her husband, he submits that even such suppression would amount to a corrupt practice requiring disqualification. In this regard he relies upon Section 19 (1)(b) of the Panchayat Raj Act, which is reproduced hereunder for easy reference:

19. Grounds for declaring election to be void.-

(1) Subject to the provisions of sub - section (2) if the Designated Court 2 is of opinion,-

(a) xxx

(b) that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent; or

6.3. He further relies upon the decision of the Hon'ble Apex Court in **S. Rukmini Madegowda vs. The State Election**



Commission & Ors⁶, more particularly para 38 and 74 thereof which are reproduced hereunder for easy reference:

38. In our considered view, a false declaration with regard to the assets of a candidate, his/her spouse or dependents, constitutes corrupt practice irrespective of the impact of such a false declaration on the election of the candidate. It may be presumed that a false declaration impacts the election.

74. Purity of election at all levels, be it the election to the Parliament or State Legislature or a Municipal Corporation or a Panchayat is a matter of national importance in which a uniform policy is desirable in the interest of all the States. A hypertechnical view of the omission to incorporate any specific provision in the KMC Election Rules, similar to the 1961 Rules, expressly requiring disclosure of assets, of condone dishonesty and corrupt practice would be against the spirit of the Constitution and public interest.

6.4. Relying on the above, he submits that a false representation with regard to the assets of the candidate, his/her spouse or dependents constitutes a corrupt practice. Relying on the

⁶ SLP (C) No. 7414/2021 dated 14.9.2022



very same decision he submits that once such a corrupt practice has been resorted to, there is no need for the petitioner to establish the impact on the election. The Corrupt practice by itself would be sufficient to disqualify any candidate including a return candidate from the electoral process.

- 6.5. As regards the affidavit required to be in Form-25A, he submits that the entire petition having been verified by the verifying affidavit and all the paras of the Election Petition having been verified in the affidavit would be sufficient compliance with Form-25, Rule 94-A of the Rules, 1961 and the proviso to Section 83(1) of RP Act and as such, no fault can be found therewith and these aspects have been rightly considered by the trial Court and the order passed by the trial Court is not required to be interfered with.



7. Heard Sri.V.K.Nayak, Learned counsel for the petitioner, Sri.Shravan Kumar Math, learned counsel for respondent No.1 and Smt.Maya.T.R, learned HCGP for respondents Nos.2 to 4. Perused papers.
8. On the basis of the submission made, the points that would arise for consideration are:
 - i. **Whether non-arraigning of all the candidates to an election in an election petition where a declaration of the petitioner to be a returned candidate is sought for would result in dismissal of the Election Petition in terms of Sub-section (1) of Section 17 read with clause (a) of Subsection (2) of Section 15 of the Panchayat Raj Act, 1993?**
 - ii. **Whether non-disclosure or suppression of the assets of the candidate in his nomination form or that of his/her spouse would amount to a corrupt practice requiring disqualification of the candidate or would it require for the petitioner in a Election Petition to establish that such suppression has resulted in an adverse impact favourable to the returned candidate in the elections?**
 - iii. **Whether the verifying affidavit to all Election Petitions are required to be in Form-25 of Conduct of Election Rules, in terms of Rule 94-A of the Rules?**



- iv. **Whether the impugned order suffers from any legal infirmity requiring interference at the hands of this Court?**
- v. **What order?**

9. I answer the above points as under:

10. **Answer to Point No.(1): Whether non arraigning of all the candidates to an election in an election petition where a declaration of the petitioner to be a returned candidate is sought for would result in dismissal of the Election Petition in terms of Sub-section (1) of Section 17 read with clause (a) of Subsection (2) of Section 15 of the Panchayat Raj Act, 1993?**

10.1. The petitioner whose election has been declared void has contended that when an election petitioner apart from challenging the election of the returned candidate seeks for a declaration that the election petitioner is the winner in terms of Section 15(2)(a) of Panchayat Raj Act, all the contestants have to be made a party. In this regard, he has relied upon the decision of the Delhi High Court in ***Surinder Kumar's*** case (*supra*) where the Hon'ble Delhi High Court has



held that provision of Order VI Rule 17 or Order I Rule 10 of CPC cannot be invoked in an Election Petition to bring on record the material particulars which had been missed out and/or to bring on record additional parties, though required to be made parties had not been made parties to the Election Petition. Thus, submission is that neither an application under Order VI Rule 17 nor under Order I Rule 10 of CPC not being permissible in the event of necessary party not being made a party, the Election Petition is required to be dismissed.

