

# **Smt. S. Rukmini Madegowda, vs The State Election Commission, on 26 May, 2021**

**Author: N S Sanjay Gowda**

**Bench: N.S.Sanjay Gowda**

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF MAY 2021

BEFORE

THE HON'BLE MR.JUSTICE N.S.SANJAY GOWDA

M.F.A.No.49/2021(MPA)

BETWEEN:

SMT. S.RUKMINI MADEGOWDA,  
WIFE OF SRI. S. MADEGOWDA,  
AGED ABOUT 43 YEARS,  
RESIDING AT DOOR No.66,  
RAMA MANDIRA ROAD,  
YERAGANAHALLI, SHAKTHI NAGAR,  
MYSORE - 570 029. ... APPELLANT

(BY SRI. ASHOK HARANAHALLI, SENIOR COUNSEL FOR  
SRI. VINAYAKA.B, ADV.)

AND:

1. THE STATE ELECTION COMMISSION,  
No.8, 1ST FLOOR,  
K S C M F BUILDING ANNEX,  
CUNNINGHAM ROAD,  
VASANTHA NAGAR,  
BENGALURU, KARNATAKA - 560 001.  
REPRESENTED BY ITS COMMISSIONER.
2. THE DEPUTY COMMISSIONER  
AND CHIEF ELECTION OFFICER,  
MYSORE DIVISION, MYSORE - 570 001.
3. THE ELECTION OFFICER,  
MYSORE CITY CORPORATION,

WARD No.36, YERAGANAHALLI,  
AND CHIEF ADMINISTRATIVE OFFICER,

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KAVERI NIRAVARI NIGAMA NIYAMITHA,  
MYSORE - 570 001.

4. SMT. C.S.RAJANI ANNAIAH,  
WIFE OF ANNAIAH,  
AGED ABOUT 38 YEARS,  
RESIDING AT DOOR No. 39,  
12TH CROSS, OPP GOPIKA HIGHER  
PRIMARY SCHOOL,  
MYSORE BANNUR MAIN ROAD,  
YERAGANAHALLI, SHAKTHI NAGAR POST,  
MYSORE - 570 029.

5. SMT. GEETHA,  
WIFE OF SRI G.V. MURALI,  
AGED ABOUT 38 YEARS,  
RESIDING AT DOOR NO.465/1,  
5TH CROSS, JANATHA COLONY,  
YERAGANAHALLI, MYSORE - 570 011.

... RESPONDENTS

(BY SMT. VAISHALI HEGDE, ADV., FOR R-1;  
SRI. K.DILIP KUMAR HCGP FOR R-2 AND R-3 (MEMO  
FOR APPEARANCE FILED IN COURT ON 09.04.2021 IS  
KEPT BELOW);  
SRI. MANMOHAN, P.N. ADV., FOR C/R-4;  
SRI. CHANDRAKANTH.R. GOULAY, ADV., FOR R-5)

THIS APPEAL IS FILED UNDER SECTION 38 OF THE  
KARNATAKA MUNICIPAL CORPORATION ACT 1976 AGAINST  
THE JUDGMENT AND ORDER DATED 14.12.2020 PASSED IN  
ELECTION PETITION No.4/2018 ON THE FILE OF THE  
PRINCIPAL DISTRICT AND SESSIONS JUDGE MYSURU,  
ALLOWING THE ELECTION PETITION FILED UNDER SECTION  
34 OF KARNATAKA MUNICIPAL CORPORATION ACT 1976.

THIS APPEAL HAVING BEEN HEARD AND RESERVED  
FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS  
DAY, THE COURT DELIVERED THE FOLLOWING:

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JUDGMENT

1. This is an appeal preferred by the returned candidate against the decision of the District Court by which her election to the Mysore Municipal Corporation (for short, 'the Corporation') as a Councilor representing Ward No.36 - Yerganahalli has been set aside and the 4th respondent has been declared to have been elected.
2. In the month of August 2018, elections were held to the Corporation. In respect of Ward No.36 - Yerganahalli, the appellant, the 4th respondent and the 5th respondent filed nominations. The appellant represented the Janata Dal (S), while the 4th respondent represented the Indian National Congress and the 5th respondent represented the Bharatiya Janata Party (BJP).
3. On 3rd September 2018, after counting of the votes, results were declared and the appellant having secured 3295 votes was declared duly elected.
4. The 4th respondent had secured 2902 votes and the 5th respondent had secured 356 votes.
5. On 1st October 2018, the 4th respondent filed an Election Petition calling in question the election of the appellant as the Councilor. The 4th respondent put forth the following plea in her petition:

"4. The petitioner submits that, subsequent to declaration of the results the petitioner has approached the competent authority and obtained the copies of the nomination form along with the required th annexure submitted by the 4 Respondent at the time of contesting the elections, upon perusal of the nomination form along with the annexure and more particularly the affidavit required to be submitted to the Election Officer as per the notification/orders issued by the 1st Respondent bearing No:11 EUB 2002 dated 14-

07-2003 and No. 29 EUB 2018 dated 01.06.2018. A perusal of the affidavit reveals that the 4th Respondent and her two children are not Income Tax Assessee and do not hold any PAN card. Furthermore, at para 8 of the affidavit the 4th Respondent has sworn regarding the particulars of the movable/immovable assets held by the husband of the 4th Respondent and her dependents, while providing such information, the 4th Respondent has erroneously provided the name of her husband as "Nanjegowda"

instead of "S.Madegowda" and claimed to possess the jewels worth Rs.1,50,000/-.

5. The petitioner further submits that while providing information regarding the immovable properties the 4th Respondent has declared that neither she nor her husband own/possess any immovable properties. This information provided at para 8(B) of the Affidavit is totally false, especially considering the fact that the husband of the 4th respondent owns the following properties/ vehicles/ businesses:

(a) Land bearing Sy.No.175/2 P-2-New NO:175/3 measuring 10 and half guntas situated at Kyathamaranahalli Village, Kasaba Hobli, Mysore Taluk having purchased

the same vide sale deed dated 11-02-2011 duly registered before the Sub-Registrar, Mysore North, vide document No:20754 (the certified copy of the sale deed, E.C. and RTC are enclosed herewith).

(b) Site Bearing No.259 measuring 18.3 meters X 16.3 +15.80/2 meters situated at Vidhyashankar Layout, Sathagalli village, Kasaba Hobli, Mysore Taluk formed by Sri. Vidhya Shankara HBCS having purchased the same vide sale deed dated:19-06-2017 duly registered before the Sub-Registrar, Mysore North, vide document No:1739(the certified copy of the sale deed and E.C. are enclosed herewith) acre situated at Hanchya village, Kasaba Hobli, Mysore Taluk (the copy of the RTC is enclosed herewith).

acre and 32 guntas situated at Hanchya village, Kasaba Hobli, Mysore Taluk (the copy of the RTC is enclosed herewith).

(e) Motor vehicle bearing Reg.No. KA-09- P-2582,

(f) M/s S.B.M. Developers, Regd, Before the Registrar of Firms and Society, Mysore District vide Firm NO:MYS-F-278/2015/16, dated 04-11-2015 having Sri.S.Madegowda as one of its Partners.

6. The petitioner further submits that by virtue of furnishing such false information in the affidavit filed along with the nomination form, the respondent No.4 has indulged in corrupt practice so as to claim reservation under BC-B category more particularly since a candidate would be eligible to contest under BC-B category only in the event of the 4th Respondent and her husband not owning any immovable property, as well as a PAN card. In view of suppression of information regarding the immovable properties held by the husband of the 4th respondent, it is clear that the 4th Respondent was not qualified to contest under BC-B Category and hence, it is improper acceptance of nomination of the 4th respondent.

7. The petitioner submits that immediately after ascertaining the false information in the affidavit submitted by the 4th respondent the petitioner lodged her written protest with the second and third respondents on 04-09-2018, which failed to evoke any response.

8. The petitioner submits that, subsequently the petitioner has also secured the entire copy of the results declared for the Election held for the Mysore City Corporation 2018 for Ward No:36-Yeraganahalli which was reserved for Backward Class-B(Women), for the elections held in the month of August 2018 and therefore it is apparent the 4th respondent is guilty of corrupt practice and has been wrongly declared as the winner, as the 4th respondent is to be disqualified for the false affidavit filed. Furthermore, the petitioner having polled the second highest number of votes of 2902 is entitled to be declared as the elected candidate for ward No:36- Yeraganahalli. Hence, this Petition.

9. The cause of action for the present petition arose on 03-09-2018 when the election results were declared pertaining to Election held for the Mysore City Corporation 2018 for Ward

No:36-Yeraganahalli which was reserved for Backward Class-B(Women), for the Elections held in the month of August 2018 which is within the jurisdiction of this Hon'ble Court."

6. This Election Petition was verified in the following manner:

"VERIFICATION Facts stated above from para 1 to 10 are all true and correct and in token whereof I have signed this petition on this 1st day of October at Mysore."

7. The 4th respondent also filed an affidavit under Order VI Rule 15 of the CPC in support of her pleadings, which reads as follows:

"I, C.S.RajiniAnnaiah, the Petitioner in the above case do hereby on solemn affirmation make oath and state as follows:

1. I swear on oath that I have preferred the present Petition as against the Respondents challenging the declaration of the result pertaining to the Election held for the Mysore City corporation 2018 for Ward No:36-

Yeraganahalli which was reserved for Backward class-B(Women), for the Election held in the month of August 2018, the results of which were declared on 03-09-2018. I am aware of the facts and the averments made in the petition may be read as part and parcel of this affidavit.

2. I swear on oath that, the averments made in para 2 to 8 of the petition are all true and correct and prepared upon my instructions. Hence, I am swearing to this affidavit.

I do swear in the name of God that this is my name and signature and the contents of this affidavit are true and correct."

8. An affidavit was also filed as required under Section 33 (5) of the Karnataka Municipal Corporation Act, 1976 (for short, hereinafter referred to as 'the KMC Act') in support of her allegation of corrupt practice. The relevant portion of which reads as follows:.

"I, C.S.RajiniAnnaiah, the Petitioner in the above case do hereby on solemn affirmation make oath and state as follows:

1. I swear on oath that I have preferred the present Petition as against the Respondents challenging the declaration of the result pertaining the Election held for the Mysore City corporation 2018 for Ward No:36-Yeraganahalli which was reserved for Backward Class-

B(Women), for Elections held in the month of August 2018, the results of which were declared on 03-09-2018.

