

Mukesh Choudhary vs Shr Tulsiram Silawat on 30 September, 2022

Author: Rajendra Kumar Verma

Bench: Rajendra Kumar Verma

1 E.P.No.26/2019
IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE
HON'BLE SHRI JUSTICE RAJENDRA KUMAR (VERMA)

ELECTION PETITION No. 26 of 2019

Between: -
MUKESH CHOUDHARY,
S/O SHRI CHHOGALAL CHOUDHARY,
AGED ABOUT 44 YEARS,
OCCUPATION AGRICULTURIST,
R/O 127/2 GRAM KANADIYA, TEHSIL
INDORE, MADHYA PRADESH

.....PETITIONER

(BY SHRI RAVINDRA CHHABRA, SENIOR COUNSEL WITH SHRI AMAN
ARORA, LEARNED COUNSEL FOR THE PETITIONER)

AND

1. SHRI TULSIRAM SILAWAT, S/O
SHRI THAKURDIN SILAWAT,
AGED ABOUT 63 YEARS,
R/O 80, AGRAWAL NAGAR,
TEHSIL AND DISTRICT-INDORE

2. SHRI KAMAL CHOUHAN,
S/O SHRI BAPU CHOUHAN,
AGED ABOUT 43 YEARS,
R/O 30, VILLAGE-SOLSINDA,
TEHSIL SANWER, DISTRICT INDORE.

3. SHRI ANIL CHOUHAN,
S/O SHRI BALU CHOUHAN,
AGED ABOUT 26 YEARS,
R/O 238, VILLAGE BRAHMAN-PIPALYA,
P.O.TODI, TEH SANWER, DISTRICT INDORE, M.P.

4. SHRI BRAMHANAND MALVIYA,

S/O SHRI MANGILAL MALVIYA,
AGED ABOUT 65 YARS,
R/O 29, ASRAWAD BUJURG,
HANUMAN MOHALLA,
P.O. DUDHIYA, DISTRICT INDORE.

5. SHRI RAHUL KHARE,
S/O SHRI KISHORE KHARE,
AGED ABOUT 34 YEARS,
R/O 166, VILALGE-PACHOLA,

Signature Not Verified
Signed by: REENA JOSEPH
Signing time: 30-09-2022
17:54:08

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E.P.No

P.O. CHITTODA, TEH-SANWER,
DISTRICT INDORE, M.P.

6. SHRI SUBHASH CHOUHAN,
S/O SHRI RAMESH CHANDRA CHOUHAN,
AGED ABOUT 37 YEARS,
R/O 166, VILLAGE-ALWASA, P.O. ALWASA,
TEH-HATOD, DISTRICT INDORE.

7. NARENDRA BOURASI,
S/O SHRI NANKULAL, AGED ABOUT 62 YEARS,
R/O 103/1, MUKHERJEE NAGAR,
INDORE, DISTRICT-INDORE, M.P.

8. RAHUL SILAWAT S/O SHRI BRIJKISHOR SILAWAT,
AGED ABOUT 30 YEARS, R/O 200, SAMAR PARK,
NIPANIYA, INDORE, DISTRICT INDORE M.P.

9. STATE ELECTION COMMISSIONER,
M.P. STATE ELECTION COMMISSION,
NIRVACHAN BHAWAN, 58, ARERA HILLS, BHOPAL.

10. DISTRICT ELECTION OFFICER,
INDORE, DISTRICT INDORE, M.P.

11. SDM/SDO/RETURNING OFFICER,
211, SANWER CONSTITUENCY,
DISTRICT INDORE, M.P.

...
(SHRI VINAY SARAF, SENIOR ADVOCATE WITH SHRI YASPA
AND SHRI AKASH SHARMA, ADVOCATES FOR RESPONDENT NO.1.)
RESERVED ON : 15.07.2022 AND DELIVERED ON 30.09.2022

This election petition coming on for orders this day, t

passed the following:

ORDER

Heard on I.A.No.2048/2022 which is an application under Order 7 Rule 11 and Section 151 of CPC read with Section 86(1) of the Representation of People Act, 1951 (hereinafter referred to as "Act of 1951") filed on behalf of respondent no.1 for rejection of election petition on the grounds mentioned therein.

2. The present election petition has been filed by the original petitioner, Dr.Rajesh Sonkar, who also contested the election from the Constituency No.211 Sanwer, District Indore as an independent candidate, but lost to respondent no.1 by a margin of 2945 votes in the general elections for Legislative Assembly held in the month of December, 2018. The petitioner has challenged the election petition seeking the following reliefs:-

"(i) call for the entire record from the Election Commission of India in respect of 211, Sanwer Constituency of M.P. State Legislative Assembly.

(ii) declare the election of respondent no.1 from 211 Sanwer Constituency of M.P. State Legislative Assembly as null and void.

(iii) declare the petitioner (who has secured second highest votes) as duly elected member of the M.P. State Legislative Assembly from 211 Sanwer Constituency of M.P.State Legislative Assembly.

(iv) direct for initiation of criminal proceedings under Section 125 A of the Representation of People Act against respondent no.1.

(v) grant any other relief which this Hon'ble Court deems fit and proper in the interest of justice.

(vi) Grand cost of the petition."

3. The respondent no.1 filed the reply of the election petition on 16.06.2019 and denied all the allegations in toto and in reply to the allegations made against the respondent no.1, it is contended that the allegations levelled in the election petition do not fall under the definition of corrupt practice described under the Act of 1951.

During the pendency of this petition the respondent no.1 resigned from the Legislative Assembly and his resignation was duly accepted on 14.03.2020 and the seat of Sanwer Constituency No.211 was declared vacant on account of resignation of respondent no.1. After the by- elections were notified by the election commission, the original petitioner filed an application for withdrawal of the petition and lastly in compliance to order passed by this Court, the Registry of this Court published the notice on 27.01.2021 seeking withdrawal of the election petition and thereafter on 13.02.2021, the substituted petitioner filed an application under Section 110(C) of the Act of 1951 which was

allowed and the present petitioner has been constituted in place of the original petitioner and this Court permitted him to continue proceedings of the instant election petition.