10.2. Reliance is also placed in this regard on the decision of this Court in ***Khadarsab's*** case (*supra*) where this Court had also opined that when an Act makes a person necessary party and provides that the petition shall be dismissed, if such party has not joined, the power of amendment or to strike out parties or



to implead parties cannot be used at all. Both Delhi High Court and our own High Court have relied upon the decision of the Hon'ble Apex Court in ***K. Venkateswara Rao and Anr. vs Bekkam Narasimha Reddi & Ors***⁷.

10.3. In ***K. Venkateswara Rao's*** case (*supra*), the proceeding was one under the RP Act, dealing with an election of a Member of the Legislative Assembly. The Hon'ble Apex Court has categorically held that when the requirement of Section 81 or Section 82 of the RP Act, are not followed, High Court must dismiss an Election Petition.

10.4. Para-11 and 12 of the said decision are reproduced here under for easy reference:

"11. *Even though Section 87 (1) of the Act lays down that the procedure applicable to the trial of an election petition shall be like that of the trial of a suit, the Act itself makes important provisions of*

⁷ 1969 SCR (1) 679



the Code inapplicable to the trial of an election petition. Under Order 6 Rule 17 C.P.C. a court of law trying the suit has very wide powers in the matter of allowing amendments of pleadings and all amendments which will aid the court in disposing of the matters in dispute between the parties are as a rule allowed subject to the law of limitation. But Section 86(5) of the Act provides for restrictions on the power of the High Court to allow amendments. The High Court is not to allow the amendment of a petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition. With regard to the addition of parties which is possible in the case of a suit under the provisions of Order 1 Rule 10 subject to the added party's right to contend that the suit as against him was barred by limitation when he was impleaded, no addition of parties is possible in the case of an election petition except under the provisions of sub-Section (4) of Section 86. Section 82 shows who are necessary parties to an election petition which must be filed within 45 days from the date of election as laid down in Section 81. Under Section 86 (1) it is incumbent on the High Court to dismiss an election petition which does not comply with the provisions of Section 81 or Section 82. Again the High Court must dismiss an election petition if security for costs be not given in terms of Section 117 of the Act.

12. *It is well settled that amendments to a petition in a civil proceeding and the addition of parties to such a proceeding are generally possible subject to the law of limitation. But an election petition stands on a different footing. The trial of such a petition and the powers of the court in respect thereof are all circumscribed by the Act. The Indian Limitation Act of 1963 is an Act to consolidate and amend the law of limitation of suits and other proceedings and*



for purposes connected therewith. The provisions of this Act will apply to all civil proceedings and some special criminal proceedings which can be taken in a court of law unless the application thereof has been excluded by any enactment: the extent of such application is governed by Section 29(2) of the Limitation Act. In our opinion however the Limitation Act cannot apply to proceedings like an election petition inasmuch as the Representation of the People Act is a complete and self-contained code which does not admit of the introduction of the principles or the provisions of law contained in the Indian Limitation Act.”

10.5.A perusal of the above paragraphs would indicate that High Court would not have the power to allow an amendment of a petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition and in respect of addition of parties Court has held that no addition of parties is possible in the case of Election Petition except under Sub-Section (4) Section 86 of the RP Act.

"86. Trial of Election petitions, --(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.

(2) xxxxx

(3) xxxxx

(4) *Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent.*

Explanation.—for the purposes of this sub-Section and of Section 97, the trial of a petition shall be deemed to commence on the date fixed of the respondents to appear before the High Court and answer the claim or claims made in the petition.”

