



ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು
ವಿಶೇಷ ರಾಜ್ಯ ಪತ್ರಿಕೆ

ಭಾಗ - ೪ Part - IV	ಬೆಂಗಳೂರು, ಶನಿವಾರ ೦೬, ಡಿಸೆಂಬರ್, ೨೦೨೫ (ಮಾರ್ಗಶಿರ, ೧೫, ಶಕವರ್ಷ, ೧೯೪೭) BENGALURU, SATURDAY 06, DECEMBER, 2025 (MARGASHIRA, 15, SHAKAVARSHA, 1947)	ಸಂ. ೭೮೯ No. 789
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PERSONNEL AND ADMINISTRATIVE REFORMS SECRETARIAT (ELECTIONS)

NOTIFICATION

No. DPAR 20 CHUTHAA 2025, Bengaluru, Dated: 6th December 2025.

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi.

Dated: 24th March, 2025
3 Chaitra, 1947 (Saka)

NOTIFICATION

No. 82/KT-LA/3/2023:-In pursuance of Section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the judgment/order of the High Court of Karnataka, Kalabuaragi dated: 16.01.2025 in Election Petition No. 3/2023.

IN THE HIGH COURT OF KARNATAKA AT BENGALURU**DATED THIS THE 16TH DAY OF JANUARY, 2025****BEFORE****THE HON'BLE MR JUSTICE KRISHNA S DIXIT****ELECTION PETITION NO. 3 OF 2023****BETWEEN:**

DR. RAMESH BABU V M,
AGED ABOUT 48 YEARS,
S/O LATE MUNIVENKATAPPA,
NO.29, UPPUKUNTE VILLAGE,
SUGATUR POST & HOBLI, KOLAR TALUK,
KOLAR DISTRICT – 563 101.

...PETITIONER

(BY SRI. R SHASHI KUMAR.,ADVOCATE)

AND:

1.SMT. ROOPAKALA M,
AGED ABOUT 43 YEARS,
W/O J E SHASHIDHAR,
RESIDING AT NO.1326, 3RD CROSS,
GEETHA ROAD EXTENSION, VIVEK NAGAR, KGF – 563 122.

2. ASHWINI SAMPANGI,
AGED ABOUT 32 YEARS,
W/O DINESH R V,
FIRST BLOCK, NEW EXTENSION,
SANTHE GATE, BETHAMANGALA,
KGF TALUK – 563 116.

3. KODANDA R,
AGED ABOUT 47 YEARS,
S/O RAMAPPA,
NO.32, DALAVAYE HOSAHALLI,
KGF TALUK – 56 122.

4. R GAGGANA SUKANYA,
AGED ABOUT 49 YEARS,
W/O GOVINDAIAH,
KONDARAJANAHALLI VILLAGE,
KASABA HOBLI, KOLAR TALUK – 563 101.

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5. THANGARAJ P,
AGED ABOUT 48 YEARS,
S/O PONNAN,
NO.177, CORONATION TOWN,
ROBERSONPET, KGF – 563 122.
 6. JOTHI BASH R,
AGED ABOUT 46 YEARS,
S/O RAMASWAMY,
NO.M021, SMITH ROAD,
MARKIKUPPAM POST,
KGF – 563 122.
 7. S RAJENDRAN,
AGED ABOUT 61 YEARS,
S/O SITARAMAN,
DOOR NO.40, OPPOSITE ST. TERESA’S SCHOOL,
3RD CROSS ROAD, ROBERSONPET, KGF – 563 122.
 8. V KALAVATHI,
AGED ABOUT 60 YEARS,
D/O P VENKATAIAH,
NO.1544/5, WARD NO.31,
MADAN BUILDING, CORONATION TOWN,
ROBERSONPET, KGF – 563 122.
 9. DR. JOSHUA M E RAJAN,
AGED ABOUT 52 YEARS,
S/O MADALAI MUTHU MANI,
DOOR NO.1273/1, B M ROAD, CORONATION TOWN,
ROBERSONPET, KGF -563 122.
- ...RESPONDENTS

(BY SRI. RAGHUPATHY K., ADVOCATE AND
SRI. R HEMANTH RAJ., ADVOCATE FOR R1;
SRI. HANAMANTHARAJU K., ADVOCATE FOR R7;
R2 TO R6, R8 & R9 ARE SERVED & UNREPRESENTED)

THIS ELECTION PETITION IS PRESENTED UNDER SECTIONS 80, 81 R/W SECTION 100 OF THE REPRESENTATION OF PEOPLES ACT, 1951, BY DR.RAMESH BABU.V.M PETITIONER-CANDIDATE ALONGWITH HIS COUNSEL SRI.SHASHIKUMAR.R (ADVOCATE FOR PETITIONER) BEFORE THE REGISTRAR (JUDICIAL) ON 23.06.2023, (THE PROCEEDINGS OF REGISTRAR (JUDICIAL) IS AT PAGE NO.6 OF THE PETITION), CHALLENGING THE ELECTION OF RESPONDENTS SMT.ROOPAKALA.M AND OTHERS, FROM 146- KOLAR GOLD FIELD (SC) ASSEMBLY CONSTITUENCY, KOLAR DISTRICT, TO THE KARNATAKA LEGISLATIVE ASSEMBLY 2023 AND THE PETITIONER PRAYING TO -i) DECLARE THE ELECTION OF THE RETURNED CANDIDATE I.E., FIRST RESPONDENT SMT.ROOPKALA.M FROM 146-KOLAR GOLD FIELD (SC) ASSEMBLY CONSTITUENCY OF KARNATAKA LEGISLATIVE ASSEMBLY 2023 AS NULL AND VOID AND SET ASIDE.II) THE FIRST

RESPONDENT SMT.ROOPAKALA.M IS DECLARED TO BE DISQUALIFIED FROM CONTESTING THE ELECTIONS.

