



ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು
ವಿಶೇಷ ರಾಜ್ಯ ಪತ್ರಿಕೆ

ಭಾಗ - ೪ Part - IV	ಬೆಂಗಳೂರು, ಮಂಗಳವಾರ, ೧೦, ಫೆಬ್ರವರಿ, ೨೦೨೬ (ಮಾಘ , ೨೧, ಶಕವರ್ಷ, ೧೯೪೭) BENGALURU, TUESDAY, 10, FEBRUARY, 2026 (MAGHA , 21, SHAKAVARSHA, 1947)	ಸಂ. ೧೪೧ No. 141
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PERSONNEL AND ADMINISTRATIVE REFORMS SECRETARIAT (ELECTIONS) NOTIFICATION

No. DPAR 03 CHUTHAA 2026, Bengaluru, Dated: 10th February 2026.

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

Dated: 8th December, 2025
17 Agrahayana, 1947 (Saka)

NOTIFICATION

No. 82/KT-LA/200002/2023:- 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/orders of the High Court of Karnataka, Kalaburagi Bench, Kalaburagi dated 25.06.2025 in the Election Petition No. 200002/2023.

**IN THE HIGH COURT OF KARNATAKA,
KALABURAGI BENCH**

DATED THIS THE 25TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MRS JUSTICE M G UMA

ELECTION PETITION NO. 200002 OF 2023

BETWEEN:

SRI. ASHWATHRAM
S/O. TUKARAM RATHOD
R/AT: 1-9-103, WARD NO.7,
TUKARAM NAYAK TANDA
STATION, TANDA NEAR
SEVALAL TEMPLE CHITTAPUR,
KALABURAGI, KARNATAKA - 585 211.

... PETITIONER

(BY SMT: PRAMILA NESARGI, SR ADVOCATE FOR
SRI: G. DEVARAJE GO
SMT: G. PRIYANKA, ADVOCATES)

AND:

SRI. PRIYANK KHARGE
S/O. MALLIKARJUN KARGE
R/AT: NO.9999
GUNDUGURTHI VILLAGE TALUK
CHITTAPUR DISTRICT
KALABURAGI - 585 317.

... RESPONDENT

(BY SRI: K.N. PHANINDRA, SR ADVOCATE FOR
SRI: ASHWIN CHIKMATH ALONG WITH
SRIYUTHS: S M PARITOSH, ROHAN HOSMATH &
A.H. ABHISHEK GOWDA, ADVOCATES)

THIS ELECTION PETITION IS FILED UNDER SECTION 81 OF THE REPRESENTATION OF PEOPLE ACT, 1951, PRAYING A) TO DECLARE THAT THE DECLARATION OF RESULTS OF RESPONDENT NO.1, ANNEXURE-C FOR THE ASSEMBLY CONSTITUENCY - 40 - CHITTAPUR (SC) AS VOID; B) DECLARING THAT RESPONDENT NO.1 HAS COMMITTED CORRUPT PRACTICE UNDER SECTION 123(1), 123(2), 123(4), 123(6) OF THE REPRESENTATION OF PEOPLE ACT, 1951 AND HE WAS NOT QUALIFIED TO BE CHOSEN TO FILL THE SEAT OF 40 - CHITTAPUR (SC) ASSEMBLY CONSTITUENCY UNDER SECTION 100 (1) (B), (1) (D) (IV) OF THE REPRESENTATION OF PEOPLE ACT, 1951; C) TO DECLARE THAT THE RESULT OF THE ELECTION OF RESPONDENT NO.1 HAS BEEN MATERIALLY AFFECTED BY THE IMPROPER RECEPTION AND COUNTING VOTES IN FAVOUR OF RESPONDENT NO.1 AS VOID UNDER SECTION 100 (1) (A) (D) (IV) AND

DISQUALIFY HIM FOR A PERIOD OF 6 YEARS FROM CONTESTING IN ELECTIONS; D) TO DECLARE THE VOTES RECEIVED AND COUNTED IN FAVOR OF RESPONDENT NO.1 AS IMPROPER

RECEPTION AND TREAT THEM AS VOID, WASTED AND THROWN AWAY VOTES; E) TO MAKE AN ORDER REGARDING THE CORRUPT PRACTICE COMMITTED BY PERSONS OTHER THAN RESPONDENT NO.1 IN THE ELECTION HELD FOR 40-CHITTAPUR (SC) ASSEMBLY CONSTITUENCY AND TO NAME THEM AND TAKE ACTION AS CONTEMPLATED UNDER SECTION 99; F) PASS SUCH OTHER ORDERS DEEMED NECESSARY UNDER SECTION 125(A) OF REPRESENTATION OF PEOPLE ACT, 1951, AND; G) TO REWARD COSTS AND SUCH OTHER CONSEQUENTIAL RELIEF/RELIEFS IN THE CIRCUMSTANCES OF THE CASE.