2. I swear on oath that, I have contested as candidate in the Election held for the Mysore City Corporation 2018 for Ward No:36 - Yeraganahalli which was reserved for Backward Class - B (Women), for the Elections held in the month of August 2018, the results of which were declared on 03-09-2018. I had contested under the Backward Class-B (Women) as a candidate for Congress Party, likewise the Respondent No:4 had also contested as a Candidate for Janatha Dal (Secular) Party and the Respondent No.5 had also contested as a Candidate for Bharathiya Janatha Party under the same Category.

3. I swear on oath that, the counting of votes was conducted and upon conclusion the results were declared on 03-09-2018. The 4th Respondent was declared as the winner having polled 3295 votes, I came second having polled 2902 votes, the 4th Respondent had polled 356 votes. The 3rd Respondent being Returning/Election Officer has issued form th No.24 declaring the 4 Respondent as elected vide certificate dated:03-09-2018.

4. I swear on oath that, subsequent to declaration of the results I have approached the competent authority and obtained the copies of the nomination form along with the required annexure submitted by the 4th Respondent at the time of contesting the elections, upon perusal of the nomination form along with the annexure and more particularly the affidavit required to be submitted to the Election Officer as per the notification/ orders issued by the 1st Respondent bearing No.11 EUB 2002 dated 14- 07-2003 and No. 29 EUB 2018 dated 01-06- 2018. A Perusal of the affidavit reveals that the 4th Respondent and her two children are not Income Tax Assessee and do not hold any PAN card. Furthermore at para 8 of the affidavit, the 4th Respondent has sworn regarding the particulars of the movable/immovable assets held by the husband of the 4th respondent and her dependents, while providing such information, the 4th Respondent has erroneously provided the name of her husband as "Nanjegowda" instead of "S.Madegowda" and claimed to possess the jewels worth Rs.1,50,000/-.

5. I swear on oath that, while providing information regarding the immovable properties the 4th Respondent has declared that neither she nor her husband own/possess any immovable properties. This information provided at para 8(b) of the Affidavit is totally false, especially considering the fact that the husband of the 4th Respondent owns the following properties/vehicles/businesses:

(a) Land bearing Sy.No.175/2 P 2- New No:175/3 measuring 10 and half guntas situated at Kyathamaranahalli village, Kasaba Hobli, Mysore Taluk having purchased the same vide sale deed dated 11-02-2011 duly registered before the Sub-Registrar, Mysore North, vide document No:20754 (the certified copy of the sale deed, E.C. and RTC are enclosed herewith).

(b) Site bearing No:259 measuring 18.3 meters X 16.3 + 15.80/2 meters situated at Vidhyashankar Layout, Sathagalli village, Kasaba Hobli, Mysore Taluk formed by Sri. Vidhya Shankara HBCS having purchased the same vide sale deed dated 19-06-2017 duly registered before the Sub-Registrar, Mysore North vide document No:1739 (the certified copy of the sale deed and E.C. are enclosed herewith).

acre situated at Hanchya village, Kasaba Hobli, Mysore Taluk (the copy of the RTC is enclosed herewith).

acre and 32 guntas situated at Hanchya village, Kasaba Hobli, Mysore Taluk (the copy of the RTC is enclosed herewith).

(e) Motor vehicle bearing Reg.No:KA-09-P- 2582,

(f) M/s. S.B.M. Developers, Regd. Before the registrar of Firms and Society, Mysore District vide Firm No:MYS-F-278/2015-16, dated 04-11-2015 having Sri. S.Madegowda as one of its Partners.

6. I swear on oath that, by virtue of furnishing such false information in the affidavit filed along with the nomination form, the Respondent No.4 has indulged in corrupt practice so as to claim reservation under BC-B category more particularly since a candidate would be eligible to contest under BC-B category only in the event of the 4th Respondent and her husband not owning any immovable property, as well as a PAN card. In view of suppression of information regarding the immovable properties held by the husband of the 4th Respondent, it is clear that the 4th Respondent was not qualified to contest under BC-B Category and hence, it is improper the acceptance of nomination of the 4 Respondent.

7. I swear an oath that, immediately after ascertaining the false information in the affidavit submitted by the 4th Respondent I have lodged my written protest with the second and third Respondents on 04-09-2018, which failed to evoke any response.

8. I swear on oath that, subsequently I have also secured the entire copy of the results declare for the Election held for the Mysore City Corporation 2018 for Ward No:36 -

Yeraganahalli which was reserved for Backward class-B (Women), for the Elections held in the month of August 2018 and therefore it is apparent the 4th Respondent is guilty of corrupt practice and has been wrongly declared as the winner, as the 4th Respondent is to be disqualified for the false affidavit filed. Furthermore, having polled the second highest number of votes of 2902, I am entitled to be declared as the elected candidate for ward No:36 - Yeraganahalli. Hence, I am swearing to this affidavit.

I do swear in the name of God that this is my name and signature and the contents of this affidavit are true and correct."

9. This petition was opposed by the appellant and also by the 5th respondent by filing statement of objections.

10. In so far as the allegation regarding the incorrect mentioning of the name of her husband and regarding the properties owned by her husband, the appellant responded as follows:

"4. Regarding the averments made in the paragraph 4 of the petition, the 4th respondent humbly submits that as a matter of fact, by oversight the name of the son (i.e., Nanje Gowda) of the 4th respondent has been mentioned in that column instead of the name of her husband (i.e., S.Made Gowda). In fact at the beginning of that affidavit, the name of the 4th respondent's husband has been correctly mentioned.

5. Regarding the averments made in the paragraph 5 of the petition, the 4th respondent humbly submits that she had no knowledge about her husband having the properties mentioned in the said paragraph at the time of swearing to that affidavit and hence she has not mentioned the same in her said affidavit.

The non-mentioning of the said properties in the said affidavit is unintentional and for the said bonafide reason. Only after receiving the summons/notice in this petition, the 4th respondent verified about it with her husband and came to know that her husband owns those properties.

6. The averments made in paragraph 6 of the petition that by virtue of furnishing such false information in the affidavit filed along with the nomination form, the respondent no.4 has indulged in corrupt practice so as to claim reservation under BC-B Category more particularly since a candidate would be eligible to contest under BC-B Category only in the event of the 4th respondent and her husband not owning any immovable property, as well as PAN card and that in view of suppression of information regarding the immovable properties held by the husband of the 4th respondent it is clear that the 4th respondent was not qualified to contest under BC-B Category and hence, it is improper acceptance of nomination of the 4th respondent are all specifically denied as false, baseless and concocted. The petitioner is put to strict proof thereof. As a matter of fact and law the criteria for contesting election under BC-B Category is caste and income. Actually the 4th respondent belongs to Vokkaliga caste and her family income was within the prescribed limits and hence she was issued BC-B Certificate properly from the competent authority. In fact the 4th respondent was eligible to contest under BC-B Category and she has contested under the said category and her nomination had been properly accepted."

11. A trial was conducted, during the course of which, the 4th respondent examined herself and got marked 13 documents, while the appellant examined herself and got marked 1 document.

12. In the first instance, the District Court heard the parties and proceeded to dismiss the Election Petition by an order dated 16th April 2019.

13. The 4th respondent, being aggrieved, preferred an appeal to this Court in MFA.No.4023/2019. This Court, after hearing, proceeded to frame the following three questions for consideration:

"a) Whether an application by a person under the provisions of the Right to Information Act, 2002 seeking details of the Income Tax Returns of a returned candidate, or the close relative/associate of such a candidate, could be rejected perforce on the ground that such details would be exempted from disclosure under the provisions of Section 8(1)(j) of the Right to Information Act, 2002.



b) Whether the trial Court is justified in dismissing the appellant's election petition under Section 33 of the Karnataka Municipal Corporations Act, 1971 on the ground that the appellant has failed to prove that the fourth respondent was disqualified/ineligible to contest the elections to Ward No.36 - Yeraganahalli, Mysuru City Corporation as a Backward class candidate.

c) Whether the trial Court is justified in its finding that the appellant has failed to prove that the fourth respondent has indulged in corrupt practice in not disclosing the Assets and Liabilities of her husband and as such her election as the returned candidate from Ward No.36 -

Yeraganahalli, Mysuru City Corporation is void."

14. This Court by an order dated 28th April 2020, as regards the first question, came to the conclusion that the concerned public officer would be required to apply the legislatively mandated test of proportionality weighing the larger public interests in disclosing over the invasion of privacy of the third party following the steps prescribed in applying such steps keeping the factors to be considered or not to be considered.

15. As far as the second question was concerned, this Court came to the conclusion that there were no pleadings to the effect that the husband of the appellant was an Income Tax assessee and hence the appellant could not have claimed the benefit of reservation and consequentially the election could not be called in question on that ground.

16. Thus, the challenge to the election of the appellant on the ground that the appellant could not have availed the benefit of reservation because her husband was an Income Tax assessee was negated by this Court.

17. This Court, however, as regards the third question, as to whether the appellant had indulged in corrupt practice in not disclosing the Assets and Liabilities of her husband and as such her election be declared void, stated as follows:

"47. The appellant has challenged the election of the fourth respondent as the returned candidate also on the ground that the fourth respondent has deliberately suppressed that her husband owns different immovable properties in mentioning in the declaratory affidavit, which is filed along with the nomination in the prescribed form in compliance with the order issued by the Election Commission, that he does not own any property. The appellant has listed the agricultural lands/residential site owned/ purchased by the fourth respondent's husband to substantiate her case. The appellant has also furnished a certified copy of the declaratory affidavit filed by the fourth respondent along with the nomination form. The appellant's contention is that the deliberate failure to mention the details of the properties owned by the husband, and the error in mentioning the husband's name in column No.8 of the declaratory affidavit tantamount to corrupt practice as contemplated under section 39 of the

KMC Act.

48. The fourth respondent has not denied that she has stated in the declaratory affidavit that her husband does not own immovable/movable properties when in fact he does own certain immovable/movable properties. The fourth respondent contends that the failure to mention the details of the properties owned by her husband and the declaration that he does not own immovable/movable properties is a bona fide and unintentional error and that such bona fide and unintentional error would not amount to corrupt practice as contemplated under the provisions of the KMC Act.