THIS IA NO.3/2024 IS FILED UNDER SECTION 81,83,86 AND 87 OF THE REPRESENTATION OF PEOPLES ACT,1951 R/W ORDER 6 RULE 16 OF THE CODE OF CIVIL PROCEDURE,1908 PRAYING TO STRIKE OUT ALL SENTENCES OF THE PARAGRAPH NOS. 1 TO 24, AND PRAYER OF THE ELECTION PETITION IN THE INTEREST OF JUSTICE AND EQUITY.

THIS IA NO.4/2024 IS FILED UNDER SECTION 81,83 AND 86 OF THE REPRESENTATION OF PEOPLES ACT,1951 R/W ORDER 7 RULE 11 OF THE CODE OF CIVIL PROCEDURE,1908 PRAYING TO DISMISS THE PRESENT ELECTION PETITION IN THE INTEREST OF JUSTICE AND EQUITY.

THIS ELECTION PETITION ALONG WITH I.A.NOS.3 & 4 /2024 HAVING BEEN HEARD AND RESERVED FOR ORDERS, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT

CAV ORDER

This petition lays a challenge to the election of 1st Respondent - Smt.Roopakala M (hereafter called 'Returned Candidate') from 146-Kolar Gold Field (SC) Constituency of Karnataka Legislative Assembly-2023. Petitioner has also sought for a declaration to disqualify the Returned Candidate from contesting the elections, on the fault grounds. The petition is structured on the principal grounds, succinctly stated as under:

(a) Improper acceptance of nomination papers of the Returned Candidate by the Returning Officer though her name did not figure in the electoral roll; she had not affixed the nomination paper along with Affidavit in Form 26 in a conspicuous place for the sight of voters, candidates & the public at large.

(b) Returned Candidate gave false & misleading information about her criminal antecedents i.e., her conviction for the offences in Crime No.125/2023; she has also withheld material particulars of the criminal case and the criminal appeal.

(c) Returned Candidate failed to disclose 'important material details of movable assets', bank deposits of herself & her spouse, particulars of bank, account number, nature of account & of deposit. These pertain to Rs.50 lakh as Staff Advances (ITC), Rs.55 lakh of market due, Rs.4,12,00,000/- stock-in trade, other current assets and also particulars of jewellery, bullion & such other valuables.

(d) Returned Candidate has failed to furnish correct information pertaining to agricultural & non-agricultural lands and residential buildings owned by herself & by her spouse. She ought to have mentioned full particulars of sale transactions such as mode & cost of acquisition, areal extent of properties, etc.

- (e) Returned Candidate has not correctly stated about her educational qualifications & details of dependants, in the Affidavits that accompany her Nomination Papers and the same amounts to suppression of material particulars required of legal disclosure.
- (f) Lastly, the Returned Candidate has failed to maintain true, correct & separate account of election expenditure and has not furnished details of separate election account in the Affidavit, as prescribed in the Conduct of Election Rules and extant ECI Notifications.

2. After service of notice, Returned Candidate and others have entered appearance through their counsel. Respondent No.9 has filed his Written Statement on 09.10.2023 supporting the case of Petitioner and seeking invalidation of the election. Returned Candidate has also filed a Written Statement on 16.12.2023, resisting the petition. She has moved the subject two applications *VIZ.*, the one for striking off the pleadings of petitioner and the other for the rejection of petition for want of cause of action. Petitioner has filed his Objections to these applications. This court vide order dated 2.2.2024 recorded the unanimous submission of all, that the pleadings have been completed and the time for filing pleadings by others has statutorily lapsed. Therefore, matter was posted for the inspection of documents. I am told at the Bar that this inspection has been done.

Contesting parties have filed the draft issues.

2.1. Though it is not much pertinent for the adjudication of the subject applications, the order entered on 22.03.2024 is reproduced for keeping the record of the proceedings open.

"ORDER ON I.A.Nos.1 & 2/2024"

Application in I.A.No.1/2024 seeking impleadment is only for the limited purpose of seeking a direction for release of the EVMs for the elections that are imminent. All the learned advocates appearing for the parties eonmine stand tall before the court and say that regardless of maintainability of such applications for impleadment& direction, they have no objection for the release of EVMs. The court also understands the difficulty of conducting elections without adequate number of EVMs and that the retention of EVMs is not required, as submitted by all advocates appearing for the parties for adjudication of the petition in question. The court also notes that the case does not involve recounting of the votes.

In view of the above, the District Election Officer or such other officer concerned is directed to release the subject EVMs to the office of Chief Electoral Officer, Karnataka, Bangalore, subject to the condition that if & when required, the same shall be produced for inspection. Ordered accordingly and both the applications in I.A.Nos.1 & 2/2024 are disposed off..."