4. Learned counsel for the respondent no.1 has submitted that due to the resignation of respondent no.1 and after the by-elections of seat of Sanwer constituency, the relief sought by the petitioner in the original petition has rendered infructuous and the reliefs are only academic. It is also submitted that in the by-elections respondent no.1 won the elections from the Legislative Assembly of Constituency No.211, Sanwer, district Indore by margin of 53,264 votes. Now no cause of action survives and as a result of which petition could be said to be the petition disclosing no cause of action qua the relief of declaring the election of the respondent no.1 from the Constituency No.211, Sanwer District Indore in the general assembly election held in the year 2018 null and void. All other reliefs are consequential and now are academic only. It is also submitted that Section 83 of the Act of 1951 not having been satisfied inasmuch as the petitioner in the petition though having alleged for commission of corrupt practices in the said election has failed to satisfy the mandatory requirement of law by not filing proper affidavit in support of the allegations of corrupt practices made in the petition as an effect whereof the petition is liable for rejection. It is further submitted that the reliefs as claimed in the petition cannot be granted.

5. It is further submitted by the counsel for the respondent no.1 that in the election petition ground of corrupt practices has also been raised. However, the instant election petition lacks in material fact constituting the cause of action required under the Act of 1951. The affidavit filed in support of the petitioner does not contain a concise statement of material facts on which the petitioner relies and therefore, does not disclose a triable issue or cause of action. The so called specific allegations of corrupt practice as contained in petition did not meet out the basic requirement which could constitute cause of action as required by law. Even the material particulars are absent in the election petition. The material facts as to how the information came to the knowledge of the petitioner pertaining to various incidents, as mentioned in the referred paras is absolutely missing, whereas the same is the preliminary requirement for maintainability of the petition. Thus, it suffers from non-compliance of the provisions contained under 83(1) of the Act of 1951.

6. It is also submitted by the learned counsel for respondent no.1 that no trial or inquiry is permissible on the basis of such vague, indefinite imprecise averments. The Court should not undertake to decide an issue unless it is a living issue between the parties. If an issue is purely academic in that case its decision neither way would have no impact on the position of the parties and would be an exercise in futility leading to waste of public time. The orders that could be passed by this Court at the conclusion of the trial of the election petition are detailed in Section 98 of the Act and relief nos. (ii) and (iii) could not be granted to the petitioner and further relief nos.(i) and (iv) also cannot be granted as the affidavit filed with the petition in support of the allegations of corrupt practice and particulars thereof does not comply with the provisions of the Act of 1951 and the Rules made thereunder.

7. It is also submitted that the affidavit accompanying the election petition in support of the allegations of corrupt practices and the particulars thereof is not according to Form No.25 prescribed for the same and provisions of Section 83(1) of Act of 1951. The petitioner has not prayed

for declaration that the respondent no.1 be declared as disqualified and under the circumstances the entire petition as it is framed and also looking to the nature of the prayer clauses, has become infructuous and no cause of action accrues and same is liable to be dismissed on this count alone. The affidavit, in essence, though forms part of the petition is in the shape of criminal charge as the allegations of corrupt practices are quasi criminal in nature and as such without disclosing the charge in the manner provided the complete cause of action has lacked. The statutory provisions laying down the requirement cannot be allowed to be diluted as the very purpose of statutory provision is to be given obedience and not the disobedience and any deviation showing the requirement of law regarding filing of an affidavit when the allegations of corrupt practices are made and also regarding other requirements as such mentioning of paragraphs regarding statements of facts qua the allegations of corrupt practices and the name of the particular corrupt practice and also the material particular qua the corrupt practice and the source of the information of the corrupt practice is an essential one as the charge of corrupt practice is not purely of civil nature but is of quasi criminal nature.

8. It is also submitted by the learned counsel for respondent no.1 that the election petition on account of sufferance of deficiency noticed heretofore cannot proceed further as the relief of declaring the election of respondent no.1 is null and void and declaring the respondent no.2 returned candidate have become infructuous on account of subsequent holding of the by-elections and further the allegations of corrupt practice, in the present case the relief on the basis of allegations of corrupt practice against the respondent no.1 cannot be granted as the respondent no.1 cannot be put to trial as affidavit which is the essence of the charges, had failed to satisfy the requirement of law. Hence, it is prayed that this application be allowed and this election petition be dismissed as rendered infructuous and not maintainable.

9. It is submitted by learned counsel for the petitioner that averments made in the application are based on erroneous, misleading and superficial interpretation of the statutory provisions of the Act of 1951. On 21.02.2022 the respondent no.1 filed the application bearing I.A.No.1256/2022 under Order VI Rule 16 read with Section 151 of the CPC seeking relief of striking out/deletion of the pleadings on the ground that the original petitioner has failed to file affidavit in the prescribed Form No.25, in view of Rule 94-A of the Conduct of Election Rules, 1961 (hereinafter referred to as "Rule of 1961"). Thus respondent no.1 had no issue with the election petition but only satisfied with the certain paragraphs of the petition. Reply to the said application was filed by the petitioner on 04.03.2022 denying the allegations made by the respondent no.1 in the aforesaid application. After filing of the reply to I.A.No.1256/2022 on the date fixed for arguments, the respondent no.1 with an ulterior motive to prolong the trial of the instant election petition sought time to file counter affidavit. When the counter affidavit was also not found conducive, the present I.A.has been filed. It is submitted that provision of Section 86 is applicable only when there is a default in non-compliance with the provisions of Section 81 or 82 or 117 of the Act of 1951. Undisputedly, there is no non-compliance with any of the said provisions. The requirement of result of the election having been materially affected is envisaged under Section 100(10)(d) and not under Section 100(1)(b) i.e. corrupt practice committed by the returned candidate or the election agent or any other person with the consent of the returned candidate or his election agent. For invoking Section 100(1)(b), proof of result having been materially affected is not required. Therefore, the present application deserves to

be dismissed.