49. The trial Court has opined in paragraph 14 of the impugned judgment that the crucial point that needs to be seriously looked into and decided is, whether the fourth respondent by furnishing false information in the affidavit filed along with the nomination form, has indulged in corrupt practice so as to claim reservation under backward class-B category. The trial Court in answer to this question, has concluded that the fourth respondent's failure to mention that her husband owned immovable properties would not amount to corrupt practice because the Rules do not prescribe that non-disclosure of such details would amount to corrupt practice and in any event the properties owned by the husband does not exceed the limit of 8 hectares notified by notification dated 16.10.1995. The trial Court has also opined that the fact that the fourth respondent has not disclosed that her husband owned immovable properties, would not amount to corrupt practice as contemplated under Section 39 of the KMC Act.

50. The trial Court's conclusion is in this regard are perfunctory and without reference to the provisions of the KMC Act and the authorities on the point. This Court is of the considered opinion that for complete adjudication of the lis, the trial Court should have considered such question with reference to the relevant provisions of the KMC Act and the decisions of the Hon'ble Supreme Court in *Union of India v. Association for Democratic Reforms*, *People's Union for Civil Liberties (PUCL) and another v. Union of India* and in *Lok Prahari vs. Union of India and Others*.

51. The Hon'ble Supreme Court in its decision in *Union of India v. Association for Democratic Reforms* directed the Election Commission to call upon the candidates seeking election to Parliament or state legislature to file affidavit furnishing inter alia the details of the assets (immovable, movable, bank balance etcetera) of a candidate as well as his/her spouse and that of the dependants and also particulars of the liabilities. Thereafter, the Representation of the People (Amendment) Ordinance 2002 was promulgated confining details to be furnished in such affidavit only to certain criminal cases. This ordinance was challenged in *People's Union for Civil Liberties v. Union of India and others*. When the matter was reserved for judgment, the Ordinance was replaced by the Representation of the People (Third Amendment) Act, 2002. This Act was notified to bring the changes in the ordinance with retrospective effect. The Hon'ble Supreme Court declared that the Section 33-B of the

Amendment Act, which abridged the directions in Association for Democratic Reforms, was unconstitutional and also declared that the Election Commission's order insofar as it related to disclosure of assets and liabilities in the affidavits to be filed would hold good and continue to be operative. Subsequently, the Hon'ble Supreme Court in Lok Prahari vs. Union of India and others has declared that non-disclosure of assets and sources of income of the candidates and their associates would constitute corrupt practice falling under the heading "Undue Influence" as defined under Section 123(2) of the RTI Act.

52. The provisions of Section 35 of the KMC Act lists the grounds on which courts could declare the election of the returned candidate to be void, and Section 35(1)(b) mentions corrupt practice by returned candidate or his election agent or by any other person, either with the consent of a returned candidate or his election agent, as one of the grounds for declaring the election to be void. The provisions of Section 39 of the KMC Act stipulate that certain acts/ practices shall be deemed to be corrupt practices, and Section 39(2) mentions 'undue influence' shall be construed as corrupt practice. This provision further stipulates that 'undue influence' shall be as defined under Section 123(2) of the RP Act. Further, the publication of any statement of a fact which is false and relates to the candidature could also be corrupt practice given the language of Section 39(5) of the KMC Act.

53. If the provisions of the KMC Act stipulate that the definition of undue influence under Section 123(2) of the RP Act would apply even in election petitions filed under the KMC Act challenging the election of a returned candidate, and the Hon'ble Supreme Court has declared that non-disclosure of assets and liabilities by a candidate would amount to undue influence under Section 123(2) of the RP Act, this Court is of the considered view that temporary injunction was incumbent upon the trial Court to consider the question accordingly. The trial court has seriously erred in concluding that the Rules do not stipulate that non-disclosure of assets and liabilities would amount to corrupt practice and that only if there is failure to disclose details of certain criminal cases, it would amount to corrupt practice.

54. As the trial court has not at all considered the lis in the light of the law that could apply in the background of the pleadings and evidence on record, this Court is of the considered opinion that the impugned judgment requires to be set-aside and the election petition restored to the board of the trial court for reconsideration on the question, whether the fourth respondent has indulged in corrupt practice as contemplated under Section 39 of the KMC Act in mentioning that he did not own immovable/movable properties. Further, in the interest of justice it would also be just and reasonable to direct the parties to appear before the trial Court without further notice of first hearing on 15.06.2020 while calling upon the trial Court to dispose of the election petition as expeditiously as possible but within an outer limit of six months from 15.06.2020. For the foregoing, the following:

ORDER a. The appeal is allowed, and the judgment dated:16.04.2019 in Election Petition No.4/2018 on the file of the Principal District and Sessions Judge, Mysuru is set-

aside, and the election petition is remanded for reconsideration in accordance with the observation by this Court.

b. The parties to appear before the  
Principal District and Sessions  
Judge, Mysuru without further  
notice of first hearing on  
15.06.2020, and the Principal  
District and Sessions Judge,

Mysuru is called upon to dispose of the election Petition as expeditiously as possible but within an outer limit of six months from 15.06.2020."

18. Thus, this Court restored the Election Petition on the board of the Trial Court to consider the question as to whether the appellant had indulged in corrupt practice as contemplated under Section 39 of the KMC Act in mentioning that she did not own movable/immovable properties.

19. This order directing the District Court to reconsider the above question was not challenged by the appellant and this order has thus become final.

20. On remand, the District Court, after hearing the parties, has come to the conclusion that the 4th respondent had proved that the appellant had deliberately suppressed the material information in the affidavit along with the nomination form and had not disclosed the properties/assets of her husband as required under the provisions of the Representation of the People Act, 1950 (for short, hereinafter referred to as 'the RP Act') and the election of the appellant was in violation of Sections 35 and 39 of the KMC Act.

21. The District Court has also come to the conclusion that the outcome of the elections had been materially affected and the appellant's election was liable to be held as void and the 4th respondent was entitled to be declared as the returned candidate.

22. The appellant, being aggrieved by this order setting aside her election, is in appeal.

23. Sri. Ashok Haranahalli, learned Senior Counsel on behalf of the appellant put forth the following contentions:

a. The Election Petition was not verified in the manner prescribed and the petition was therefore liable to be rejected at the very threshold itself.

b. The affidavit filed in support of the allegation of corrupt practice was completely

defective and could not be construed as an affidavit in support of an allegation of corrupt practice and since it was no affidavit in the eye of law, the petition ought not to have been entertained by the District Court.

c. There was no requirement under the KMC Act or the Rules mandating the disclosure of assets and liabilities of a spouse and hence the non disclosure of assets and liabilities of the appellant's husband could not have been considered as a corrupt practice so as to set aside the appellant's election.

d. The election petition did not contain the material facts necessary to constitute a corrupt practice. It was nowhere pleaded that the non disclosure of assets and liabilities amounted to undue influence and since the allegation of corrupt practice was akin to a criminal charge, the setting aside of an election in the absence of material facts being pleaded could not be sustained.

e. The basic allegation of the 4th respondent was that the nomination paper had been improperly accepted in as much as the appellant could not have contested in a seat reserved for BC-B category and since there was no plea or proof that the election had been materially affected by the said improper acceptance, the order setting aside the election was unsustainable.

f. It was settled law that the result of an election should not be lightly interfered with and though the filing of a defective petition and the non filing of an affidavit had been established beyond doubt, the District Court had erred in ignoring the same.

g. In an election involving more than two candidates, it was settled law that when an election was set aside, one of the other contesting candidates could not be declared to be elected as the returned candidate and in the instant case, though three candidates had contested the elections, the District Court had declared the 4th respondent as the returned candidate and this was wholly impermissible.

h. This Court while remanding the matter in the earlier round had not restricted the scope of remand and it was an open remand and therefore, it was certainly open to the appellant to put forth the plea that the petition did not contain material facts and that the verification and affidavit was not in conformity with the law. These questions relating to pleadings, being essentially, questions of law, could be raised even in the absence of a specific plea.

i. In support of his submissions, the learned counsel relied upon the following decisions:

(1) V. Narayanaswamy Vs CP Thirunavukkarasu - 2000(2) SCC 294 (2) Sri A Manu Vs Sri Prajwal Revanna @ Prajwal R & Others - ILR 2020 KAR 1793 (3) Ravindra Singh Vs Janmeja Singh & Others

- 2000 (8) SCC 191 (4) R.P.Modidutty Vs P.T.Kunju Mohammad & Another - 2000 (1) SCC 481 (5) B.R.Patil Vs Rajeev Chandrashekar & Others - ILR 2007 KAR 317 (6) C.P. John Vs Babu M Palissesey & Others -

2014 (10) SCC 547 (7) Prakash Khandre Vs Dr. Vijay Kumar Khandre & Others - 2002 (5) SCC 568 (8) Vishwanath Reddy Vs Konappa Rudrappa Nadgouda and Another - AIR 1969 SC 604 (9) M Karunanidhi Vs Dr. H V Hande & Others

- 1983 (2) SCC 473 (10) Shivakumar Somalingappa Malagali Vs Malagi Shivaputrappa Channabasappa & Others - 2000 SCC Online Kar 580 (11) Lok Prahari Vs Union of India & Others -

2018(4) SCC 699 (12) Krishnamoorthy Vs Shivakumar & Others -

2015(3) SCC 467 (13) Sanjay Brijkishorilal Nirupam Vs Gopal Chinayya Shetty & Others - 2018 SCC Online Bom 5638 (14) Orient Papers and Industries Ltd., and Another v. Tahsildar-Cum-Irrigation Officer and Others - 1998(7) SCC 303 (15) J.P.Builders and Another v. A. Ramdas Rao and Another - 2011(1) SCC 429 (16) Rajeswari Amma and Another v. Joseph and Another - 1995(2) SCC 159 (17) Baldev Singh Mann v. Surjit Singh Dhiman

- 2009(1) SCC 633 (19) Union of India v. R.A.Yadav and Another -

2000(10) SCC 278 (20) Joseph M. Puthussery v. T.S. John and Others - 2011(1) SCC 503 (21) Samant N.Balakrishna v. George Fernandez

- 1969 (3) SCC 238 (22) Markio Tado v. Takam Sorang and Others

- (2012) 3 SCC 236 (23) Sunil Kumar Kori v. Gopal Das Kabra -

(2016) 10 SCC 467 (24) Mercykutty Amma v. Kadavoor Sivadasan & Another - (2004) 2 SCC 217 (25) Union of India v. Association for Democratic Reforms and Another - (2002) 5 SCC 294 (26) Muniraju Gowda P.M. v. Munirathna and Others - (2020) 10 SCC 192 (27) People's Union of Civil Liberties v. Union of India and Another - (2003) 4 SCC 399 (28) Ram Sukh v. Dinesh Aggarwal - (2009) 10 SCC 541 (29) Mayanglambam Rameshwar Singh v.