3. BRIEF FACTS:

3.1. The process of General Elections to the Karnataka State Legislative Assembly commenced with the issuance of Calendar of Events by the ECI vide Notification dated 13.04.2023; its particulars as furnished by the Petitioner in a tabular form are as under:

Event	Schedule Date
Start of Filing of nomination	13.04.2023
Last Date for filing nomination	20.04.2023
Date of Scrutiny of nomination	21.04.2023
Last Date for Withdrawal of nomination	24.04.2023
Date of poll	10.05.2023
Date of Counting of Votes	13.05.2023

3.2. In all, there were ten candidates in the electoral fray and two of them were Independents. Polling took place on 10.05.2023. Returning Officer declared/announced the election results on 13.05.2023. Following table gives a thumb nail sketch of the scenario:

Sl.No	Name of Candidate	Party	Votes secured
1	Aswini Sampangi	BJP	31102
2	Kodanda R	BSP	260
3	R Gaggana Sukanya	AAP	278
4	Thangaraj P	CPI (M)	1008
5	Dr. Ramesh Babu VM	JDS	1360
6	Roopakala M	INC	81569
7	Jothi Bash. R	CPI	918
8	S.Rajendran	RPI (Karnataka)	29795
9	V. Kalavathi	Independent	182
10	Dr.Joshua M E Rajan	Independent	196

4. Having heard the learned counsel for the parties on the subject applications and having perused the case papers and also having adverted to relevant of the Rulings cited at the Bar, this Court is inclined to allow the subject applications for the following reasons:

4.1. A BROAD LEGAL POSITION AS TO PLEADINGS IN AN ELECTION PETITION:

(i) An Election Petition is a statutory proceeding of peculiar nature to which the common law and the principles of equity remain as strangers unless they are statutorily embodied. To it apply only those rules which the statute makes. Such statute is the Representation of People Act, 1951 and the Rules promulgated thereunder; in other words, the law of election is what the statutes enacts. This view gains support from **JYOTI BASU vs. DEBI GHOSAL**¹. That being said, ordinarily, the insignificant technicalities in the matter of pleadings are liable to be ignored in adjudging the validity of elections of the kind vide **PONNALA LAKSHMAIAH Vs. KOMMURI PRATAP REDDY**².

(ii) Petitioner in addition to seeking invalidation of election of Returned Candidate prays '*The first respondent Smt. Roopakala M is declared to be disqualified from contesting the respondents.*' Sec. 83(1)(a) of the 1951 Act prescribes that an election petition shall contain a concise statement of material facts on which the petitioner has founded his challenge; 'material facts' are those which taken at their face value not only will have a cause of action but also entitle the petitioner to the grant of relief which he has prayed for. In other words, all those facts which clothe the petition with a choate or complete cause of action are termed as material facts, in election jurisprudence. Failure to plead any material fact renders the challenge to an election of the kind, bad.

(iii) The law of elections & election disputes in India, to a considerable extent has grown precedent by precedent, by legislative process in addition. Challenge to an election, be it to the Parliament or to the State Legislatures, is treated as a serious matter. An election cannot be set at naught unless a fool proof case is made out vide **SANTOSH YADAV vs. NARENDAR SINGH**³. This is done to ensure that the Sword of Damocles is not kept hanging over the head of victorious candidates unnecessarily and without point or purpose. Added, election in a country like ours, involves huge expenditure, time & energy. A popular mandate culminating in the electoral result, therefore, cannot be lightly brushed aside.

¹ AIR 1982 SC 983

² (2012) 7 SCC 788

³ (2002) 1 SCC 160

(iv) When a challenge to an election is founded on the ground of non-disclosure of relevant information mandated by law, in the nomination papers and more particularly in the Affidavit in Form 26, law mandates that both the 'material facts' and 'material particulars' are to be pleaded. At times, there may be some overlapping between these two, is true; nevertheless, difference lies between them, cannot be disputed. This difference is like a boundary dispute, which obviously is not as to the existence of the boundary but is as to where exactly the boundary line lies. Material facts would mean all the fundamental facts constituting the ingredients of the required averment, which the petitioner has to substantiate in order to succeed. The proven test to identify a fact as the 'material fact' is to ask oneself whether in the absence of such a fact, relief sought for in the petition can be granted.

(v) 'Material particulars' on the other hand are the details of the case set up by the parties which are necessary to amplify, refine & embellish the material facts pleaded in the petition. In a way they are decorative details of material facts. 'Particulars' serve the purpose of finishing touches to the basic contours of a picture already drawn, to make it full, more detailed and more informative. The function of 'particulars' is to present as full a picture of the case brought before the court as to make the opposite party understand and to meet it. While the failure to plead material facts is fatal to the election petition and no amendment of the pleading could be allowed for introducing the material facts after the expiry of limitation period prescribed by law for filing the election petition, the absence of material particulars can be cured even at a later stage by an appropriate amendment vide **L.R.SHIVARAMAGOWDA Vs. T.M.CHANDRASHEKAR**⁴.

(vi) There is yet another aspect of law which the petition at hand attracts: As already mentioned above, there are two prayers viz invalidation of the election of Returned Candidate and further declaration that she be 'disqualified from contesting the election'. However, if the petitioner alleges that there was improper acceptance of any nomination paper [sec.100(1)(d)(ii)] or that there was non-compliance with the provisions of the Constitution, Act or any Rules [vide sec. 100(1)(d)(iv)], petitioner has to plead and prove that the result of election insofar as it concerns the Returned Candidate has been materially affected by such improper acceptance or non-compliance. In **PEOPLE'S UNION FOR CIVIL LIBERTIES vs. UNION OF INDIA**⁵, this view has been broadly affirmed caveating

⁴ (1999) 1 SCC 666

⁵ AIR 1997 SC568

that the direction to reject the nomination papers for furnishing wrong information or concealing material information and verification of assets and liabilities by means of a summary inquiry at the time of scrutiny of the nominations cannot be readily given. Of course, in ***S.RUKMINI MADEGOWDA vs. STATE ELECTION COMMISSION***⁶, this view is to some extent relaxed, is also true, as rightly contended by petitioner's counsel. In light of this position of law, the subject applications need to be treated keeping in view only the petition averments and the accompanying documents.