10. It is also submitted that if the contents of this election petition regarding corrupt practices are found to be true then not only the election of respondent no.1 will be declared void, but will also be incurred electoral disqualification. Infact, if the instant election petition had been decided and allowed prior to the by-elections, then the respondent no.1 would have been disqualified from contesting the said elections. Thus resignation from constituent assembly/dissolution of assembly or by election and result thereof, has no bearing on the present election petition much less will not result in abatement of the petition. In support of the aforesaid contention reliance is placed in the matter of Sheo Sadan Singh Vs. Mohan Lal Gautam reported in (1969) 1 SCC 408.

11. It is further submitted that a bare perusal of the written statement of respondent no.1 reveals that there was no protest/demur/objection with regard to the pleadings of the election petition. The instant election petition is duly supported by an affidavit in Form No.25 as prescribed under Rule 94-A of Rule of 1961 and is filed in terms of Section 83 of the Act of 1951. The averments made in the petition has also been verified by the original petitioner in the verification clause of the affidavit as per Form No.25. In the said affidavit it has been categorically stated that the statements made in paragraphs 9 to 35 of the election petition in respect of corrupt practices by suppression of criminal antecedents and improper filing of nomination form of the respondent no.1 are true to his knowledge. The election petition contains a concise statement of material facts and requisite particulars in accordance with the Rule of 1961.

12. It is also submitted that a bare reading of Section 83 of the Act of 1951 would show that an election petition should contain a concise statement of material facts and full particulars of corrupt practice 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. A bare perusal of paragraphs 9 to 20, 23 to 27 and 30 of the election petition itself shows that the election petition complies with the requirement of Section 83 of the Act of 1951. Respondent no.1 has levelled the pleadings as vague, indefinite, imprecise but failed to mention as to which particular averment/pleading is vague/incomprehensible. On the above grounds the petitioner prays for dismissal of the application on exemplary cost.

13. Heard learned senior counsel for both the parties at length and perused the record.

14. Undisputedly, during the pendency of the election petition respondent no.1 has resigned from the Legislative Assembly and Sanwer Constituency No.211 was declared vacant and after by elections respondent no.1 was elected once again for Assembly from the same Constituency, hence relief nos.(ii) and (iii) claimed by the petitioner in the relief clause of the petition cannot be granted. So far as relief nos.(i) and (iv) in the relief clause of the petition is concerned, petitioner has to prove that any corrupt practices has/have been committed by the respondent no.1, and if it is proved then this Court shall pass order under Section 99 of the Act of 1951.

15. As per respondent no.1 petition also suffers from non-compliance of Section 83 (1) of the Act of 1951 which also provides 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.

16. Learned counsel for respondent no.1 has relied upon the judgment of the Apex Court in the case of Dharti Pakar Madan Lal Agarwal Vs. Rajiv Gandhi AIR 1987 SC 1577. The Apex Court in the aforesaid case has held as under:-

"4 . The election under challenge relates to 1981, its term expired in 1984 on the dissolution of the Lok Sabha, thereafter another general election was held in December, 1984 and the respondent was again elected from 25th Amethi Constituency to the Lok Sabha. The validity of the election held in 1984 was questioned by means of two separate election petitions and both the petitions have been dismissed. The validity of respondent's election has been upheld in *Azhar Hussain v. Rajiv Gandhi*, [1986]2SCR782 and *Bhagwati Prasad v. Rajiv Gandhi*: [1986]2SCR823 . Since the impugned election relates to the Lok Sabha which was dissolved in 1984 the respondent's election cannot be set aside in the present proceedings even if the election petition is ultimately allowed on trial as the respondent is a continuing member of the Lok Sabha not on the basis of the impugned election held in 1981 but on the basis of his subsequent election in 1984. Even if we allow the appeal and remit the case to the High Court the respondent's election cannot be set aside after trial of the election petition as the relief for setting aside the election has been rendered infructuous by lapse of time. In this view grounds raised in the petition for setting aside the election of the respondent have been rendered academic. Court should not undertake to decide an issue unless it is a living issue between the parties. If an issue is purely academic in that its decision one way or the other would have no impact on the position of the parties, it would be waste of public time to engage itself in deciding it. Lord Viscount Simon in his speech in the House of Lords in *Sun Life Assurance Company of Canada v. Jervis* [1944] AC 111 observed; "I do not think that it would be a proper exercise of the Authority which this House possesses to hear appeals if it occupies time in this case in deciding an academic question, the answer to which cannot affect the respondent in any way. It is an essential quality of an appeal fit to be disposed of by this House that there should exist between the parties a matter in actual controversy which the House undertakes to decide as a living issue." These observations are relevant in exercising the appellate jurisdiction of this Court. 5 . The main controversy raised in the present appeal regarding setting aside of the respondent's election has become stale and academic, but precious time of the apex Court was consumed in hearing the appeal at length on account of the present state of law. Section 98 read with Section 99 indicates that once the machinery of the Act is moved by means of an election petition, charges of corrupt practice, if any, raised 24-09-2022 (Page 2 of 18) against the returned candidate must be investigated. On conclusion of the trial if the Court finds that a returned candidate or any of his election agent is guilty of commission of corrupt practice he or his election agent, as the case may be, would be guilty of electoral offence incurring disqualification from contesting any subsequent election for a