10.6. A perusal of Sub-Section (4) of Section 86 of the RP Act indicates that any candidate not already made a respondent can make an application within 14 days from the date of commencement of trial for him to seek to be joined as respondent. Thus, Sub-Section (4) of Section 86 of the RP Act also does not permit the petitioner to implead another candidate as a



respondent after filing of the proceedings. The Hon'ble Apex Court in the above decision has mandated by stating that in terms of Sub Section (1) of Section 86 of the RP Act, it is incumbent upon the High Court to dismiss an Election Petition which does not comply with the provisions of Sections 81 or Section 82 or Section 117 of the RP Act.

10.7. Section 81 of the RP Act deals with presentation of petitions.

10.8. Section 82 of the RP Act is relevant for the present matter and deals with parties to the petition. Section 82 mandates that where the petitioner in addition to claiming declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner and when no such further



declaration is claimed, all the returned candidates are to be made parties.

10.9. Section 15(2)(a) of the Panchayat Raj Act, is in *pari materia* with Section 82(a) of the RP Act. Thus, the said mandate imposed upon by the Hon'ble Apex Court in ***K.Venkateswara Rao's*** case (*supra*) in terms of Section 82(a) of the RP Act would also equally apply to Section 15(2)(a) of the Panchayat Raj Act.

10.10. The Hon'ble Apex Court in ***Mohanraj vs. Surendra Kumar Taparua and Others***⁸, which decision is also rendered by the very same bench as that in ***K.Venkateswara Rao's*** case has stated the same as that in ***K. Venkateswara Rao's*** case.

10.11. Thus, in the present matter, there being no dispute that relief of declaration of the election

⁸ (1969) 1 SCR 630



petitioner as the returned candidate is sought for, the trial Court ought not to have eschewed the said relief by dismissing the relief on the ground that all the contesting candidates have not been made parties. The trial Court ought to have taken into consideration the mandate under Section 15(2)(a) of the Panchayat Raj Act and the mandate imposed by the Hon'ble Apex Court in ***K. Venkateswara Rao's*** case (*supra*) and dismissed the petition in *limine* on the ground that all the contesting parties had not been made parties, even though the declaration of the petitioner as the returned candidate was sought for.

10.12. Hence, I answer point No.1 by holding that non-arraigning of all the candidates to an election in a Election Petition where a declaration of the petitioner to be a returned candidate is sought for would necessarily result in dismissal of the



Election Petition in terms of Sub-section (1) of Section 17 read with Clause (a) of Sub-section (2) of Section 15 of the Panchayat Raj Act. The said dismissal can be made by the Court trying the Election Petition *suo motu* or an application made by any of the respondents in the said proceedings.

11. **My answer to point No.2: Whether non-disclosure or suppression of the assets of the candidate in his nomination form or that of his/her spouse would amount to a corrupt practice requiring disqualification of the candidate or would it require for the petitioner in a Election Petition to establish that such suppression has resulted in an adverse impact favourable to the returned candidate in the elections?**

11.1. Though this issue is rendered academic on account of my answer to point No.1, since extensive arguments are advanced on this aspect, I answer the same, lest it be contended that these contentions are not considered by this Court.



11.2. The contention of the election petitioner is that the returned candidate has suppressed her assets as also the assets of her husband and as such, the said suppression would amount to a corrupt practice by returned candidate in terms of Sub Section 19(1)(b) of Panchayat Raj Act.

11.3. In this regard reference and reliance is made to the decision in ***Rukmini Made Gowda's*** case (*supra*). The Hon'ble Apex Court in that case has come to a categorical conclusion that not only a mis-statement but also suppression would come within the purview of corrupt practice.