4.2 A BRIEF SKETCH OF THE PETITION:

(i) Petition Paragraphs 1 & 2 of the petition mention about commencement of election process, issuance of calendar of events vide Notification dated 13.04.2023 and filing of Nomination Papers *inter alia* by Respondent No.1 on 19.04.2023 from the reserved constituency. Paragraph 3 mentions about ten candidates that were in the fray; paragraph 4 mentions that the polling took place on 10.05.2023; it states polling of votes in favour of each of these candidates.

(ii) Petition Paragraph 5 states about declaration of election results on 13.05.2023 by virtue of which the 1st respondent emerged victorious in the electoral battle; it also mentions about petitioner having secured copies of Returned Candidate's Affidavits dated 13.04.2023 & 17.04.2023 as uploaded by her to ECI website; petitioner specifically states that he obtained certified copies of Affidavit dated 13.04.2023 from KGF Taluk office.

(iii) Petition Paragraph 6 mentions about the filing of two sets of Nomination Papers by the Returned Candidate on 23.04.2023 & 17.04.2023 along with Affidavits in Form-26 and that the same were uploaded to the ECI website. Paragraph 7 mentions about declaration of election results on 13.05.2023 and that the petitioner discovered the discrepancies & falsities in the Returned Candidate's Affidavit dated 17.04.2023.

(iv) Petition Paragraph 8 alleges that the Returning Officer had never affixed 1st respondent's Nomination Papers along with Affidavits 'in a conspicuous place at the office of Returning Officer for information to the electors...' Paragraph 9 enlists the grounds (a) to (t) *inter alia* on which challenge to the election of Returned Candidate is structured.

(v) Petition Paragraphs 10 & 11 allege infirmities in the day to day expenses of election and accounts management as filed by the Returned Candidate and their uploading to the website of District Electoral Officer. Paragraphs 12 to 22 in the petition plead the grounds on which

invalidation of election is sought for. In paragraph 23, petitioner reserves right of amendment to his pleadings and seeks leave to rely upon the documents in support of his case.

(vi) Petition Paragraphs 24 to 28 relate to compliance of protocol prescribed for filing of Election Petition. Paragraph 29 is the prayer column which essentially seeks invalidation of 1st Respondent's election and an order for barring her from contesting in the elections.

4.3. AS TO IMPROPER ACCEPTANCE OF NOMINATION PAPERS OF RETURNED CANDIDATE:

(i) Learned counsel appearing for the 1st respondent contended that the petition averment that the Returning Officer had never affixed the Returned Candidate's Nomination Papers along with Affidavits in Form-26 dated 17.04.2023 in a conspicuous place of his office for the information of electors, is falsified by the petition averments in paragraphs 5, 6 & 7. Let me see what is averred in these paragraphs: paragraph 5 mentions about returned candidate's election results declared on 13.05.2023; petitioner specifically admits that the two Affidavits dated 13.04.2023 & 17.04.2023 accompanying two sets of Nomination Papers were uploaded to the ECI website by the Returning Officer for the information of the electors/general public and that, petitioner downloaded the same. It is also admitted in the petition that he had obtained certified copy of one of these Affidavits in Form26 dated 13.04.2023. Paragraph 6 also mentions about filing of two sets of Nomination Papers along with Affidavits on 13.04.2023 and on 17.04.2023 and that the same were uploaded to the ECI website by the Returning Officer. Paragraph 8 mentions about non-affixing of these Nomination Papers along with Affidavits in a conspicuous place of the office of Returning Officer. At paragraph 9, scrutiny process undertaken by the RO is mentioned and also alleged abrupt & improper acceptance of the Nomination Papers in breach of procedure prescribed u/s 36(2) of the R.P.Act. Petitioner has not whispered anything about he having pointed out to the RO during the scrutiny process, about the alleged non-affixture of requisite documents filed by the Returned Candidate in a conspicuous place in his office.

(ii) Added, petitioner has also not uttered one single word as to how the alleged non-affixture has materially affected the subject election; it is not his case that had the Returned Candidate been in the electoral fray, at least some of the votes she has secured would have gone to other candidates and eventually, at least she would not have been elected, as rightly contended by learned Sr. Counsel appearing for the Returned Candidate. This stand of the Returned Candidate gains support from the text of section 100(1)(d) of the R.P. Act, as

construed by the Apex Court in **KARIM UDDIN BARBHUIYA vs. AMINUL HAQUE LASKAR**⁷. An omnibus plea ‘that the RO abruptly and improperly accepted the Nomination Papers of the Returned Candidate without conducting proper scrutiny process as envisaged under section 36(2)’ of the R.P. Act, would not satisfy the requirement of election law. The law enacted in Section 33-A of 1951 Act requires that the information furnished by the candidate in the form of Affidavit shall be displayed in a conspicuous place in the office of jurisdictional Returning Officer for the knowledge of electors; there is a presumption in law that the statutory functionaries duly discharge their official duties in regular course; such a presumption enures to the benefit of Returned Candidate, there being nothing to the contra.