period of six years. In this state of legal position we had to devote considerable time to the present proceedings as the appellant insisted that even though six years period has elapsed and subsequent election has been held nonetheless if the allegations made by him make out a case of corrupt practice the proceedings should be remanded to the High Court for trial and if after the trial the Court finds him guilty of corrupt practice the respondent should be disqualified. If we were to remand the proceedings to the High Court for trial for holding inquiry into the allegations of corrupt practice, the trial itself may take couple of years, we doubt if any genuine and bona fide evidence could be produced by the parties before the Court, in fact, during the course of hearing the appellant himself stated before us more than once, that it would now be very difficult for him to produce evidence to substantiate the allegations of corrupt practice but nonetheless he insisted for the appeal being heard on merits. Though the matter is stale and academic yet having regard to the present state of law, we had to hear the appeal at length. 6. Before we consider the submissions on merit, we would like to say that Parliament should consider the desirability of amending the law to prescribe time limit for inquiry into the allegations of corrupt practice or to devise means to ensure that valuable time of this Court is not consumed in election matters which by efflux of time are reduced to mere academic interest. Election is the essence of democratic system and purity of elections must be maintained to ensure fair election. Election petition is a necessary process to hold inquiry into corrupt practice to maintain the purity of election. But there should be some time limit for holding this inquiry. Is it in public interest to keep sword of Damocles hanging on the head of the returned candidate for an indefinite period of time as a result of which he cannot perform his public duties and discharge his obligations to his constituents? We do not mean to say that the returned candidate should be permitted to delay proceedings and to plead later on the plea of limitation. Ways and means should be found to strike a balance in ascertaining the purity of election and at the same time in preventing waste of public time and money and keeping the sword of Damocles hanging on the head of returned candidate for an indefinite period of time. 7. The appellant appeared in person and argued the case vehemently for a number of days. He made three submissions: (i) The High Court had no jurisdiction to entertain preliminary objections under Order VI Rule 16 or to reject the election petition under Order VII Rule 11 of the CPC before the respondent had filed his written statement to the petition. In rejecting the petition under Order VII Rule 11 the High Court deprived the appellant opportunity of amending the petition by supplying material facts and particulars, (ii) Allegations contained in various paragraphs of the election petition constituted corrupt practice which disclosed cause of action within the meaning of Section 100 of the Act. The High Court committed error in holding that the petition was defective on the premise that it did not disclose any triable issue,

(iii) The election petition disclosed primary facts regarding corrupt practice and if there was absence of any particulars or details the High Court should have afforded opportunity to the appellant to amend the petition. 8. The first question which falls

for our determination is whether the High Court had jurisdiction to strike out pleadings under Order VI Rule 16 of the CPC and to reject the election petition under Order VII Rule 11 of the Code at the preliminary stage even 24-09-

2022 (Page 3 of 18) though no written statement had been filed by the respondent. Section 80 provides that no election is to be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act before the High Court. Section 81 provides that an election petition may be presented on one or more of the grounds specified in Section 100 by an elector or by a candidate questioning the election of a returned candidate. Section 83 provides that an election petition shall contain a concise statement of material facts on which the petitioner relies and he shall set forth full particulars of any corrupt practice that he may allege including full statement 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. Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Sections 81 and 82 or Section 117. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made there under, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable to the trial of suits under the CPC, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, Order VI Rule 16 and Order VII Rule 11 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Sections 81, 83, 86 and 87 of the Act, it is apparent that those paragraphs of a petition which do not disclose any cause of action, are liable to be struck off under Order VI Rule 16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the Court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI Rule 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the proceedings, the court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable issues remain to be considered, it has power to reject the election petition under Order VII Rule

11."

17. In the case of Shipping Corporation of India Limited Vs. Machado Brothers and others (2004) 11 SCC 168 it has been held as under:-

"19. Coming to the maintainability of I.A.No.20651/2001, the learned counsel for the appellant in support of his contention that an application under Section 151 CPC for the dismissal of the suit on the ground of same having become infructuous was

maintainable, has relied on number of judgments. In *M/s. Ram Chand & Sons Sugar Mills Pvt.Ltd. Barabanki (U.P.) vs. Kanhayalal Bhargava & Ors.* (AIR 1966 SC 1899) while discussing the scope of Section 151 CPC this court after considering various previous judgments on the point held: "The inherent power of a court is in addition to and complementary to the powers expressly conferred under the Code. But that power will not be exercise if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions. Whatever limitations are imposed by construction on the provisions of S.151 of the Code, they do not control the undoubted power of the Court conferred under Section 151 of the Code to make a suitable order to prevent the abuse of the process of the court."

20. From the above, it is clear that if there is no specific provision which prohibits the grant of relief sought in an application filed under Section 151 of the Code, the courts have all the necessary powers under Section 151 CPC to make a suitable order to prevent the abuse of the process of court. Therefore, the court exercising the power under section 151 CPC first has to consider whether exercise of such power is expressly prohibited by any other provisions of the Code and if there is no such prohibition then the Court will consider whether such power should be exercised or not on the basis of facts mentioned in the application.

21. In the instant case, the appellant contends that during the pendency of the first suit, certain subsequent events have taken place which has made the first suit infructuous and in law the said suit cannot be kept pending and continued solely for the purpose of continuing an interim order made in the said suit.

22. While examining this question we will have to consider whether the court can take cognizance of a subsequent event to decide whether the pending suit should be disposed of or kept alive. If so, can a defendant make an application under Section 151 CPC for dismissing the pending suit on the ground the said suit has lost its cause of action. This Court in the case of *Pasupuleti Venkateswarlu vs. The Motor & General Traders* (1975 1 SCC 770 at para 4) has held thus:

"We feel the submissions devoid of substance. First about the jurisdiction and propriety vis-à-vis circumstances which come into being subsequent to the commencement of the proceedings. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equality justifies bending the rules of procedure, where no specific provision or fairplay is not violated, with a

view to promote substantial justice subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad.

We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

23. In the very same case, this Court quoted with approval a judgment of the Supreme Court of United States in *Patterson vs. State of Alabama*, (294 US 600) wherein it was laid down thus : "We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered."