11.4. The Hon'ble Apex Court by referring to the decision in ***Lok Prahari vs. Union of India***⁹ case has held that non-disclosure of the assets would amount to undue influence as defined under the Representation of Peoples Act, and

⁹ (2018) 4 SCC 699



therefore, non-disclosure of assets would amount to undue influence and consequently, a corrupt practice. The relevant paragraphs of **Lok Prahari's** case (supra) are reproduced hereunder for easy reference:

79. We shall now deal with Prayer 2 [Prayer 2 – “declare that non-disclosure of assets and sources of income of self, spouse and dependants by a candidate would amount to undue influence and thereby, corruption and as such election of such a candidate can be declared null and void under Section 100(1)(b) of the 1951 RP Act in terms of the judgment reported in AIR 2015 SC 1921.”] which seeks a declaration that non-disclosure of assets and sources of income would amount to “undue influence” – a corrupt practice under Section 123(2) of the 1951 RP Act. In this behalf, heavy reliance is placed by the petitioner on a judgment of this Court in Krishnamoorthy v. Sivakumar [Krishnamoorthy v. Sivakumar, (2015) 3 SCC 467 : (2015) 2 SCC (Cri) 359 : AIR 2015 SC 1921] . It was a case arising under the Tamil Nadu Panchayats Act, 1994. A notification was issued by the State Election Commission stipulating that every candidate at an election to any panchayat is required to disclose information, inter alia, whether the candidate was accused in any pending criminal case of any offence punishable with imprisonment for two years or more and in which charges have been framed or cognizance has been taken by a court of law. In an election petition, it was alleged that there were certain criminal cases pending falling in the abovementioned categories but the said information was not disclosed by the returned candidate at the



time of filing his nomination. One of the questions before this Court was whether such non-disclosure amounted to "undue influence" — a corrupt practice under the Panchayats Act. It may be mentioned that the Panchayats Act simply adopted the definition of a corrupt practice as contained in Section 123 of the 1951 RP Act.

80. On an elaborate consideration of various aspects of the matter, this Court in Krishnamoorthy case [Krishnamoorthy v. Sivakumar, (2015) 3 SCC 467 : (2015) 2 SCC (Cri) 359 : AIR 2015 SC 1921] held as follows: (SCC p. 522, para 91)

"91. ... While filing the nomination form, if the requisite information, as has been highlighted by us, relating to criminal antecedents, is not given, indubitably, there is an attempt to suppress, effort to misguide and keep the people in dark. This attempt undeniably and undisputedly is undue influence and, therefore, amounts to corrupt practice. ..."

81. For the very same logic as adopted by this Court in Krishnamoorthy [Krishnamoorthy v. Sivakumar, (2015) 3 SCC 467 : (2015) 2 SCC (Cri) 359 : AIR 2015 SC 1921], we are also of the opinion that the non-disclosure of assets and sources of income of the candidates and their associates would constitute a corrupt practice falling under heading "undue influence" as defined under Section 123(2) of the 1951 RP Act. We, therefore, allow Prayer 2.

11.5. The Hon'ble Apex Court by referring to ***Union of India vs. Association for Democratic Reforms***¹⁰ has also held that it was incumbent

¹⁰ (2002) 5 SCC 294



for the Election Commissioner to secure voters information pertaining to assets not only of the candidate but also the spouse and the dependant members. Therefore, in the present case, it was incumbent on the petitioner to have disclosed her assets, her husband's assets and also other dependent members. Non- disclosure thereof is not in dispute would therefore amount to undue influence and corrupt practice.

11.6. The Hon'ble Apex Court in ***Rukmini Made Gowda's*** case (*supra*) has also held that purity of election at all levels, be it election to the Union Parliament or a State Legislature or a Municipal Corporation, or Panchayat is of a national importance in which uniform policies are desirable in the interest of all the States and therefore, disclosure of assets has to be made of the candidate, spouse of the candidate and other dependent members.



11.7. It is not only *suggestio falsi* i.e., suggesting of false information regarding the assets but also *suppressio veri i.e.*, suppression of details relating to the assets which would be covered under Section 19 of the Panchayat Raj Act. That is to say *suggestio falsi* and *suppressio veri* of assets of the candidate, his or her spouse and dependent would come within the purview of Section 19 (1)(b) of the Panchayat Raj Act.

11.8. In that view of the matter, I answer point No.2 by holding that non-disclosure of assets or suppression of the assets of the candidate, or his or her spouse and dependent members would amount to corrupt practice requiring disqualification of the candidature and towards this end, there is no particular requirement for the election petitioner to specifically aver or prove that the suppression has resulted in adverse impact favourable to the returned



candidate in the election. The mere suppression is sufficient to invoke the provisions of Section 19(1)(b) of the Panchayat Raj Act.