(iii) The fact remains that neither the Returning Officer nor any electors have found the information furnished by R-1 as being insufficient or incorrect. This apart, how the alleged non-furnishing of the so called material information has materially affected the electoral prospects of the petitioner or of any other candidate, is also not pleaded, such a plea being legally essential in view of the fact that there were plural candidates in the electoral fray. The Apex Court in **MAIREMBAM PRITHVIRAJ vs. PUKHREM SHARATCHANDRA SINGH**⁸, at paragraph 26 has observed as under:

"Mere finding that there has been an improper acceptance of the nomination is sufficient for a declaration that the election is void under section 100(1)(d). There has to be further pleading and proof that the result of the election of R-1 was materially affected. But, there would be no necessity of any proof in the event of the nomination of a R-1 being declared as having been improperly accepted, especially in a case where there are only two candidates in the fray..."

(iv) The petition averments at paragraph 9(a) that ‘...the name of first respondent is not forthcoming in the electoral roll’ and the Returning Officer having not properly scrutinized the Nomination Papers & Affidavit, has wrongly permitted the Returned Candidate to have been in the fray, are stoutly contested by the other side on the basis of material on record. Petitioner has withheld the information furnished by the Returned Candidate in the Nomination Forms dated 13.04.2023 and 17.04.2023 inasmuch as he has not referred to the Annexure filed along with the Nomination Forms, more particularly the authentic copy of electors list. The petitioner

⁷ 2024 SCC OnLine SC 509, paras 12-24

⁸ (2017) 2 SCC 487

has to specifically aver what is the correct information that has not been stated in the Nomination Papers accompanied by Affidavits in the prescribed Form vide **KANIMOZHI KARUNANIDHI vs. A.SANTHANAKUMAR**⁹. Name of the Returned Candidate figures at Sl.No.305, Part 229. What the petitioner has produced as documents at Annexures-B, C & D are sectarian and that the requirement of section 65B of the Indian Evidence Act, 1872 has not been complied with. If material information was lacking in the Affidavit of R-1, it was open to the petitioner or other respondents or any of the voters to solicit the said information or to point out any information being wrong/false, vide **KISAN SHANKAR KATHORE vs. ARUN DATTATREY SAWANT**¹⁰. This aspect being a material particular, has not been pleaded in the subject paragraphs of the petition and therefore, they are liable to be struck off.

(v) The Apex Court at paragraph 29 of the decision in KISAN SHANKAR *supra* recognized the right of electors to know about the credentials of their candidates, as a fundamental right guaranteed u/a 19(1)(a) of the Constitution since it flows from the concept of Democracy and that where relevant information is not disclosed in the Affidavit, the Returning Officer has the power coupled with duty to direct the candidate to furnish the same; further, it is also true that if the candidate fails to furnish despite direction, his Nomination Papers can be rejected on that ground *per se*; however, this power of Returning Officer to reject the Nomination Papers must be exercised very sparingly & cautiously. In the case at hands, no such deficiency in the Affidavit was pointed out by any one and much less any direction was issued by the Returning Officer to make good any alleged deficiency.

4.4 NON-DISCLOSURE ABOUT CRIMINAL ANTECEDENTS OF RETURNED CANDIDATE:

(i) The Apex Court in *PUBLIC INTEREST FOUNDATION vs. UOI*¹¹ observed that in a democratic system, the best available candidates should not have criminal antecedents and that the electors have a right to know such antecedents of persons in the electoral fray. It also recognized that for a constitutional democracy, criminalization of politics is extremely disastrous. At para 116 of the decision, it laid down the following rudimentary principles for cleansing the system:

⁹ 2023 SCC OnLine SC 573

¹⁰ (2014) 14 SCC 162

¹¹ (2018) 10 SCR 141

"Keeping the aforesaid in view, we think it appropriate to issue the following directions which are in accord with the decisions of this Court :-

(i) Each contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the particulars as required therein.

(ii) It shall state, in bold letters, with regard to the criminal cases pending against the candidate.

(iii) If a candidate is contesting an election on the ticket of a particular party, he/she is required to inform the party about the criminal cases pending against him/her.

(iv) The concerned political party shall be obligated to put up on its website the aforesaid information pertaining to candidates having criminal antecedents.

(v) The candidate as well as the concerned political party shall issue a declaration in the widely circulated newspapers in the locality about the antecedents of the candidate and also give wide publicity in the electronic media. When we say wide publicity, we mean that the same shall be done at least thrice after filing of the nomination papers."

To some extent, this requirement was legislatively diluted by enacting section 33B in the 1951 Act and that came to be liquidated by the Apex Court in *PUCL vs. UOI*¹² eventually resulting into the ECI promulgating the guidelines *inter alia* for disclosing criminal antecedents of candidates vide Notification dated 10.10.2018. Learned counsel for the petitioner pressed all this into service.

(ii) The petition averments at paragraphs 9(b), (c), (d), (o) & (p) relate to non-disclosure of relevant information by the Returned Candidate about her criminal antecedents in the Affidavits in the prescribed Form. The Returned Candidate has mentioned about the pending criminal cases against her, keeping open the column of conviction 'blank' specifically stating that the same was not applicable to her inasmuch as, she had not been convicted in any of the criminal cases. Accordingly, she had endorsed 'Nil' in para 11(6) of Part 'B' of the Affidavit. This is absolutely correct.