24. Almost similar is the view taken by this Court in the case of *J.M.Biswas vs. N.K.Bhattacharjee & Ors.* (2002 (4) SCC 68) wherein this Court held :

"The dispute raised in the case has lost its relevance due to passage of time and subsequent events which have taken place during the pendency of the litigation. In the circumstances, continuing this litigation will be like flogging a dead horse. Such litigation, irrespective of the result, will neither benefit the parties in the litigation nor will serve the interests of the Union."

25. Thus it is clear that by the subsequent event if the original proceeding has become infructuous, *ex debito justitiae*, it will be the duty of the court to take such action as is necessary in the interest of justice which includes disposing of infructuous litigation. For the said purpose it will be open to the parties concerned to make an application under Section 151 of CPC to bring to the notice of the court the facts and circumstances which have made the pending litigation infructuous. Of course, when such an application is made, the court will enquire into the alleged facts and circumstances to find out whether the pending litigation has in fact become infructuous or not.

26. Having thus understood the law, we will now consider whether the courts were justified in rejecting the application filed by the appellant herein for dismissing the suit on the ground that the same had become infructuous. In this process, we have already noticed that there seems to be no dispute that the original termination notice based on which first suit O.S.No.4212/95 was filed, has since ceased to exist because of the subsequent termination notice issued on 23.8.2001, validity of which has already been challenged by the respondent in the third suit.

27. While dismissing the application I.A.No.20651/2001 the courts below proceeded not on the basis that the original notice of termination has not become infructuous, but on the basis that the said application lacks in bona fide and if the said application is allowed the interlocutory injunction hitherto enjoyed by the plaintiff will get vacated and consequently the plaintiff will be prejudiced. The question for our consideration now is whether such ground can be considered as valid and legal. While so considering the said question one basic principle that should be borne in mind is that interlocutory orders are made in aid of final orders and not vice versa. No interlocutory order will survive after the original proceeding comes to an end. This is a well established principle in law as could be seen from the judgment of this Court in Kavita Trehan (Mrs.) & Anr. vs. Balsara Hygiene Products Ltd. (1994 5 SCC 380) wherein it is held :

"Upon dismissal of the suit, the interlocutory order stood set aside and that whatever was done to upset the status quo, was required to be undone to the extent possible."

28. Therefore, in our opinion, the courts below erred in continuing an infructuous suit just to keep the interlocutory order alive which in a manner of speaking amounts to putting the cart before the dead horse.

18. In the case of Pawan Diwan Vs. Vidya Charan Shukla reported in 1996 J LJ 762 it has been held as under:-

"20. To summaries the second part of the objections, learned Counsel for the applicant/Respondent No. 1 in this connection made following four-fold submissions:

(a) that in the absence of prayer seeking declaration for declaring Respondent No. 1 as disqualified the petition as framed is infructuous as no cause of action accrues; (b) that the affidavit filed was not in consonance of Form 25 (supra) read with Rule 7 of the Rules framed by the High Court of Madhya Pradesh under the Act; (c) that the affidavit accompanying the petition wherefore proforma is prescribed by law has to satisfy the requirements of law which are mandatory in character; (d) that though the affidavit in proforma 25 do not provide for disclosure of source of information for the alleged corrupt practice the mode of information needs to be disclosed as the preposition is no more res-integra. The first point as raised by the learned Counsel for the Respondent No. 1 is sans substance as firstly such an objection is not covered under the provisions of Order 7 Rule 11 of the Code of Civil Procedure as the allegations in the petition disclose cause of action and not the prayer. Secondly relief could be the subject matter of amendment at any stage within the framework of the allegations in the petition, if found necessary. Thirdly High Court at the conclusion of Trial of an election petition can grant only the following reliefs: (a) dismiss the petition; or (b) declare the election of all or any of the returned candidates to be void; or (c) declaring the election of all or any of the returned candidates to be void and the Petitioner or any other candidate to have been duly elected. However, Section 99 of the Act provides that at the time of making an order under Section 98 the High court

shall also make an order:

(a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording: (i) a finding whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice; and 24-

09-2022 (Page 9 of 14) (ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice. This provision does not speak for final order that could be passed by the High Court except recording of finding of the guilt of corrupt practice qua the nature of corrupt practice and the name of the person who committed. In this context it is relevant to extract out the Section 8A of the Act, which is: 8A. Disqualification on ground of corrupt practices.- (1) The case of every person found guilty of a corrupt practice by an order under Section 99 shall be submitted, as soon as may be, after such order takes effect, by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period: Provided that the period for which any person may be disqualified under this subsection shall in no case exceed six years from the date on which the order made in relation to him under Section 99 takes effect. (2) Any person who stands disqualified under Section 8A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), may, if the period of such disqualification has not expired, submit a petition to the President for the removal of such disqualification for the unexpired portion of the said period. (3) Before giving his decision on any question mentioned in Subsection (1) or on any petition submitted under Sub-section (2), the President shall obtain the opinion of the Election Commission on such question on petition and shall act according to such opinion. (Emphasis supplied) The case after finding of guilt Under Section 99 of the Act to be submitted to the President of India for determination of the question as to whether such person shall be disqualified and if so, for what period. When High Court cannot grant relief Under Section 98 of the Act there is no question of claiming the relief in petition by the election Petitioner Under Section 99 of the Act, if the charges of corrupt practice are pleaded in the petition, then High Court to record only finding and nothing more. The objection thus fails. It may, however, may not go un-noticed that the High Court does not act as a Commission under the Commissions of Enquiry Act, 1952 for recording finding leaving action for the President of India. President of India cannot figure himself in the justice processing delivery system and thereby in judicial review process. The provision under Section 99 of the Act read with Section 8A, prima facie, erodes upon the basic feature of the Constitution and independence of the Judiciary. However here there is neither any such challenge nor could such a challenge be given in the election petition in view of law laid down by the Supreme Court in the case of Charan Lal Sahu v. Shri Keelam Sanjeeva Reddy AIR 1978 SC 409. 24-09-2022 (Page 10 of 14). In connection with second point, learned Counsel for the Respondent No. 1 as a first limb of submission submitted that the Petitioner has to specify the paragraphs of the election petition which relate to the allegation of corrupt practice in the affidavit as it is a mandatory requirement of law and it has to be in the prescribed form in support of the allegations of corrupt practices and particulars thereof and this mandatory requirement has not been complied-with by the Petitioner/opposite party, as according to him, the election Petitioner has to specify in the affidavit the name of the corrupt practice as provided Under