Yengkhom Surchandra Singh and Another - 2020 SCC Online Mani 312

24. Sri. Manmohan, learned counsel appearing on behalf of the 4th respondent-election petitioner put forth the following contentions:

a. The plea of a defective verification or the absence of an affidavit in a particular form was neither pleaded, nor argued before the District Court and hence, the said contention could not be put forth in appeal.

b. The argument that the need for a proper verification and a proper affidavit to be filed was to basically hold the election petitioner accountable to his assertions and to prevent reckless allegations being made. In the instant case, since the allegation of non disclosure of assets and liabilities was categorically admitted by the appellant, the argument of a defective verification or affidavit would be of no consequence, especially, when admitted facts are not required to be proved.

c. It had already been held by this Court in the earlier round of litigation i.e., in MFA.

No.4023/2019 that the District Court was required to reconsider the question as to whether the appellant had indulged in corrupt practice by not mentioning the appellant did not own movable/immovable properties and this order having been accepted by the appellant, no contention could be raised regarding the absence of a plea or a defective verification and a defective affidavit.

d. The State Election Commission in exercise of its constitutional power under Article 243 ZA of the Constitution of India had mandated the filing of an affidavit requiring the disclosure of assets and liabilities and this was thus an absolute requirement and the Supreme Court had also clearly laid down the law that non disclosure of assets and liabilities amounted to undue influence, a corrupt practice under the Act. Since it was an admitted fact that the assets and liabilities were not disclosed, the corrupt practice itself stood admitted and the District Court was bound to set aside the election.

e. In support of his submissions, he relied upon the following decisions:

(1) GagaiVinayagar Temple and ors. V. Meenakshi Ammal and Ors. - (2009) 9 SCC 757 (2) Premier Tyres Limited v. Kerala State Road Transport Corporation - 1993 Supp (2) SCC 146 (3) Dattatreya v. Srinivasa Bhat Thimmanna -

ILR 1985 KAR 1946 (4) JasrajInder Singh v. Hemraj Multanchand

- (1977) 2 SCC 155 (5) Union of India v. Association for Democratic Reforms and Anr; - (2002) 5 SCC 294 (6) Lok Prahari v. Union of India and Ors.; -

(2018) 4 SCC 699 (7) Mahboob Sahab v. Syed Ismail - (1995) 3 SCC 693 (8) Balwan Singh v. Prakash Chand and Ors;

(1976) 2 SCC 440 (9) AyanurManjunatha v. S.Bangarappa and Ors.; - ILR 2001 KAR 3043 (10) PonnalaLakshmaiah v. Kommuri Pratap Reddy and Ors.; (2012) 7 SCC 788

25. I have considered the submissions of the learned counsel for the respective parties and also perused the material produced before this Court and also the entire Trial Court records.

26. In my view, the following questions arise for consideration in this appeal:

(i) Whether the non disclosure of assets and liabilities of the appellant's husband in the form of an affidavit along with the nomination paper amounts to a corrupt practice as contemplated under Section 39 of the KMC Act?

(ii) Whether the Election Petition contained a plea regarding corrupt practice and whether it was properly verified and supported with an affidavit as prescribed?

(iii) Whether the District Court could have set aside the appellant's election and declared the 4th respondent as the returned candidate?

27. By the 74th amendment to the Constitution of India, Part IXA relating to Municipalities was inserted thereby making it a constitutional requirement to constitute municipalities in the form of a Nagar Panchayath for a transitional area, a Municipal Council for a smaller urban area and a Municipal Corporation for a larger urban area. Article 243ZA (1) of Part IXA of the Constitution of India mandated that the superintendence, direction and control of the preparation of electoral rolls and conduct of elections to Municipalities would vest with the State Election Commission. Article 243ZA (2) of the Constitution of India stated that the States were permitted to make a law relating to the elections of the Municipalities.

28. The State Legislature of Karnataka had already enacted the KMC Act, 1976. This statute was amended to bring it in conformity with the 74th amendment by Act No.35 of 1994.

29. Section 55 of the KMC Act was also amended under Act No.35 of 1994 and Sub-section (1) of the said section, post amendment, declared that the superintendence, direction and control of the preparation of electoral rolls for, and conduct of elections to the Corporations would vest with the State Election Commission. Sub-section (2) of the said Section enabled the State to make rules for the purposes mentioned therein, subject, however, to Sub-section (1).

30. The State Government in exercise of the powers under Section 55 (2) of the KMC Act had framed the Karnataka Municipal Corporations (Election) Rules, 1979 (for short, '1979 Rules') which have been also amended from time to time. Rule 12 of the 1979 Rules states that every candidate is required to present his nomination paper in Form No.2 along with recent passport size photographs and nomination papers was required to be signed by the candidate and six electors of the ward as proposers. If the candidate was set up by a recognized political party, the nomination is deemed to be duly nominated if the nomination papers are signed by just one elector of the ward as proposer.

31. Form No.2 of the Rules only requires the details of the proposers who were nominating the candidate and the details and also the assent of the candidate to the nomination and a declaration regarding his age, gender, details of his caste, the name of the party setting him up and if not, his symbol of preference.



32. The said Form No.2 does not require any affidavit to be filed regarding the assets and liabilities of the candidate or his/her spouse. Thus, the Rules, as such, do not require the filing of an affidavit regarding the disclosure of assets and liabilities.

33. The argument of the learned Senior Counsel, Sri Ashok Haranahalli in the matter of filing an affidavit, at first glance, would therefore appear to be correct.

34. However, as stated in Article 243ZA of the Constitution of India and reiterated in Section 55 (1) of the KMC Act, the superintendence and control of elections vest with the State Election Commission. The Election Commission in exercise of this constitutional power and as recognized by the statute issued a notification dated 14th July 2003.

35. In the preamble to the said notification, it has been stated that in order to implement the judgment of the Apex Court rendered in the case of Union of India vs. Association for Democratic Reforms & Another (Civil Appeal No. 7178/2001) had passed an order on 2nd May, 2002 reported in (2002) 5 SCC 294 and which was reiterated in the case of People's Union for Civil Liberties (PUCL) & Another vs. Union of India & Another reported in (2003) 4 SCC 399, a judgment dated 13th March, 2003 wherein the Election Commission was directed to call for information on affidavit by issuing an order under Article 324 of the Constitution of India from each candidate seeking election to Parliament or the State Legislature as a necessary part of the nomination form and furnish information regarding the past criminal record of the candidate and regarding the pendency of criminal cases at the time of filing of the nomination form.

36. In addition to the criminal antecedents, the Election Commission was also directed to call for information regarding the assets (movable, immovable, bank balances) of a candidate and his/her spouse and that of the dependants and also the liabilities, if any of the candidate with particular reference to public financial institution dues and government dues. Lastly, the candidate was required to be called upon to furnish information regarding his educational qualifications.

37. The said direction issued by the Apex Court, though was in respect of elections to the Parliament and the State Legislature, the Election Commission, in exercise of its constitutional power conferred under Articles 243K and 243ZA of the Constitution of India, issued a notification calling upon the candidates to furnish the information regarding five material particulars that the Apex Court had ordered to be called for from the candidates in the form of an affidavit in respect of an election to the Panchayaths and Municipalities also.

38. Thus, though the KMC Act and the Rules did not mandate the furnishing of information in respect of an election to a Municipality or a Panchayath, the Election Commission in exercise of its constitutional power mandated the filing of an affidavit containing the requisite information including that of furnishing the list of assets and liabilities of a candidate.

39. This power of the Election Commission, being a constitutional power, would therefore have to prevail especially when it was in respect of a matter which was not covered under the legislation made by the State.



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©. ¹PgÁ¹ÛUÀ¼ÄÄ «ªÀgÀ (Immovable Properties):

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 CªÀ®A«vÀgÀÄ-3 ,ÀASÉª °É,ÀgÀÄ °É,ÀgÀÄ °É,ÀgÀÄ °É,ÀgÀÄ C)  
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 E) PÀlÖqÀUÀ¼ÄÄ (ªÁtÂdª ªÄÄvÀÄÜ ªÁ,ÉÆÄ¥ÀAiÉÆÄUÀ) -E®è EgÀÄªÀ  
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46. As could be seen from this portion of the affidavit, the appellant stated that neither she nor her husband owned any immovable assets. Thus, the fact that the appellant declared in her affidavit that neither she nor her husband had any immovable properties cannot be in dispute.

47. The question that follows is whether a plea was made in the election petition that a false affidavit was filed regarding the assets and liabilities of the appellant's husband, which amounted to a

corrupt practice and whether this was supported by an affidavit as envisaged in the proviso to Section 33 of the KMC Act.

48. Sri Manmohan, learned Counsel for the 4th respondent, contended that this question of not raising a plea could not be raised in the appeal when no such objection was taken up in the District Court. He submitted that since this Court had, while remanding the matter, clearly held that it was necessary for the District Court to reconsider the question regarding corrupt practice in the light of the pleadings, it was unavailable for the appellant to contend to the contrary.

49. He also submitted that there was a distinct plea regarding the filing of a false affidavit and there was also an affidavit filed in support of the allegations thus satisfying the legal requirement. He submitted that since this allegation was admitted by the appellant in her objections, the question of a defective plea or defective affidavit was redundant and futile.

50. Sri Ashok Haranahalli, learned Senior Counsel appearing for the appellant, on the other hand, contended there was no plea in the petition that the non disclosure of assets and liabilities amounted to an undue influence and thus there was a corrupt practice by the appellant and therefore, the petition was liable to be thrown out. He submitted that the requirement of a plea, properly verified and duly supported by an affidavit, would be the basic ingredient to be considered when the aspect of corrupt practice was being ascertained and this question being a pure question of law, could be raised at anytime and even in appeal. He submitted that the order of remand did not preclude the appellant from raising this plea.