¹² (2003) 4 SCC 399

(iii) Crime No.125/2023 was registered for the offences punishable under sections 3 & 6 of the Essential Commodities Act, 1955. The same has been quashed by a Coordinate Bench of this Court in Returned Candidate's Crl.P.No.2435/2023 disposed off on 16.06.2023. The other criminal case i.e., Spl.C.30769/2021 concerning Railway offences also came to be quashed by another Coordinate Bench in Crl.P.No.8718/2021 vide order dated 8.12.2023.

(iv) The certified copies of Coordinate Benches' orders are placed on record with leave of this Court *sans* any objection from the side of petitioner. These subsequent developments emerging from the Court orders also support that the Returned Candidate has furnished requisite information about the alleged criminal antecedents, in her Affidavits accompanying the Nomination Papers, in terms of section 33A of the R.P.Act, 1951. Therefore, petitioner's reliance on **BHIM RAO BASWANTH RAO PATIL vs. K.MADAN MOHAN RAO**¹³ does not come to his aid.

(v) Learned Sr. Advocate appearing for the Returned Candidate is right in contending that the information gathered by the petitioner based on which the averment in relation to non-disclosure of criminal antecedents of his client is taken up, is 'truncated' one. Added, petitioner has not disclosed the source of this information either, and on that count also, there is a palpable lacuna in the petition in the light of what has been observed in **V.NARAYANASWAMY vs. C.P.THIRUNAVUKKARASU**¹⁴.

4.5 AS TO NON-DISCLOSURE OF FULL INFORMATION ABOUT MOVABLE PROPERTY:

(i) The petition averments at paras 9(e) to (i) relate to alleged non-disclosure of material particulars of movable assets namely the bank accounts of the Returned Candidate & her spouse and also non-disclosure of material information relating to gold & silver articles. Petitioner avers at paragraphs (e), (f) & (h) that the Returned Candidate at column No.2 has mentioned about the deposit of Rs.7 lakh in SBI-KCDCC Apex Bank and in column No.3, the deposit of Rs.2 lakh standing in the name of her husband who happens to be in public employment. Similarly, she has mentioned at para (f) about the Returned Candidate showing Rs.50 lakh as Staff Advance (ITC) and Rs.55 lakh as being the market due (ITC business). He complains that the Returned Candidate has not furnished full details of the company, firm or

¹³ (2023) 9 S.C.R 1218

¹⁴ (2000) 2 SCC 294, para 23

individual to whom she has given loan. At para (h), petitioner avers that the Returned Candidate has failed to disclose the relevant details for showing a sum of Rs.4,12,00,000/- as stock in trade and other current assets at paragraph 7A(viii) of the Affidavit. Let me examined all this.

(ii) Annexure-B to the petition is the Affidavit of the Returned Candidate in Form-26 dated 13.04.2023. Annexure-C is also Affidavit of the said candidate dated 11.04.2023. In para 7, the Returned Candidate has given the information relating to movable assets at Para-A. The same consists of bank deposits, investments in bonds/debentures/shares/Insurance Policy, details of loans & dues and vehicles. Petitioner has mistaken one aspect of the matter: Para 11(8) of Part B of the Affidavit is an abstract statement mentioning the total value of the movable assets of her spouse and the details are also furnished.

(iii) The tabular form which contains the material information as furnished by the Returned Candidate is reproduced below for ease of reference: A. Details of movable assets.

Sl. No.	Description	Self	Spouse	Depen dent-1	Depen dent-2	Depen dent-3
(i)	Cash in hand	20 lakhs	1 lakh	Nil	Nil	Nil
(ii)	Details of deposit in Bank accounts (FDRs, Term Deposits and all other types of deposits including savings accounts), Deposits with Financial Institutions, Non-Banking Financial companies and	7,00,000/- (SBI-KCDCC APEX BANK)	2.00 lakhs	Nil	Nil	Nil
	Cooperative societies and the amount in each such deposit					
(iii)	Details of investment in Bonds, Debenture/Shares and units in companies/Mutual Funds and other and the amount.	(1) Capital account in Bhuvan Enterprises 2.09 Crores (2)Annapurneshwari Beverages Rs.44.00 lakhs. 3) Shree Janani Indian Designs Exports Pvt Ltd 9,90,000/-	Nil	Nil	Nil	Nil

(iv)	Details of investment in NSS, Postal Saving, Insurance Policies and investment in any Financial instruments in Post Office or Insurance Company and the amount.	1) EXIDE LIFE INSURANCE RS 10 LAKHS PER YEAR. 2) LIC RS 12000 PER YEAR	Nil	Nil	Nil	Nil
(v)	Personal loans/advances given to any person or entity including firm, company, Trust etc., and other receivable from debtors and the amount.	Staff advances (ITC) 50.00 lakhs Market due (ITC Business) 55.00 lakhs	Nil	Nil	Nil	Nil
(vi)	Motor Vehicles/Aircrafts yachts/ships (details of make, registration number, etc., year of purchase and amount)	1) Make Toyota- Reg.No. KA-03AK-0099 32.00 Lakhs (2021-22) 2) Make Toyota Innova Reg. No.KA-02-MK-4428 (2014-2015)	1) SWIFT DeZIREREG.NO .KA-03MS117 RS 7.5 LAKHS (2014-15) 2) HYUNDA Creta REG.NO.KA02 MP 9198	Nil	Nil	Nil
		25.00 Lakhs. 3) Other movable assets (In ITC) Business Rs. 50.00 Lakhs.	RS 17.30 LAKHS (2021-22)			
(vii)	Jewellery, bullion and valuable thing(s) (give details of weight and value)	500 grams 15.00 lakhs	250 grams 12.50 lakhs	Nil	Nil	Nil
(viii)	Any other assets such as value of claims/interest	Stock in Trade & other current Assets 4,12,00,000/-	Nil	Nil	Nil	Nil
(ix)	Gross total value	9,39,02,000/-	40,30,000/-			