Section 123 of the Act and while stating the name of corrupt practice also to give the particulars of such practice as mentioned in the paragraphs of the petition in the beginning of the affidavit. Second limb of submission is that though the Form 25 does not provide for giving source of information, if any, for such corrupt practice and the mode of information but the mode of information has to be disclosed and this proposition is no more *res Integra* in view of the pronouncement of the Supreme Court. The objection (d) (*supra*) finds place in objection (b).

24. The Supreme Court in V.K. Saklecha's case (*supra*) considered the case under the Act arising from the judgment of the Madhya Pradesh High Court. In paragraph 10 it was stated that Rule 9 of the Madhya Pradesh High Court Rules in respect of election petitions states that the rules of the High Court shall apply in so far as they are not inconsistent with the Representation of the People Act, 1951 or other rules, if any, made thereunder or of the Code of Civil Procedure in respect of all matters including *inter alia* affidavits. Rule 7 of the Madhya Pradesh High Court Rules states that every affidavit should clearly express how much is a statement and declaration from knowledge and how much is a statement made on information or belief and must also state the source or grounds of information or belief with sufficient particularity and in paragraph 11 of the said report the Court has stated that Form No. 25 of the Conduct of Election Rules requires the deponent of an affidavit to set out which statements are true to the knowledge of the deponent and which statements are true to his information. The source of information is required to be given under the provisions in accordance with Rule 7 of the Madhya Pradesh High Court Rules. In so far as Form No. 25 of the Conduct of Election Rules requires the deponent to state which statements are true to knowledge there is no specific mention of the sources of information in the form. The form of the affidavit and the High Court Rules are not inconsistent. The High Court Rules give effect to provisions of Order 19 of the Code of Civil Procedure. The Court pointed out that importance of setting out the sources of information in affidavits which came up for consideration before the Supreme Court from time to time. The earlier decision was *State of Bombay v. Purushottam Jog Naik* : AIR 1952 SC 317 where the Supreme Court endorsed the decision of the Calcutta High Court in *Padmabati Dasi v. Rasik Lal Dhar* ILR Cal 259 and held that the sources of information should be clearly disclosed. Again, in *Barium Chemicals Ltd. v. Company Law Board* 1966 :

AIR 1967 SC 295 the Supreme Court deprecated 'slipshod verifications' in an affidavit and reiterated its ruling in *Bombay* case (*supra*) that verification should invariably be modelled on the lines of Order 19, Rule 3 of the Code 'whether the Code applies in terms or not'. Again in *A.K.K. Nambiar v. Union of India* 1969 : AIR 1970 SC 652 the Supreme Court said that the importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations.

27. It may be noticed that the filing of the affidavit along with the election petition in cases where the allegations of corrupt practices are made is a must and the affidavit has to be in Form No. 25 with the addition recording source of information as per decision of the Supreme Court in V.K. Saklecha's case (*supra*). The necessity of affidavit is of course to constitute a charge regarding corrupt practice provided under Section 123 of the Act.

The verification clause as provided in Rule 15 of Order 6 of the Code of Civil Procedure, which is as extracted below, only says: What he verifies upon information received and believed to be true. It does not provide for disclosure of the source."

19. Learned counsel for the petitioner has relied upon the judgment of Hon' ble Apex Court in the case of Mairambam Prithviraj @ Prithviraj Singh Vs Pukhrem Sharatchandra Singh reported in (2017) 2 SCC 487 in which it has been held as under:-

"17. It is clear from the law laid down by this Court as stated above that every voter has a fundamental right to know about the educational qualification of a candidate. It is also clear from the provisions of the Act, Rules and Form 26 that there is a duty cast on the candidates to give correct information about their educational qualifications. It is not in dispute that the Appellant did not study MBA in the Mysore University. It is the case of the Appellant that reference to MBA from Mysore University was a clerical error. It was contended by the Appellant that he always thought of doing MBA by correspondence course from Mysore University. But, actually he did not do the course. The question which has to be decided is whether the declaration given by him in Form 26 would amount to a defect of substantial nature warranting rejection of his nomination."

20. In the case of Resurgence India Vs. Election Commission of India and another reported in (2014) 14 SCC 189 the Hon'ble Apex Court has held as under:-

"26. At this juncture, it is vital to refer to Section 125A of the RP Act. As an outcome, the act of failure on the part of the candidate to furnish relevant information, as mandated by Section 33A of the RP Act, will result in prosecution of the candidate. Hence, filing of affidavit with blank space will be directly hit by Section 125A(i) of the RP Act. However, as the nomination paper itself is rejected by the Returning officer, we find no reason why the candidate must again be penalized for the same act by prosecuting him/her.

27. If we accept the contention raised by Union of India, viz., the candidate who has filed an affidavit with false information as well as the candidate who has filed an affidavit with particulars left blank should be treated at par, it will result in breach of fundamental right guaranteed under Article 19(1)(a) of the Constitution, viz., 'right to know', which is inclusive of freedom of speech and expression as interpreted in Association for Democratic Reforms.