51. Though the contention of Sri Manmohan, learned counsel for the 4th respondent that the question as to whether the appellant can raise the question of a defective or non-existent plea or a defective verification and affidavit cannot now be raised may have substance in it, but in the light of the order passed in the earlier round of litigation in MFA.No.4023/2019, in my view, it would be better to examine this question on its merits in order to ensure legality of the proceedings.

52. Section 33 (4) of the KMC Act states that an election petition should contain a concise statement of the material facts on which the petitioner relies and it shall set forth full particulars of any corrupt practice that the petitioner alleges including the details of the corrupt practice is required to be stated. The petition is also required to be signed by the petitioner and verified in the manner laid under Order VI Rule 15 of CPC. Further, as per the proviso, when a corrupt practice is alleged by the petitioner, an affidavit in the prescribed form in support of the allegation and the full particulars is required to be filed.

53. Thus, the requirement of the law is that the petition should contain a concise statement of the material facts and full particulars of any corrupt practice are required to be stated.

54. While dealing with a case arising out of the RP Act, a three Judge Bench of the Apex court in the case of Harkirat Singh vs. Amrinder Singh - (2005) 13 SCC 511, after reviewing a plethora of decisions held as follows:

"48. The expression "material facts"

has neither been defined in the Act nor in the Code. According to the dictionary meaning, "material" means "fundamental", "vital", "basic", "cardinal", "central", "crucial", "decisive", "essential", "pivotal", "indispensable", "elementary" or "primary". [Burton's Legal Thesaurus (3rdEdn.), p.349]. The phrase "material facts", therefore, may be said to be those facts upon which a party relies for its claim or defence. In other words, "material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be "material facts" would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party.

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51. A distinction between "material facts" and "particulars", however, must not be overlooked. "Material facts" are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. "Particulars", on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. "Particulars" thus ensure conduct of fair trial and would not take the opposite party by surprise.

52. All "material facts" must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial.

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60. The Court stated that rules of pleadings are intended as aids for a fair trial and for reaching a just decision. An action at law should not be equated with a game of chess. Provisions of law are not mere formulae to be observed as rituals. Beneath the words of a provision of law, generally speaking there lies a juristic principle. It is the duty of the Court to ascertain that principle and implement it."

55. Another three Judge Bench of the Apex Court in the case of Madiraju Venkata Ramana Raju vs. Peddireddigari Ramachandra Reddy & Others - (2018) 14 SCC 1, while approving the decision in Harikirat Singh (supra) has also stated as follows:

"38. It is well settled that the election petition will have to be read as a whole and cannot be dissected sentence-wise or paragraph-wise to rule that the same does not disclose a cause of action. Cause of action embodies a bundle of facts which may be necessary for the plaintiffs to prove in order to get a relief from the court. The reliefs

claimed by the appellant are founded on grounds inter alia ascribable to Section 100(1)(d)(i). Further relief has been claimed to declare the appellant as having been elected under Section 101 of the 1951 Act. The cause of action for filing the election petition, therefore, was perceptibly in reference to the material facts depicting that the nomination form of Respondent 1 was improperly accepted by the Returning Officer.

39. On reading the election petition as a whole, we have no hesitation in taking a view that the High Court misdirected itself in concluding that the election petition did not disclose any cause of action with or without Paras 2 and 9 to 11 of the election petition. Indeed, the pleadings of the election petition should be precise and clear containing all the necessary details and particulars as required by law. "Material facts" would mean all the basic facts constituting the ingredients of the grounds stated in the election petition in the context of relief to declare the election to be void. It is well established that in an election petition, whether a particular fact is material or not and as such required to be pleaded, is a question which depends on the nature of the grounds relied upon and the special circumstances of the case. Particulars, on the other hand, are the details of the case set up by the party. The distinction between "material facts" and "full particulars" has been delineated in *Mohan Rawale v. Damodar Tatyaba*. This judgment has been adverted to in the reported decision relied on by the parties. The Court noted thus SCC pp.397-99, paras 10-18) "10. We may take up the last facet first. As Chitty, J. observed, "There is some difficulty in affixing a precise meaning to" the expression "discloses no reasonable cause of action or defence".

He said: "In point of law ...every cause of action is reasonable one." (See *Republic of Peru v. Peruvian Guano Co.*) A reasonable cause of action is said to mean a cause of action with some chances of success when only the allegations in the pleading are considered. But so long as the claim discloses some cause of action or raises some questions fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The implications of the liability of the pleadings to be struck out on the ground that it discloses no reasonable cause of action are quite often more known than clearly understood. It does introduce another special demurrer in a new shape. The failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars. The distinctions among the ideas of the "grounds" in Section 81(1); of "material facts" in Section 83(1)(a) and of "full particulars" in Section 83(1)(b) are obvious. The provisions of Section 83(1)(a) and (b) are in the familiar pattern of Order 6 Rules 2 and 4 and Order 7 Rule 1(e) of the Code of Civil Procedure. There is a distinction amongst the "grounds" in Section 81(1); the "material facts" in Section 83(1)(a) and "full particulars" in Section 83(1)(b).

11. Referring to the importance of pleadings a learned author says:

'Pleadings do not only define the issues between the parties for the final decision of the court at the trial, they manifest and exert their importance throughout the whole process of the litigation. ...They show on their face whether a reasonable cause of

action or defence is disclosed. They provide a guide for the proper mode of trial and particularly for the trial of preliminary issues of law or fact. They demonstrate upon which party the burden of proof lies, and who has the right to open the case. They act as a measure for comparing the evidence of a party with the case which he has pleaded. They determine the range of the admissible evidence which the parties should be prepared to adduce at the trial. They delimit the relief which the court can award. ...' [See: Jacob: "The Present Importance of Pleadings" (1960) Current Legal Problems, at pp.175-76]

12. Further, the distinction between "material facts" and "full particulars" is one of degree. The lines of distinction are not sharp "Material facts"

are those which a party relies upon and which, if he does not prove, he fails at the time.

13. In *Bruce v. Odhams Press Ltd.*

Scott L.J. said: "The word 'material' means necessary for the purpose of formulating a complete cause of action; and if any one 'material' statement is omitted, the statement of claim is bad." The purpose of "material particulars" is in the context of the need to give the opponent sufficient details of the charge set up against him and to give him a reasonable opportunity.

14. Halsbury refers to the function of particulars thus:

'The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises, and incidentally to reduce costs. This function has been variously stated, namely either to limit the generality of the allegations in the pleadings, or to define the issues which have to be tried and for which discovery is required.' [See: Pleadings Vol.36, para 38]

15. In *Bullen and Leake and Jacob's "Precedents of Pleadings"* 1975 Edn. at p.112 it is stated"

"The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises and incidentally to save costs. The object of particulars is to "open up"

the case of the opposite party and to compel him to reveal as much as possible what is going to be proved at the trial, whereas, as Cotton L.J. has said, 'the old system of pleading at common law was to conceal as much as possible what was going to be proved at the trial.'

16. The distinction between "material facts" and "Particulars" which together constitute the facts to be proved

- or the *facta probanda*- on the one hand and the evidence by which those facts are to be proved - *facta probantia*- on the other must be kept clearly distinguished. In *Philipps v. Philipps*, Brett, L.J. said:

'I will not say that it is easy to express in words what are the facts which must be stated and what matters need not be stated. ...The distinction is taken in the very rule itself, between the facts on which the party relies and the evidence to prove those facts. Erle, C.J. expressed it in this way. He said that there were facts that might be called the *allegata probanda*, the facts which ought to be proved, and they were different from the evidence which was adduced to prove those facts. And it was upon the expression of opinion of Erle, C.J. that Rule 4 [now Rule 7(1)] was drawn. The facts which ought to be stated are the material facts on which the party pleading relies.'

17. Lord Denman, C.J. in *Williams v. Wilcox* said:

'It is an elementary rule in pleading that, when a state of facts is relied, it is enough to allege it simply, without setting out the subordinate facts which are the means of proving it, or the evidence sustaining the allegations.'

18. An election petition can be rejected under Order 7 Rule 11(a) CPC if it does not disclose a cause of action. Pleadings could also be struck out under Order 6 Rule 16, *inter alia*, if they are scandalous, frivolous or vexatious. The latter two expressions meant cases where the pleadings are obviously frivolous and vexatious or obviously unsustainable."

56. It will thus have to be seen whether in this case the basic facts which the petitioner was required to plead to prove her case had been set forth.

57. As could be seen from paragraph 4 of the petition extracted above, the 4th respondent basically stated what had been stated by the appellant in her affidavit accompanying the nomination form.

58. In paragraph 5, the 4th respondent stated the information provided in paragraph 8 (b) of the affidavit was false, especially when the husband of the 4th respondent owned the properties mentioned therein.

59. Thus, the averments made in these two paragraphs were to the effect that a false affidavit had been filed by the appellant.

60. In paragraph 6 of the petition, it is alleged that the filing of this false affidavit resulted in the indulging of a corrupt practice so as to claim reservation under BC-B category and this amounted to a disqualification and improper acceptance of the 4th respondent.

61. According to learned Senior Counsel for the appellant, since it was not specifically stated that the non disclosure of the assets and liabilities by itself amounted to a corrupt practice, there was



basically no plea put forth and the only plea that was actually put forth was that the non disclosure of assets was to take the benefit of reservation.

62. In my view, this argument cannot be accepted. The averments made in paragraphs 4 and 5 clearly stated that a false affidavit was filed regarding the disclosure of properties owned by the husband of the 4th respondent and this by itself would be a sufficient plea of material facts relating to a corrupt practice. In other words, if these facts were proved by the 4th respondent, the election of the appellant would be liable to be set aside on the ground of a corrupt practice having been indulged by the appellant.

63. It is to be stated here that the 4th respondent did not have to state the consequence of filing of a false affidavit in her plea since that would not have been a material fact. In other words, the consequence of a fact or the resultant proof of that fact need not be stated in the pleading since that would be basically an argument and not a material fact.

64. The 4th respondent has no doubt stated in paragraphs 6 that the reason for filing the false affidavit was to gain reservation. From that, however, it cannot be held that the only plea put forth was that a corrupt practice was indulged in only to gain reservation.

65. As held by the Apex court in the case of Madiraju (supra), the election petition will have to be read as a whole and cannot be dissected sentence wise or paragraph wise to rule that there was no cause of action. In my view, if the election petition as a whole is read, the primary thrust of the election petitioner was that a false affidavit had been filed to the effect that the husband of the appellant did not own movable or immovable properties. Obviously, this plea need not to have been followed with a conclusion that it amounted to a corrupt practice since that would have amounted to an argument and not a material fact.