(iv) A perusal of Affidavits dated 13.4.2023 & 17.4.2023 would show that the Returned Candidate has furnished material information about the loans: Rs.20 lakh is from Toyota Finance Car Loan; her spouse's Rs.34 lakh is taken by way of Housing Loan; she has borrowed Rs.15 lakh from Meghana Selve Shekar and Rs.80 lakh from Mr.S.Srinivas. She has also mentioned at Para 8(ii) of the Affidavit that neither she nor her spouse owes any dues to the government in respect of the headings mentioned in the said paragraph. The endorsement 'Nil' can be seen even by a naked eye.

(v) Learned Sr. Counsel appearing for the Returned Candidate is justified in contending that whatever has been pleaded by the petitioner is again on the basis of truncated information extracted from only a part of Affidavit in the prescribed Form, which the petitioner admittedly has downloaded from the website of ECI/RO.

4.6 AS TO RETURNED CANDIDATE NOT DISCLOSING CORRECT MATERIAL PARTICULARS OF IMMOVABLE PROPERTIES, IN THE AFFIDAVITS:

(i) Para 7B(i), column (ii) of the Affidavit mentions about agricultural lands in Sy.No.54 of Hirenandi village, H.D.Kote Taluk; it was purchased vide sale deed dated 2.2.2015. The land in Sy.No.12/8 of Giddenahalli in Madugiri Taluk, was purchased vide sale deed dated 27.4.2016. The extents of these lands are also specifically mentioned in the Affidavit. She has also mentioned another sale deed dated 15.2.2015. She has offered explanation as to how the particulars of this transaction came to be deleted by the typographer while editing the entries. Since all the three sale deeds are specifically mentioned, it was open to the electors and the candidates to tap information by seeking inspection of the same even in the office of the jurisdictional Sub-Registrar. Therefore, it cannot be gainfully argued that the Returned Candidate has not disclosed material information.

(ii) The Returned Candidate has given full particulars of non-agricultural properties acquired vide sale deeds dated 15.12.2011, 17.5.2014, 14.8.2015 & 18.5.2020. The extent, value & location of these properties are also stated, in so many words. Petitioner fails to see that in respect of site Nos.1 & 2 at Kannampalli village, there is one common one sale deed dated 15.12.2011. Affidavit also mentions the flat owned by her spouse with full details as to built-up area, carpet area, etc. Therefore, petitioner is not justified in complaining that material information has been suppressed in the Affidavits.

4.7 AS TO NON-DISCLOSURE OF EDUCATIONAL QUALIFICATIONS AND DETAILS OF DEPENDENTS:

(i) The first allegation that the Returned Candidate has not disclosed her educational qualification correctly, is not true, to say the least. The Affidavit accompanying the Nomination Form at Part B, para 11 specifically states that the Returned Candidate has done her M.A. from Karnataka State Open University, Mysore, during the year 2015-16. This University is established under the provisions of Karnataka State Open University Act, 1992. The Act and the Statute promulgated thereunder are a matter of law. They have certain unconventional provisions for the University awarding certain

academic degrees. How the University functions and how degrees & diplomas are awarded are a matter of law and ignorance in that regard would not enure to the benefit of uninformed. What has not been properly explained according to the petitioner, remains a riddle wrapped in enigma.

(ii) It is not the case of petitioner that the Returned Candidate has falsely mentioned degrees & diplomas which she has not secured from the educational institutions and as a consequence, the electors were swayed away in casting their votes in her favour and this has materially affected the election in question. It shall not be construed to be saying that false or wrong mentioning of educational credentials *per se* would go with impunity.

(iii) Paragraph (t) of the petition avers that the Returned Candidate has failed to disclose particulars of the dependants namely a son and a daughter and that the Candidate has falsely mentioned 'Nil' in the column relating to dependants. This averment is taken admittedly on the basis of a News report published in Samyukta Karnataka Daily Newspaper dated 5.6.2023. Petitioner assumes that merely because the son of the Returned Candidate is prosecuting studies in law, he is dependant. He also assumes that the candidate's daughter studying in a college too is a dependant. This is too farfetched, to say the least. Courts approach to the averments in an Election Petition has to be a bit in variance with that to the plaint averments in suit proceedings.

(iv) At this stage of the petition, a mini-trial is not being held, is true. That being said, one cannot ignore what the Apex Court observed about the authenticity of the Newspaper reports in **LAXMI RAJ SHETTY vs. STATE OF TAMIL NADU**¹⁵:

"...We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspapers is only hearsay evidence. A newspaper is not one of the documents referred to in s. 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under s. 81 of the Evidence Act to a newspapers report cannot be treated as proved of the facts reported therein."