28. In succinct, if the Election Commission accepts the nomination papers in spite of blank particulars in the affidavits, it will directly violate the fundamental right of the citizen to know the criminal antecedents, assets and liabilities and educational qualification of the candidate. Therefore, accepting affidavit with blank particulars from the candidate will rescind the verdict in Association for Democratic Reforms (supra). Further, the subsequent act of prosecuting the candidate under Section

125A(i) will bear no significance as far as the breach of fundamental right of the citizen is concerned. For the aforesaid reasons, we are unable to accept the contention of the Union of India."

21. In the case in hand Sections 83, 99, 123 and 125-A of the Act of 1951 are relevant which 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:

[Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.] (2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.]

99. Other orders to be made by the High Court.--

(1) At the time of making an order under section 98 3 [the High Court] shall also make an order--

[(a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording--

(i) a finding whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice; and

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and]

(b) fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid:

Provided that 6 [a person who is not a party to the petition shall not be named] in the order under sub-clause

(ii) of clause (a) unless--

(a) he has been given notice to appear before 3 [the High Court] and to show cause why he should not be so named; and

(b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by 3 [the High Court] and has given evidence against him, of calling evidence in his defence and of being heard.

[(2) In this section and in section 100, the expression "agent" has the same meaning as in section 123.]

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

[(1) "Bribery", that is to say--

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

(a) a person to stand or not to stand as, or 4 [to withdraw or not to withdraw] from being a candidate at an election, or

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

(i) a person for having so stood or not stood, or for 5 [having withdrawn or not having withdrawn] his candidature; or

(ii) an elector for having voted or refrained from voting; (B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward--

(a) by a person for standing or not standing as, or for 6 [withdrawing or not withdrawing] from being, a candidate; or

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

Explanation.--For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.] (2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person 7 [with the consent of the candidate or his election agent], with the free exercise of any electoral right:

Provided that--

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

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-

communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause. [(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:] 2 [Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.] (3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.] [(3B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

Explanation.--For the purposes of this clause, "sati" and "glorification" in relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987 (3 of 1988).] (4) The publication by a candidate or his agent or by any other person 4 [with the consent of

a candidate or his election agent], of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

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

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

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

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

(6) The incurring or authorizing of expenditure in contravention of section 77.

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person 1 [with the consent of a candidate or his election agent], any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, 2 [from any person whether or not in the service of the Government] and belonging to any of the following classes, namely:--

- (a) gazetted officers;
- (b) stipendiary judges and magistrates;
- (c) members of the armed forces of the Union;
- (d) members of the police forces;
- (e) excise officers;

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

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

[Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of /the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election;] [(h) class of persons in the service of a local authority, university, government company or institution or concern or undertaking appointed or deputed by the Election Commission in connection with the conduct of elections.] [(8) booth capturing by a candidate or his agent or other person.] Explanation.--(1) In this section, the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(2) For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent of that candidate.] [(3) For the purposes of clause (7), notwithstanding anything contained in any other law, the publication in the Official Gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Central Government (including a person serving in connection with the administration of a Union territory) or of a State Government shall be conclusive proof--

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

(ii) where the date of taking effect of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, is stated in such publication, also of the fact that such person was appointed with effect from the said date, or in the case of resignation, termination of service, dismissal or removal from service, such person ceased to be in such service with effect from the said date.] 3 [(4) For the purposes of clause (8), "booth capturing" shall have the same meaning as in section 135A.] [125A. Penalty for filing false affidavit, etc.--A candidate who himself or through his proposer, with intent to be elected in an election,--

(i) fails to furnish information relating to sub-section (1) of section 33A; or

(ii) give false information which he knows or has reason to believe to be false; or

(iii) conceals any information, in his nomination paper delivered under sub-section (1) of section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.]

22. Rule 94-A of the Rules of 1961 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.]

23. Form No.25 is reproduced here as under:-

(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.....of the same petition and in paragraphs.....of 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.....day of.....19 .

Before me, Magistrate of the first class/Notary/ Commissioner of Oaths.] * Here specify the name of the corrupt practice.]

24. The affidavit in Form No.25 filed by the petitioner is reproduced as under:-

BEFORE THE HON'BLE HIGH COURT OF MADHYA PRADESH IN THE MATTER OF Dr. Rajesh SonkarPetitioner Versus Shri Tulsiram Silawat and othersRespondents FORM 25 (See rule 94A) Affidavit I, Dr. Rajesh Sonkar, the petitioner in the accompanying election petition calling in question the election of Shri Tulsiram Silawat (Respondent no.1 in the said petition) make solemn affirmation/oath and say-

a) That, the statements made in the paragraphs No.9 to 35 of the accompanying election petition about the commission of corrupt practices by suppression of criminal antecedents and improper filing of nomination form and affidavit by the respondent no.1 and improper acceptance of nomination form by respondent no.11 and annexures thereto are true to my knowledge;

DEPONENT Solemnly affirmed by Dr. Rajesh Sonkar at Jabalpur this 24th day of January, 2019.

BEFORE ME

25. To summarize the objections raised by respondent no.1 regarding affidavit filed in Form No.25 the following three questions arise:-

(i) Whether the affidavit filed was not in consonance of Form No.25(supra) read with Rule 7 of the Rules framed by the High Court of Madhya Pradesh under the Act.

(ii) Whether the affidavit accompanying the petition wherefore proforma is prescribed by law has to satisfy the requirements of law which are mandatory in character.

(iii) Whether the affidavit in Form No.25 (Rule-94-A) do not provide for disclosure of source of information for the alleged corrupt practice the mode of information needs to be disclosed.