66. The 4th respondent has followed up this plea of material fact with a conclusion in paragraph 6 that it amounted to a corrupt practice and it was for the purpose of obtaining reservation. The understanding of the 4th respondent about the consequence of the corrupt practice indulged in by the appellant cannot be considered as a material fact since this would be a matter for the Court to decide after trial.

67. The 4th respondent has also furnished the details of the properties owned by the husband of the appellant to indicate that a false affidavit had been filed. Thus, the full particulars of the corrupt practice i.e., the suppression of assets have been disclosed by the appellant.

68. I am, therefore, of the view that the election petition did contain a plea of the material facts relating to non disclosure of properties owned by the husband of the appellant and it also contained the full particulars of the properties owned by him.

69. The next question to be decided is whether this plea was properly verified and duly supported by an affidavit as contemplated under Section 33 (4) of the KMC Act.

70. At the outset, it is to be understood as to why a pleading is required to be verified. The requirement of a party to verify a pleading is to basically have a certification by the person making the statement that the statement made by him is true and that not only was he confirming the same to be true but would also be able to establish the same to be true. Obviously, this requirement is to hold the person making the statement accountable and responsible. If it is found subsequently that the statement made was false and yet it was made knowing it to be false, the person would be subjected to the penalties of law.

71. The verification, in reality, is a proof reading by the person making the statement. By the verification, he confirms the statement made by him to be true. He also thereby certifies that he has understood the implication of the statement made by him and that he would stand by it and would also establish it to be true in order to secure the relief from the Court. Verification, in essence, is a solemn assurance to the Court that the person who makes it is making it with a sense of responsibility and is also aware of the consequences of making it.

72. The Apex Court in the case of F.A.Sapa & Others vs. Singora and Others - (1991) 3 SCC 375 has stated as follows:

"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 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."

73. Thus, it is clear that the very purpose of verification and the filing of an affidavit is to fix responsibility on the person making it and to prevent wild and reckless allegations being made by an election petitioner.

74. In the instant case, the 4th respondent has stated in her verification that the facts stated in paragraphs 1 to 10 are all true and correct and in token thereof she was signing the petition.

75. In paragraph 4 of the petition, the 4th respondent stated that she had approached the competent authority and obtained the nomination form and the affidavit annexed to it. In paragraph 5, she has stated that the information provided in paragraph 8 (b) of the affidavit were totally false given the fact that her husband owned several properties which were also detailed in the very same paragraph. In paragraph 7, she has stated that immediately after ascertaining the false information in the affidavit she had had submitted a written protest. It is thus clear that all the averments made by her were, according to her, true and correct and the averments were made out of her own knowledge.

76. Order VI Rule 15 (2) of CPC requires that person verifying should specify with reference to the numbered paragraphs what he verifies to his own knowledge and what he verifies upon information received by him which he believes to be true. In this case, the 4th respondent did not attribute her knowledge of the assets owned by the husband appellant to any other person and hence the need to state the source of information would not arise. Further, she stated that she had ascertained the falsity of the affidavit and lodged a complaint. In other words, the 4th respondent stated that her assertions were based on her own knowledge. In this view of the matter, it is clear that the verification of the 4th respondent was in accordance with the requirement of Order VI Rule 15 of CPC.

77. Learned Senior Counsel Sri Ashok Haranahalli appearing for the appellant, however, also put forth the contention that the affidavit accompanying the petition which had been filed in support of the allegation of corrupt practice was required to be in the prescribed form and the affidavit filed did not meet the requirement of law.

78. Learned Senior Counsel, however, did submit that the neither the KMC Act nor the Rules prescribed a form of affidavit to be adopted for compliance of the requirement of the proviso to Section 33 (4) of the KMC Act. He, however, submitted that the affidavit should have been a verifying affidavit and the affidavit filed could not be considered as an affidavit at all.

79. Since it is an undisputed fact that there is no prescribed form of the affidavit by virtue of Section 36 of the KMC Act which contemplates the procedure prescribed by the CPC for suits to be followed in respect of trial of election petition, one would have to fall back upon the provisions of the Code to determine the requirements of an affidavit.

80. Order XIX Rule 3 (1) of CPC states that the affidavits should be confined to such facts as the deponent is able of his own knowledge to prove. An exception is however made in respect of interlocutory applications, which would be however inapplicable to the case on hand. Thus, if the affidavit filed by the 4th respondent conforms to the requirement of Order XIX Rule 3 (1) of CPC, it

cannot be said that the affidavit was defective.

81. A perusal of the affidavit filed in support of the allegation of corrupt practice indicates that the 4th respondent had stated on oath that the appellant had furnished false information regarding the assets of her husband and she also thereafter stated the details of the assets owned by 4th respondent's husband. Obviously, this affidavit was confined to the facts within her knowledge and was thus in conformity with the requirement of Order XIX Rule 3 (1) of CPC. The argument of the learned Senior Counsel appearing for the appellant that the affidavit was defective cannot therefore be accepted.

82. There are two other reasons that this argument of defective verification and an improper affidavit cannot be accepted.

83. Recently, a three Judge Bench of the Apex Court in the case of Saritha S. Nair Vs. Hibi Eden - 2020 SCC Online SC 1006 while considering a case arising under the RP Act has stated as follows:

"30. It is relevant to note that the Act keeps in two separate compartments-

(i) The presentation of election petitions;

and

(ii) the trial of election petitions.

31. The presentation of election petitions is covered by Sections 80 to 84 falling in Chapter-II. The trial of election petitions is covered by Sections 86 to 107 and they are contained in Chapter-III.

32. This compartmentalization, may be of significance, as seen from 2 facts namely:--

(i) That under Section 80 no election shall be called in question except by an election petition presented in accordance with the provisions of "this part"; and

(ii) That a limited reference is made to the provisions of the Code of Civil Procedure, 1908 in Chapter-II, only in places where signature and verification are referred to.

33. In so far as presentation of election petitions is concerned, Chapter-II is a complete code. This is because, the various provisions of Chapter-II cover all aspects of the presentation of an election petition, such as:--

(i) The person(s) who is/are entitled to file;

(ii) Person(s) who could be joined as respondents;

(iii) The types of different reliefs that can be sought;

- (iv) The grounds on which such reliefs could be sought;
- (v) Period of limitation for filing an election petition;
- (vi) The court where the petition could be filed;
- (vii) Contents of such petition; and
- (viii) Format of the election petition and the manner in which it is to be signed and verified.

34. Some of the rules contained in Chapter II are inflexible and inviolable. But some may not be. Whether the manner of signing and verifying an election petition is an inflexible rule, is what is to be seen here.

35. Section 83(1)(c) mandates that an election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for verification of pleadings. Signing a petition and verifying the petition are 2 different aspects. While Order VI, Rule 14 deals with the signing of the petition, Order VI, Rule 15 deals with the verification of pleading. Rule 14 mandates that every pleading shall be signed by the party as well as the pleader, if any. But the proviso carves out an exception by stating that where a party is unable to sign the pleading, by reason of absence or for other good cause, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf. Order VI, R.14 reads as follows:--

"14. Pleading to be signed.-Every pleading shall be signed by the party and his pleader (if any):

Provided that where a party pleading is, by reason of absence or for other good cause; unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf."

36. Order VI, R.15 which speaks about verification of pleadings reads as follows:--

"15. Verification of pleadings.-- (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings."

37. It is to be noted that Sub-rule (1) of Rule 15 of Order VI also permits the verification of pleading to be done by a person other than the party pleading, provided it is proved to the satisfaction of the Court that such other person was acquainted with the facts of the case.

38. Section 86(1) empowers the High Court to dismiss an election petition which does not comply with the provisions of Section 81, Section 82 or Section 117 and it does not include Section 83 within its ambit. Therefore, the question whether or not an election petition which does not satisfy the requirements of Section 83, can be dismissed at the pre-trial stage under section 86(1), has come up repeatedly for consideration before this Court. We are concerned in this case particularly with the requirement of Clause (c) of Subsection (1) of Section 83 and the consequence of failure to comply with the same.

39. In *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore*, a preliminary objection to the maintainability of the election petition was raised on the ground that the verification was defective. The verification stated that the averments made in some 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. There was no statement that the advice and information received by the election petitioner were believed by him to be true. Since this case arose before the amendment of the Act under Act 47 of 1966, the election petition was dealt with by the Tribunal. The Tribunal held the defect in the verification to be a curable defect. The view of the Tribunal was upheld by this Court in *Murarka Radhey Shyam Ram Kumar* (supra). This Court held that "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 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".

40. The ratio laid down in *Murarka* was reiterated by a three member Bench of this Court in *F.A. Sapa v. Singora* holding that "the 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". It was also held in *F.A. Sapa* that "since Section 83 is not one of the three provisions mentioned in Section 86(1), ordinarily it cannot be construed as mandatory unless it is shown to be an integral part of the petition under Section 81".

41. In *F.A. Sapa* (supra) this Court framed two questions in paragraph 20 of the Report, as arising for consideration. The first question was as to what is the consequence of a defective or incomplete verification. While answering the said question, this Court formulated the following principles:--

(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 desires 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."

42. It was also held in *F.A. Sapa (supra)* that though an allegation involving corrupt practice must be viewed very seriously and the High Court should ensure compliance with the requirements of Section 83 before the parties go to trial, the defective verification of a defective affidavit may not be fatal. This Court held that the High Court should ensure its compliance before the parties go to trial. This decision was followed by another three-member Bench in *R.P. Moidutty v. P.T. Kunju Mohammad*.

43. In *Sardar Harcharan Singh Brar v. Sukh Darshan Singh*, this Court held that though the proviso to Section 83(1) is couched in a mandatory form, requiring a petition alleging corrupt practice to be accompanied by an affidavit, the failure to comply with the requirement cannot be a ground for dismissal of an election petition in limine under Section 86(1). The Court reiterated that non-compliance with the provisions of Section 83 does not attract the consequences envisaged by Section 86(1) and that the defect in the verification and the affidavit is a curable defect. The following portion of the decision is of significance:

"14. xxxx Therefore, an election petition is not liable to be dismissed in limine under Section 86 of the Act, for alleged non-compliance with provisions of Section 83(1) or (2) of the Act or of its proviso. The defect in the verification and the affidavit is a curable defect. What other consequences, if any, may follow from an allegedly "defective" affidavit, is required to be judged at the trial of an election petition but Section 86(1) of the Act in terms cannot be attracted to such a case."