It is not the case of petitioner that they are minor children, either. Petitioner except producing a copy of the said Newspaper as Annexure-F has not done anything further. Nothing is averred as to dependency of a son and a daughter of the Returned Candidate. Added admittedly, the father of these children is in public employment.

¹⁵ AIR 1988 SC 1274,

4.8 AS TO NOT MAINTAINING SEPARATE, TRUE & CORRECT ACCOUNT OF ELECTION EXPENDITURE:

(A) Sections 73 & 77 of the 1951 Act enact a duty on the person in the electoral fray to maintain a true & correct and a separate account of election expenditure. After scanning these provisions amongst other in **ASHOK SHANKARRAO CHAVAN VS MADHAVRAO KINHALKAR**¹⁶, what the Apex observed in para 42 being relevant, is reproduced:

"...When we read Section 77(1), it is specified therein that every candidate should keep a separate and correct account of all the expenditure in connection with the election that was incurred as between the date on which his nomination was made and the date of declaration of the result thereof i.e. inclusive of both the dates. A careful reading of Section 77(1) makes it significantly clear that a candidate contesting in an election, should maintain a separate and correct account of all expenditure incurred by him in connection with the election. Section 73(3) makes it mandatory that the total of the expenditure in connection with an election should not exceed such amount as may be prescribed. Here and now we can point Special Leave Petition C.A.5044 of 2014 [@ SLP (C) No.29882 of 2011] 51 of out that under Rule 90 of the Rules, the total of the expenditure that can be expended for which account is to be maintained under Section 77 has been prescribed in a separate table applicable to different States, in respect of their Parliamentary Constituency and Assembly Constituency. Therefore, reading Section 77(3) along with Rule 90 and Section 77(1), what ultimately emerges is that every candidate contesting in an election should maintain a separate account relating to the election, that such account should contain all the expenditures incurred by him in connection with the election and most importantly such details of the account and the expenses incurred must reflect the correct particulars apart from ensuring that such expenditure does not exceed the maximum limit prescribed under Rule 90 as stipulated under Section 77(3)."

¹⁶ (2014) 7 SCC 99

(B) In light of above exposition of law, let me examine petition averments as to the Returned Candidate not complying with the duty to disclose true & correct account of election expenditure incurred by him.

(i) The petition averment at paragraph 10 reads as under:

"That for the information the petitioner downloaded the copy of Register for Maintenance of Day to day Accounts of Election Expenditure by Contesting Candidates (part-A) from the Kolar District Administration website of District Electoral Officer, Kolar District, uploaded by the Returning officer, 146-Kolar gold Field (SC), Assembly constituency of First respondent. In this copy of document she mentioned nil expenses on 17.04.2023 even though she filed her second nomination paper along with sworn affidavit in form 26 on 17.04.2023, is in violation of Section 77 of the RP Act and thereby committed corrupt practice under Section 123(6) of the RP Act. The downloaded copy of the Register for Maintenance of Day to day Accounts of Election Expenditure of the first Respondent is produced Annexure-G."

(ii) The petition averment at paragraph 11 has the following text:

"The Petitioner further submits that, the first respondent has failed to maintain Separate Election Account for all expenditures in connection with the election, even though she has opened the separate S/B account at SBI, KGF on 12.04.2023 and filed her first Nomination papers on 13.04.2023 she has not disclosed the details of the separate election account in affidavit form 26 and failed to maintain true and correct account of all expenditures including nomination filing charges in connection with the election, she filed her second nomination paper along with Affidavit in Form 26 on 17.04.2023 but the first respondent failed to disclose the separate election account details in her affidavit in form 26, thereby she filed the false affidavit. The copy of SBI Account opened by the 1st respondent on 12.04.2023 is produced as Annexure-H."

(iii) Petitioner in so many words at para 11 has specifically averredly admitted that the Returned Candidate "has opened the separate S/B account at SBI, KGF on 12.04.2023..." The averments as to non-mentioning of election expenditure are structured on the basis of what is stated in the

affidavits in Form 26 accompanying the Nomination Papers. As on the date of filing the Nomination Papers, what expenditure has been incurred by the Returned Candidate is not specified. The deposit to be made as a precondition for being in the electoral fray, arguably is not an expenditure. Learned Sr. Advocate appearing for the Returned Candidate is more than justified in contending that till date of filing of the Nomination Papers, what is incurred as expenditure need not be disclosed inasmuch as, a person acquires candidature only after the filing of Nomination Papers. At the stage of scrutiny of Nomination Papers, one cannot expect the Returning Officer to undertake a roving enquiry into the expenditure, regard being had to the nature of his jurisdictional limits and shortness of the period between the filing of Nomination Paper and undertaking of scrutiny.

In the above circumstances, the Applications in I.A.No.3/2024 filed by the Returned Candidate having been favoured, the petition averments at paras 5 to 22 & 29 are struck off. As a consequence & corollary, the accompanying Application in I.A.No.4/2024 having been allowed, the petition in E.P.No.3/2023 is rejected, costs having been made easy.

This court places on record its deep appreciation for the able research & assistance rendered by its official Research Assistant Mr.Raghunandan K.S.

Sd/-
(KRISHNA S DIXIT)
JUDGE

By Order,

(PAWAN DIWAN)
SECRETARY
ELECTION COMMISSION OF INDIA

By order and in the name of the
Governor of Karnataka

(MADHU A.C)
Under Secretary to Government
D.P.A.R (Elections)