26. Learned counsel for respondent no.1 submits that petitioner has to specify the paragraphs of the election petition which relate to the allegation of corrupt practice I the affidavit as it is a mandatory requirement of law and it has to be in the prescribed form in support of the allegations of corrupt practices and particulars thereof and this mandatory requirement has not been complied with by the petitioner, as according to him, the election petitioner has to specify in the affidavit the name of the corrupt practice as provided under Section 123 of the Act and while stating the name of the corrupt practice also to given the particulars of such practice as mentioned in the paragraphs of the petition in the beginning of the affidavit. It is also submitted that Form No.25 does not provide for giving source of information, if any, for such corrupt practice and the mode of information but the mode of information has to be disclosed. The Hon'ble Apex Court in the case of V.K.Sakhlecha Vs. Jagjiwan reported in AIR 1974 SC 1957 it has been held as under:-

"14. The non-disclosures of grounds or sources of information in an election petition which is to be filed within 45 days from the date of election of the returned candidate, will have to be scrutinized from two points of view. The non-disclosure of the grounds will indicate that the election Petitioner did not come forward with the sources of information at the first opportunity. The real importance of setting out the sources of information at the time of the presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based. That will give an opportunity to the other side to test the genuineness and veracity of the sources of information. The other point of view is that the election Petitioner will not be able to make any departure from the sources or grounds. If there is any embellishment of the case, it will be discovered."

27. On perusal of the affidavit (Form No.25) it is evident that clause (a) the name and the particulars of corrupt practice as provided under Section 123 of Act of 1951 was stated. As per proforma of affidavit under Rule 94-A of Rules of 1961 in Column (b) source of information has to be disclosed which is absent in the affidavit filed by the petitioner.

28. Learned counsel for respondent no.1 submits that the affidavit is defective because it does not disclose the source of information. It is further submitted that affidavit in essence, though form part of the petition is in the shape of criminal charges as the allegations of corrupt practices are quasi criminal in nature and as such without disclosing the charge in the manner provided the complete cause of action has lapsed.

29. The importance of setting out the sources of information in affidavits which came up for consideration before the Supreme Court from time to time. The earlier decision was State of Bombay v. Purushottam Jog Naik AIR 1952 SC 317 where the Supreme Court endorsed the decision of the Calcutta High Court in Padmabati Dasi v. Rasik Lal Dhar ILR Cal 259 and held that the sources of information should be clearly disclosed. Again, in Barium Chemicals Ltd. v. Company Law Board AIR 1967 SC 295 the Supreme Court deprecated 'slipshod verifications' in an affidavit and reiterated its ruling in Bombay case (supra) that verification should invariably be modelled on the lines of Order 19, Rule 3 of the Code 'whether the Code applies in terms or not'. Again in A.K.K. Nambiar v. Union of India AIR 1970 SC 652 the Supreme Court said that the importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations.

30. Paragraph 14 of the aforesaid decision in V.K. Saklecha's case, as has already been extracted above, which deals with the non-disclosure of grounds or sources of information, the Court said that the non-disclosure of grounds will indicate that the election Petitioner did not come forward with the sources of information at the first opportunity. The real importance of setting out the source of information at the time of presentation of the petition is to give the other side notice of the contemporaneous evidence on which the election petition is based. That will give an opportunity to the other side to test the genuineness and veracity of the source of information. The other point of view is that the election Petitioner will not be able to make any departure from the sources or grounds. If there is any embellishment of the case it will be discovered. It may be noticed that the

filing of the affidavit along with the election petition in cases where the allegations of corrupt practices are made is a must and the affidavit has to be in Form No. 25 with the addition recording source of information as per decision of the Supreme Court in V.K. Saklecha's case (supra).

31. In Hari Vishnu Kamath v. Ahmad Ishaqua and Ors. AIR 1955 SC 233 in Paragraph 35 the Court though in different context laid down the rule of law as:

"When the law prescribes that the intention should be expressed in a particular manner, it can be taken into account only if it is so expressed. An intention not duly expressed is, in a Court of law, in the same position as an intention not expressed at all."

This principle would be attracted as here the intention of disclosure of the source of information and the intention of disclosing the particular corrupt practice is provided by law.

32. In the case in hand the relief nos.(ii) and (iii) of relief clause of petition cannot be granted. Only cause of action has to be seen with regard to relief nos.(i) and (iv) claimed in the petition. The complete cause of action thus in the absence of affidavit in the form prescribed together satisfying the requirements of the Rules of the Court in view of decision of V.K. Saklecha's case (supra), source of information is not there and as such the filing of the affidavit satisfying all the requirements in Form No. 25 is a mandatory requirement of law.

33. In Pawan Diwan's Case (Supra) it was held that the statutory provision laying down the requirement of cannot be allowed to be diluted as the very purpose of statutory provision is to give obedience and not the disobedience and any deviation showing the requirement of law regarding filing of an affidavit when the allegations of corrupt practices are made and also regarding other requirements as such mentioning of paragraphs regarding statements of facts qua the allegation of corrupt practice and the name of the particular corrupt practice and also the material particular qua the corrupt practice and the source of the information of the corrupt practice is an essential one as the charge of corrupt practice is not purely of civil nature but is of quasi criminal nature. Accordingly, I am of the view that when the election petition which contains allegations of corrupt practices against a returned candidate then the petition should be accompanied by an affidavit and such an affidavit must strictly conform to the requirements mentioned in Form No. 25 as well as the disclosure of the source of information as required under the Rules of the Court. In the absence of satisfying the above requirements the petition qua the corrupt practices would be treated as not disclosing the complete cause of action qua the charges of corrupt practice.

34. In view of the above, I find that the election petition on account of sufferance of deficiency noticed hereinbove cannot proceed further as the reliefs claimed in the petition cannot be granted as the respondent No. 1 cannot be put to trial as affidavit, which is essence of the charges, had failed to satisfy the requirement of law.

35. Accordingly the I.A.No.2048/2022 is allowed and this petition is dismissed. No order as to cost. However, the election petitioner is entitled to take back the security amount which lie deposited.

The security amount so deposited shall be refunded to the Petitioner as a whole. Let the intimation of decision and authenticated copy of decision may be sent to the authorities as mentioned in Section 103 of the Act of 1951.

(RAJENDRA KUMAR (VERMA)) JUDGE RJ