44. In *K.K. Ramachandran Master v. M.V. Sreyamakumar*, this Court followed *F.A. Sapa (supra)* and *Sardar Harcharan Singh Brar (supra)* to hold that defective verification is curable. The Court again reiterated that the consequences that may flow from a defective affidavit is required to be judged at the trial of an election petition and that such election petition cannot be dismissed under Section 86(1).

45. Though all the aforesaid decisions were taken note by a two-member Bench in *P.A. Mohammed Riyas v. M.K. Raghavan*, the Court held in that case that the absence of proper verification may lead to the conclusion that the provisions of Section 81 had not been fulfilled and that the cause of action for the election petition would remain incomplete. Such a view does not appear to be in conformity with the series of decisions referred to in the previous paragraphs and hence *P.A. Mohammed Riyas*

cannot be taken to lay down the law correctly. It appears from the penultimate paragraph of the decision in P.A. Mohammed Riyas (supra) that the Court was pushed to take such an extreme view in that case on account of the fact that the petitioner therein had an opportunity to cure the defect, but he failed to do so. Therefore, P.A. Mohammed Riyas (supra) appears to have turned on its peculiar facts. In any case P.A. Mohammed Riyas was overruled in G.M. Siddeshwar v. Prasanna Kumar on the question whether it is imperative for an election petitioner to file an affidavit in terms of Order VI Rule 15(4) of the Code of Civil Procedure, 1908 in support of the averments made in the election petition in addition to an affidavit (in a case where resort to corrupt practices have been alleged against the returned candidate) as required by the proviso to Section 83(1). As a matter of fact, even the filing of a defective affidavit, which is not in Form 25 as prescribed by the Rules, was held in G.M. Siddeshwar to be a curable defect and the petitioner was held entitled to an opportunity to cure the defect.

46. The upshot of the above discussion is that a defective verification is a curable defect. An election petition cannot be thrown out in limine, on the ground that the verification is defective."

84. It is also to be noticed here that unlike the obligation cast upon the Court to dismiss the Election Petition under Section 86 in the RP Act for non compliance of Section 81 (i.e., Presentation of petitions) or Section 82 (i.e., Parties to the petition) of the RP Act, there is no provision similar to Section 86 in the KMC Act.

85. As noticed by the Apex Court in Saritha S. Nair's case (supra), even in respect of an Election Petition filed under the RP Act, there is no obligation on the part of the Court to dismiss the petition for non adherence to Section 83 of the RP Act which relates to the requirement of the contents of an Election Petition and which prescribes the requirement of a proper verification and an affidavit in support of the allegation of corrupt practice.

86. Thus, the upshot of this discussion is that no Election Petition can be dismissed because it contained a defective verification or a defective affidavit as both of them have been held to be curable defects.

87. Yet another reason for which this line of argument cannot be accepted is that the appellant did not raise any objections regarding the defective affidavit or defective verification. As stated above, by virtue of Section 36 of the KMC Act, the procedure prescribed for suits under the CPC is required to be followed for trial and disposal of an election petition.

88. Admittedly, the appellant filed her statement of objections to the contents of the Election Petition and in that objections she did not raise any plea that the petition was not properly verified and full particulars of the corrupt practice were not furnished in the affidavit.

89. Order VIII Rule 2 of CPC states that the defendant must raise by his pleading all matters which show the suit not to be maintainable and that the transaction is either void or voidable in law and raise all such grounds of defence, which, if not raised would be likely to take the plaintiff by surprise.



90. Thus, it was incumbent on the appellant to put forth a specific plea that the Election Petition was not maintainable for want of a proper verification and a proper affidavit. If such a plea was not taken, it is obvious that the raising of such a contention after the conclusion of the trial or in appeal would be impermissible and would essentially be an attempt to take the election petitioner by surprise. I am therefore of the view that the argument of the learned Senior Counsel regarding the defective verification and the affidavit cannot be entertained.

91. A further reason as to why this argument cannot be accepted is the fact that the allegation of the 4th respondent that the appellant did not disclose the assets of her husband in the affidavit was unconditionally admitted by the appellant. If the allegation of the 4th respondent, assuming, it was not properly verified or supported by an affidavit, is in fact admitted by the appellant in her reply, the argument that the allegation will have to be discarded because of an improper verification cannot be entertained at all.

92. The appellant, in her reply, admitted that she had not furnished the details of the assets owned by her husband and she attributed this to a bona fide error and contended that it was unintentional. In my view, in the light of the fact the allegation of the 4th respondent regarding non disclosure was admitted by the appellant, the entire set of arguments relating to a defective verification or affidavit cannot be pressed into service and the same deserve to be rejected.

93. In the light of the admitted fact that the appellant did not disclose the assets of her husband in her affidavit accompanying the nomination form, it will now have to be considered whether this non disclosure amounted to a corrupt practice.

94. The Apex Court in the case of Krishnamoorthy vs. Sivakumar and Others - (2015) 3 SCC 467 in the context of criminal antecedents of a candidate contesting the elections held as follows:

"91. The purpose of referring to the instruction of the Election Commission is that the affidavit sworn by the candidate has to be put in public domain so that the electorate can know. If they know the half truth, as submits Mr. Salve, it is more dangerous, for the electorate is denied of the information which is within the special knowledge of the candidate. When something within special knowledge is not disclosed, it tantamounts to fraud, as has been held in S.P.Chengalvaraya Naidu v. Jagannath. While filing the nomination form, if the requisite information, as has been highlighted by us, relating to criminal antecedents, is not given, indubitable, 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. It is necessary to clarify here that if a candidate gives all the particulars and despite that he secures the votes that will be an informed, advised and free exercise of right by the electorate. That is why there is a distinction between a disqualification and the corrupt practice. In an election petition, the election petitioner is required to assert about the cases in which the successful candidate is involved as per the rules and how there has been non-disclosure in the affidavit. Once that is established, it would amount to corrupt practice. We repeat at the cost of repetition, it has to be

determined in an election petition by the Election Tribunal."

95. As already stated above, the Election Commission taking note of the decision of the Apex Court dated 2nd May 2002 in the case of Union of India vs. Association of Democratic Reforms (supra) and reiterated in PUCL & Another vs. Union of India & Another - (2003) 4 SCC 399 made the filing of an affidavit containing not only the criminal antecedents of the candidate but also the assets and liabilities of the candidate and his/her spouse along with the nomination form mandatory.

96. The Apex Court in the case of Lok Prahari vs. Union Of India and others - (2018) 4 SCC 699, which was decided on 16.02.2018, has held as follows:

"56. It must be mentioned that the 1st respondent in its counter-affidavit stated:

"6. That it is further stated that the Election Commission of India's Proposal relating to amending of Form 26 was thoroughly examined and considered in the Ministry of Law and Justice and a final decision has been taken to amend Form 26 of the 1961 Rules. As the issues involved relate to policy matter and after due deliberations on the subject matter a final policy decision was taken to amend Form

26."

57. Collection of such data can be undertaken by any governmental agency or even the Election Commission. The present writ petition seeks that the State be compelled to make a law authorizing the collection of data pertaining to the financial affairs of the legislators. The petitioner submits that the first step in the collection of data should be to call upon those who seek to get elected to a legislative body to make a declaration of (i) their assets and those of their associates (which is already a requirement under Section 33 of the 1951 RP Act, etc.); and (ii) the sources of their income.

58. The obligation to make the second of the abovementioned two declarations arises as a corollary to the fundamental right of the voter under Article 19(1)(A) to know the relevant information with respect to the candidate, to enable the voter to make an assessment and make an appropriate choice of his representative in the legislature. The enforcement of such a fundamental right needs no statutory sanction. This Court and the High Courts are expressly authorized by the Constitution to give appropriate directions to the State and its instrumentalities and other bodies for enforcement of fundamental rights.

On the other hand, nobody has the fundamental right to be a legislator or to contest an election to become a legislator. They are only constitutional rights structured by various limitations prescribed by the Constitution and statutes like the 1951 RP Act. The Constitution expressly permits the structuring of those rights by Parliament by or under the authority of law by prescribing further qualifications or disqualifications. To contest an election for becoming a legislator, a candidate does not require the consent of all the voters except the appropriate number of proposers being electors of the Constituency, and compliance with other procedural requirements stipulated under the 1951

RP Act and the Rules made thereunder. But to get elected, every candidate requires the approval of the "majority" of the number of voters of the Constituency choosing to exercise their right to vote. Voters have a fundamental right to know the relevant information about the candidates. For reasons discussed earlier, the financial background in all its aspects, of the candidate and his/her associates is relevant and critical information. Therefore, a candidate's constitutional right to contest an election to the legislature should be subservient to the voter's fundamental right to know the relevant information regarding the candidate; information which is critical to the making of an informed and rational choice in this area. XXXXX

79. We shall now deal with Prayer 2 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. It was a case arising under the Tamil Nadu Panchayats Act, 1994. A notification was issued by the State Election Commission stipulating the 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 above mentioned 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's case 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, 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."

97. As could be seen from the said decision, the Apex court has held that the non disclosure of assets and sources of income of the candidate and their associates would constitute a corrupt practice falling under heading "undue influence" as defined under Section 123 (2) of RP Act.

98. In the case on hand, as noticed above, the filing of an affidavit disclosing the assets and liabilities of the candidate and his/her spouse had been made mandatory by the Election Commission way

back in 2003 itself and this mandate was held to be lawful and in exercise of the constitutional power of the Election Commission available under Article 324 of the Constitution of India by the Apex Court. Since a similar constitutional power is enabled in favour of the Election Commission under Article 243 ZA of the Constitution of India in respect of elections to Municipalities, it cannot be in dispute that the requirement of filing an affidavit along with the nomination form was both mandatory and essential.

99. Keeping this legal requirement in mind, if the case of the appellant is considered, it is clear that the appellant cannot contend that she was unaware of the requirement of filing an affidavit containing information of her criminal antecedents and also the assets and liabilities of herself and her husband. Despite being aware of this mandate, the appellant chose not to disclose her husband's assets. Further, on being confronted with an allegation in this regard in the Election Petition, she admitted the allegation and put forth the plea that it was a bona fide error and was unintentional.