12. **My Answer to Point No.3: Whether the verifying affidavit to all Election Petitions are required to be in Form-25 of Conduct of Election Rules, in terms of Rule 94-A of the Rules?**

12.1. Again this question is also redundant, in view of my answer to point No.1, but several arguments have been advanced on this aspect, lest it be contended that these contentions are not considered by this Court.

12.2. The contention of Sri.V.K.Nayak, learned counsel for the petitioner is that the election petitioner has to aver by pleading material facts that the result of the election has been materially affected and in this regard, the election petitioner has to specifically state by way of an affidavit as to what portions of the allegation are known to him personally or made



known on the basis of information, advice, etc.,
When such averments are not made and the affidavit is not in terms of Form-25 of the Rules, 1961, the Election Petition is required to be dismissed.

12.3. Rule 94-A of the Rules, 1961 which has been reproduced above indicates that the affidavit referred to in 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.

12.4. Section 83 of the RP Act deals with contents of election petition and the proviso thereof requires an affidavit in the prescribed form in support of the allegation of such corrupt practice.

12.5. The prescribed form is Form-25, prescribed under Rule 94A of the Rules, 1961. The said form contains two distinct portions; first part as



regards averments made in the petition which are true to the knowledge of the deponent and the second part as regards that which are true to the information of the deponent.

12.6. The contention of Sri.V.K.Nayak, learned counsel for the petitioner is that the affidavit filed in the present petition is not in terms of Form-25 in the strict sense and the requirement of Form-25 as per Rule 94A being mandatory, election petition was required to be dismissed.

12.7. This aspect had been considered by a three judge bench of the Hon'ble Apex Court in ***F.A.Sapa and Others vs. Singora and Others***¹¹ and the Hon'ble Apex Court has considered this aspect in paragraph Nos.20, 21, 28 thereof which are reproduced herein for easy reference:

¹¹ (1991) 3 SCC 375



"20. That brings us to clause (c) of sub-section (1) of section 83, which provides that an election petition shall be signed by the petitioner and verified in the manner laid down by the Code for the verification of the pleadings. Under Section 83(2) any schedule or annexure to the pleading must be similarly verified. Order 6 Rule 15 is the relevant provision in the Code. Sub-rule (2) of Rule 15 says that the person verifying shall specify with reference to the numbered paragraphs of the pleading, what he verifies on his own knowledge and what he verifies upon information received and believed to be true. The verification must be signed by the person making it and must state the date on and the place at which it was signed. The defect in the verification can be (i) of a formal nature and not very substantial (ii) one which substantially complies with the requirements and (iii) that which is material but capable of being cured. It must be remembered that the object of requiring verification of an election petition is clearly to fix the responsibility for the averments and allegations in the petition on the person signing the verification and at the same time discouraging wild and irresponsible allegations unsupported by facts. Then comes the proviso which provides that in cases where corrupt practice is alleged in the petition, the petition shall also be supported by an affidavit in the prescribed form i.e. Form No.25 prescribed by Rule 94-A of the Rules. Lastly sub- section (2) of section 83 lays down that any schedule or annexure to the petition shall also be similarly signed and verified. Two questions arise: (i) what is the consequence of a defective or incomplete verification and (ii) what is the consequence of a defective affidavit? It was also said that the verification clause in regard to averments or allegations based on information ought to disclose the source of information which had not been done in this case.