100. Since the non disclosure of assets and liabilities was admitted by the appellant, it is clear that it did constitute a corrupt practice as envisaged under Section 39 (2) of the KMC Act. It is to be stated here that the definition of "undue influence" under Section 123 (2) of the RP Act has been adopted under Section 39 (2) of the KMC Act. In view of the declaration of law by the Apex Court in this regard in Lok Prahari's case (supra), it is clear that the appellant is deemed to have indulged in a corrupt practice and as a consequence, the elections returned in favour is required to be set aside.

101. The plea that the non disclosure of assets was a bona fide error and was unintentional and should therefore not be taken seriously cannot also be accepted. The Election Commission in order to give effect to the principles laid down by the Apex Court devised a mechanism to ensure "purity, openness and transparency in the elections" and in order to fulfill this objective required the filing of an affidavit containing not only the full information of the criminal antecedents of the candidate, but, also the disclosure of his/her assets and that of the spouse mandatory. If a candidate were to treat such a mechanism in a casual and cavalier manner and put forth a plea that omission was a bona fide error, it would render the whole exercise of laying down a mechanism to ensure purity, openness and transparency meaningless, redundant and futile.

102. If in a given case, a candidate were to suppress his criminal antecedents by saying that there were no convictions against him or that there were no criminal cases pending against and later on it was found that he did in fact have convictions or criminal cases against him, the candidate would surely be guilty of undue influence as explained in paragraph 91 of the judgment rendered in Krishnamoorthy's case (supra). Surely, a candidate who has suppressed key information about his antecedents to the citizens cannot escape the consequences of suppression of facts by saying it was a bona fide error or it was unintentional.

103. If the purpose of disclosing all assets and liabilities is to ensure that the voter's fundamental right of information guaranteed under Article 19 (1) (a) of the Constitution of India to be informed of the complete details of the candidates contesting for election, then, obviously the non disclosure of the assets would be a direct contravention of this fundamental right, which can neither be overlooked, ignored nor condoned. Thus, the argument of a bona fide error or the act being

unintentional cannot be accepted in the case of an allegation of corrupt practice.

104. In view of the above, discussion questions (i) and

(ii) are held against the appellant and it is to be held that the non disclosure of assets and liabilities of the appellant's husband did constitute a corrupt practice as defined under S. 39 of the KMC Act and the Election petition did contain a plea regarding the corrupt practice and was supported by an affidavit containing the full particulars.

105. The last argument of the learned Senior Counsel appearing for the appellant was that the approach of the District Court was completely erroneous and it had not considered the matter in the proper perspective. I am afraid this argument too cannot be accepted.

106. The District Court in the impugned judgment has stated as follows with regard to the non disclosure of assets and its effect:

"31. On reading the aforesaid provisions, the purpose of disclosure of assets and liabilities of the candidate is to educate the voters about the financial status of the candidate. It also facilitates the voters to estimate whether assets declared by the candidate have been procured by him/her out of legitimate or known source of income. Based on this estimate, the voters have to form a decision as whether or not to elect the candidate. It is the fundamental right of the voter, which casts a corresponding fundamental duty on the candidate to disclose fully and truthfully information regarding his/her assets and liabilities, including of his/her spouse.

XXX XXX XXX

36. So far as documentary evidence produced by the petitioner is concerned, in this case, she has produced the RTC Extracts, copy of the sale Deed and other documents marked at Exs.P.4 to P.9. Voters List have been produced at Exs.P.10 and P.11 and photographs at Exs.P.12 and P.13 are produced to show that respondent No.4 is residing in the house so seen in these Exhibits-Photographs. It is not denied by respondent No.4 during the Course of her evidence.

37. The petitioner has contended that, respondent No.4 has intentionally and deliberately suppressed the assets stated supra in her petition which is corroborative in nature with that of the documents being produced by her.

38. The Nomination Form-Ex.P.2 was filled by respondent No.4 and presented before the Returning Officer of Ward No.36, Yeraganahalli. On 28.02.2018, she has filled in all the clauses. The said Form was accepted as a valid nomination by the Returning Officer. Respondent No.4 has filed 'B' Form issued by the Election Authority, submitted Affidavits along with Nomination as per the provisions of Representation of People Act. Respondent No.4 has made affidavit in respect of her

movables. In this Affidavit, respondent No.4 is required to give personal details in respect of her income-tax returns, immovable properties etc. Above information is part 'A' of the Form. Similar details and description of the properties i.e., movable and immovable, owned by spouse and dependent are required to be mentioned in the Form 'A'. Part 'B' is an extract of the details given in clauses 1 to 10 of Part 'A'. At the end, deponent of this affidavit is required to make verification that the contents of the affidavit are true and correct to the best of his/her knowledge, belief and no part of its is false and no material have been concealed therefrom. Thus, respondent No.4 has made further declaration and made statement on oath as follows:

"My spouse or my dependents did not have any asset or liability, other than those in items No.7 and 8 of Part 'A' and items No.8, 9 and 10 of Part 'B' above."

39. This affidavit was sworn in before Notary on 16.08.2018. Thus, chronologically, the affidavit was sworn and then it was presented along with the Nomination Form to the Returning Officer. As per the record, Returning Officer accepted the Nomination Form and Affidavit of respondent No.4 as valid.

40. Before discussing the fact on non-disclosure, it is necessary for the petitioner to prove first that, the properties are owned by spouse/husband of respondent No.4. If the properties are owned by respondent No.4's husband, then the issue of disclosure or non- disclosure will arise. In this case, as stated supra, the petitioner has produced RTC Extracts, copies of the Sale Deed etc., standing in the name of the husband of respondent No.4. The petitioner in order to prove the same, has produced various documents to show the holding of immovable properties by the husband of respondent No.4. That means, Exs.P.3 to P.9 have been tendered in evidence by the petitioner in addition to the oral evidence spoken to by her.

41. Respondent No.4 has fairly admitted about this fact and contends that, this non-disclosure of the properties is not deliberate, but it is for bona fide reasons. In view of respondent No.4 has admitted in the pleadings and in her oral testimony of non- disclosure of mentioning the immovable properties standing in the name of her husband, it can be held that, this respondent has not disclosed the said fact in her affidavit.

XXX XXX XXX

45. Now, the plea taken by the respondent No.4 that, such non-disclosure is not deliberate or intentional cannot be accepted. It is the duty of the contesting candidate to verify the contents of Form No.26 before submitting the same to the Returning Officer. The plea taken by the respondent No.4 that it was not intentional/deliberate is not sustainable either on facts or law. Respondent No.4 cannot blame anybody except herself for non-mentioning the immovable properties of her husband, having admitted the same in her counter. Basing the material on record, I have no hesitation to hold that, by non-mentioning the immovable properties in Form No.26, the respondent No.4 had violated the provisions of the Karnataka Municipal Corporations Act as well as the provisions of Section 123(2) of the Representation of People Act. Hence, Points No.1 and 2 stated supra are to be

answered in favour of the petitioner and against respondent No.4. Accordingly, they are answered in the affirmative."

107. The District Court, having regard to the order passed by this Court in MFA.4023/2019 and also on consideration of the evidence adduced before it, has recorded a clear finding of fact that the non disclosure of the assets of the appellant's husband amounted to a corrupt practice and therefore, her elections were required to be set aside. In my view, there is no error or infirmity in the approach adopted by the District Court.

108. In view of the fact that elections of the appellant were rightly set aside, the next question to be considered is whether the 4th respondent could be declared to have been elected.

109. A three Judge Bench of the Apex court in the case of Muniraju Gowda P.M. vs. Munirathna & Others - (2020) 10 SCC 192 has held as follows:

"19. There is one more reason why the petitioner cannot succeed. In the elections in question, there were 14 candidates in the fray, including the petitioner herein and the first respondent. In Vishwanatha Reddy v. Konappa Rudrappa Nadgouda, the Constitution Bench of this Court treated the votes polled in favour of the returned candidate as thrown away votes, on the ground that he was disqualified from contesting and that the election petitioner was entitled to be declared elected, in view of the fact that there was no other contesting candidate. But the Constitution Bench cautioned that the rule for the exclusion of the votes secured by corrupt practices by the returned candidate in the computation of the total votes and the consequential declaration of the candidate who secured the next highest number of votes as duly elected, can be applied only when there are just two candidates at an election.

20. The ratio in Vishwanatha Reddy was followed in Thiru John v. Returning Officer. Though this case concerned election to the Rajya Sabha through single transferable votes, this Court observed in this case that it would be extremely difficult if not impossible, to predicate what the voting pattern would have been, if the electors knew at the time of election that one was disqualified. The Court pointed out that the question as to how many of the voters would have cast their votes in favour of other continuing candidates and in what preferential order, remained a question in the realm of speculation and unpredictability.

21. In D.K. Sharma v. Ram Sharan Yadav, this Court followed the dictum in Vishwanatha Reddy to the effect that where there are more than two candidates in the field, it is not possible to apply the same ratio as could be applied when there are only two candidates. This principle was also reiterated in Prakash Khandre v. Vijay Kumar Khandre, where this Court pointed out: Prakash Khandre case, SCC pp. 579-80, para 24) "24. ... in the present case, for one seat, there were five candidates and it would be impossible to predict or guess in whose favour the voters would have voted if they were aware that the elected candidate was disqualified to contest

election or if he was not permitted to contest the election by rejecting his nomination paper on the ground of disqualification to contest the election and what would have been the voting pattern."

110. Indisputably, in the present case, there were in all three candidates contesting the elections, i.e., the appellant, the 4th respondent and the 5th respondent. Thus, in light of the judgment of the Apex Court in the case of Muniraju Gowda (supra), it is obvious that the decision of the District Court in declaring that the 4th respondent was to be declared as the returned candidate cannot be sustained and question (iii) is answered accordingly. Accordingly, that portion of the judgment by which the 4th respondent has been ordered to be declared elected, is set aside.

111. In view of the above, this appeal is allowed in part.

112. The decision of the District Court in setting aside the election of the appellant as the Councilor to represent Ward No.36, Yeraganahalli Ward of the Mysore City Corporation is upheld.

113. The decision of the District Court in declaring that the 4th respondent was to be declared elected in place of the appellant is, however, set aside.

114. The concerned respondents shall take further steps to hold fresh elections expeditiously.

Sd/-

JUDGE PKS