21. It must at the outset be realised that section 86(1) which lays down that the High court 'shall' dismiss an election petition which does not comply with



*the provisions of section 81 or section 82 or section 117 does not in terms refer to section 83. It would, therefore, seem that the legislature did not view the non-compliance of the requirement of section 83 with the same gravity as in the case of sections 81, 82 or 117. But it was said that a petition which does not strictly comply with the requirements of section 83 cannot be said to be an election petition within the contemplation of section 81 and hence section 86(1) was clearly attracted. In *Murarka Radhey Shyam Kumar v. Roop Singh Rathore*, [1964] 3 SCR 573 one of the defects pointed out was that though the verification stated that the averments made in some of the paragraphs of the petition were true to the personal knowledge of the petitioner and the averments in some other paragraphs were verified to be true on advice and information received from legal and other sources, the petitioner did not in so many words state that the advice and information received was believed by him to be true. The Election Tribunal held that this defect was a matter which came within section 83(1)(c) and the defect could be cured in accordance with the principles of the Code. This Court upheld this view in the following words:*

"It seems clear to us that reading the relevant sections in Part VI of the Act, it is impossible to accept the contention that a defect in verification which is to be made in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings as required by clause (c) of sub-section (1) of section 83 is fatal to the maintainability of the petition."

It is thus clear from this decision which is binding on us that mere defect in the verification of the election petition is not fatal to the maintainability of the petition and the petition cannot be thrown out solely on that ground. As observed earlier since section 83 is not one of three provisions mentioned in section 86(1),



ordinarily it cannot be construed as mandatory unless it is shown to an integral part of the petition under section 81.

28. *From the text of the relevant provisions of the R.P.Act, Rule 94A and Form-25 as well as Order 6 Rule 15 and Order 19 Rule 3 of the Code and the resume of the case law discussed above it clearly emerges (i) a defect in the verification, if any, can be cured (ii) it is not essential that the verification clause at the foot of the petition or the affidavit accompanying the same should disclose the grounds or sources of information in regard to the averments or allegations which are based on information believed to be true (iii) if the respondent desire better particulars in regard to such averments or allegations, he may call for the same in which case the petitioner may be required to supply the same and (iv) the defect in the affidavit in the prescribed Form-25 can be cured unless the affidavit forms an integral part of the petition, in which case the defect concerning material facts will have to be dealt with, subject to limitation, under section 81(3) as indicated earlier. Similarly the Court would have to decide in each individual case whether the schedule or annexure referred to in section 83(2) constitutes an integral part of the election petition or not; different considerations will follow in the case of the former as compared to those in the case of the latter.”*

12.8. A perusal of the above paragraphs would indicate firstly, that defect in verification can be cured; secondly that it is not essential that verification clause at the foot of the petition or the affidavit accompanying the same should disclose the ground or sources of information in



regard to the averments or allegations which are based on information believed to be true and in the event of respondent desiring better particulars in regard to such averments or allegations, he may call for the same in which case, the petitioner may be required to supply the same.

12.9. A two judge bench of the Hon'ble Apex Court in the case of **A.Manju vs. Prajwal Revanna @ Prajwal R. and Others**¹² while reiterating the judgment of a three judge bench case in **F.A.Sapa's** case (supra) has further held at paragraph 26 and 27 as under:

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 :*

¹² (2022) 3 SCC 269



(2013) 2 SCC (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.

27. *The arguments of the learned counsel for Respondent 1 were predicated on the distinction between the absence of an affidavit and a defective affidavit. This presupposes that for an opportunity of cure to be granted, there must be the submission of a Form 25 affidavit which may be defective. This would be very narrow reading of the provisions. Once there is an affidavit, albeit not in Form 25, the appropriate course would be to permit an affidavit to be filed in Form 25. We have to appreciate that the petition is at a threshold stage. It is not as if the appellant has failed to cure the defect even on being pointed out so. This is not a case where the filing of an affidavit now in Form 25 would grant an opportunity for embellishment as is sought to be urged on behalf of Respondent 1.*



12.10. A reading of the above would indicate that if an objection is raised that the verifying affidavit is not in terms of Form-25 in that event, the Court ceased of the matter would have to provide an opportunity to the election petitioner to rectify the same, the defect being formal in nature cannot result in dismissal of the election petition.

12.11. In the present case, the affidavit filed along with objections reads as under:

“PETITION VERIFYING AFFIDAVIT

I, Mohd. Ismail S/o Mahiboobsab, Age: 50 years, occ: Agri. R/o Naikal village, tq: Wadgera, Dist: Yadgir do hereby state on oath as under:

That I am the petitioner in the above case, hence knows the facts of the case personally.

That the contents of petition para are true and correct to the best of my knowledge, believe them to be true.

That deponent have not filed any similar petitions before any Court or forums.

That the documents produced herein copies of original issued by the competent authority.”



12.12.A perusal of the above affidavit indicates that the petitioner in Election Petition has categorically stated that he knows the facts of the case, the contents of the petition true and correct to the knowledge and he believes them to be true. He has not filed any other similar petition and that the documents produced are copies of the original issued by the competent authority.

12.13.The deponent having categorically stated that the contents of the paragraphs are true and correct to his knowledge and he believes them to be true and he has filed the affidavit in compliance of clause-A in Form-25. Clause-B would only come into effect, only if the deponent wishes to state that something is true to his information. In the present case, all the allegations are claimed to be to the knowledge of the petitioner and further to be true, thus,



the question of distinguishing the paragraph numbers to be true to his knowledge and the paragraph numbers to be true to his information would not arise.

12.14.If at all the respondent No.1 who is a petitioner herein had any doubt or had any dispute to seek better particulars with regard to averment or allegation, he could have sought for the same. Not having done so, the respondent No.1 election petitioner cannot now challenge to the judgment passed in Election Petition and take up the grievance that the affidavit is not in terms of Form-25.

12.15.In the present matter, I have come to a conclusion that the affidavit is in compliance of Form-25 and as such, ***Prajwal Revanna's*** decision (*supra*) though not strictly applicable, if at all the respondent in the Election Petition



has raised this issue, the Court always could have permitted the petitioner to rectify it.

12.16. Hence, I answer point No.3 by holding that affidavit filed by the petitioner in Election Petition No.11/2021 is in due compliance with Rule 94A of the Rules, 1961, Form-25 thereof as also Section 83 of the RP Act.

13. **Answer to Point No.4: Whether the impugned order suffers from any legal infirmity requiring interference at the hands of this Court?**

13.1. By way of the impugned order, the trial Court came to a conclusion that since the election petitioner had not made all the contestants party to the election petition, the relief seeking for declaration that the election petitioner was a returned candidate could not be granted and as such, rejected that prayer. As held supra, the Hon'ble Apex Court has categorically come to a conclusion that in the event of a necessary party not being made a party to the Election



Petition, it would be incumbent upon the Court to dismiss the petition.

13.2. In the present case, the petitioner having not only sought for setting aside the election of the respondent No.1 but also having sought for declaration that he is the returned candidate, it was but required that all the other contestants were to be made a party since it is only in their presence that any finding could be given as regards the election petitioner being a returned candidate. This aspect though would require further consideration by the Law Commission, since multiple candidates were contesting the elections, the declaration of the election petitioner as a returned candidate when votes are distributed among multiple candidates would be very difficult if not impossible, it is probably only when there are two candidates and election of one of the candidates being



declared void, the other candidate could be declared as returned candidate. Even if there are three candidates, the matter could be difficult inasmuch as it cannot be ascertained as to in whose favour the votes polled by the returning candidate would have to be apportioned.

13.3. The Registrar General of this Court is directed to forward a copy of this order to the Law Commission, Government of India for consideration.

13.4. I answer point No.4 by holding that the order passed by the trial Court refusing the relief of declaration of the election petitioner as returned candidate on the ground that other contestants were not made a party and continued with the matter is not in accordance with Section 15(2)(a) of the Act when all the contestants were not made a party and relief of declaration



of the Election Petition as returned candidate was sought for, the Election Petition ought to have been rejected in *limine* in terms of Sub-Section (1) of Section 17 of the Panchayat Raj Act.

14. **Answer to Point No.5: What order?**

14.1.The writ petition is ***allowed***.

14.2.The impugned judgment in Election Petition No.11/2021 dated 31.10.2022 passed by Senior Civil Judge and JMFC, Shahapur at Annexure-D is hereby set aside.

14.3.Election Petition No.11/2021 is dismissed.

**Sd/-
JUDGE**