THIS ELECTION PETITION HAVING BEEN HEARD AND RESERVED ON 06.06.2025 AND COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT PASSED THE FOLLOWING: CORAM: HON'BLE MRS JUSTICE M G UMA

CAV ORDER

The petitioner has filed this petition under Section 81 of the Representation of the People Act, 1951 (hereinafter referred to as 'the RP Act') against the respondent seeking the following reliefs:

a) To declare that the declaration of results of Respondent No.1, Annexure for the Assembly Constituency-40-Chittapur(SC) as void;

b) Declaring that Respondent No. 1 has committed Corrupt practice U/s 123(1),123(2),123(4), 123(6) of the Representation of People Act, 1951 and he was not qualified to be chosen to fill the seat of 40- Chittapur(SC) Assembly Constituency U/s 100(1)(b),(1)(d)(iv) of the representation of People Act, 1951;

c) To declare that the result of the election of the Respondent No.1 has been materially affected by the improper reception and counting votes in favor of the Respondent no.1 as void under Section 100(1)(A)(d)(iv) and disqualify him for a period of 6 years from contesting in elections;

d) To declare the votes received and counted in favor of the Respondent No.1 as improper reception and treat them as void, wasted and thrown away votes;

e) To make an order regarding the corrupt practice committed by persons other than the Respondent No.1 in the election held for 40- Chittapur(SC) Assembly constituency and to name them and take action as contemplated under Section 99;

f) Pass such other orders deemed necessary under section 125(A) of Representation of People Act, 1951; and

g) To reward costs and such other consequential relief/ reliefs in the circumstances of the case."

2. It is the contention of the petitioner that the respondent being a successful candidate in the Karnataka Legislative Assembly from 40-Chittapur(SC) constituency, in the general election that was held on 10.05.2023, indulged in corrupt practice as referred to under Section 123(6) of RP Act by being part of the election manifesto and proclaiming to give various guarantees, which is nothing but promising freebies to win over the voters. It is also contended that the caste certificate produced by the respondent while filing his nomination as he belongs to Scheduled Caste was not in a proper format. But the certificate of caste produced by him is for the purpose of contesting Gram Panchayat election for the period 2020-2021, which was made used for the General Assembly election during 2024. Thereby, the respondent has deceived the public by manipulating the facts, which attracts Section 100(1)(2)(a) of RP Act.

3. It is also the contention of the petitioner that the respondent has misled the general public regarding his educational qualification. During 2009 election, he declared that he has studied upto PUC. In 2018, he stated that he has studied PUC during 1996-98. But in the present election during 2024, he has stated that he has studied PUC in the year 1996. But he has given a statement which was reported in the Kannada Prabha daily newspaper that he has studied in law school, which also amounts to corrupt practice as it is an attempt to deceive the general public and to mislead them.

4. It is the further contention of the petitioner that the respondent has adopted the tactics of threatening the opponents by filing false and frivolous complaints. He filed one such complaint with

Chowk Police Station, Kalaburagi, which was registered in Crime No.113 of 2023. He has also filed the complaint against another person, which was registered in Crime No.33 of 2023 of Sadashivanagara Police Station. Registration of these criminal complaints was only with an intention to cause fear in the mind of the general public and also the opponents, which is in violation of Section 123(2) of RP Act. It is the further contention of the petitioner that the respondent has not submitted his returns regarding expenditure incurred for providing the guarantees under manifesto, which attracts Section 123(6) of RP Act. Therefore, the petitioner is seeking the reliefs as stated above.

5. Learned counsel for the respondent has filed IA No.1 of 2023 seeking rejection of the petition.
6. Learned counsel for the petitioner has filed objections to the said application.
7. Heard Smt Pramila Nesargi, learned senior advocate for the petitioner and Sri K N Phanindra, learned senior advocate for the respondent on IA No.1 of 2023. Perused the materials on record.
8. Learned senior advocate for the respondent supporting the application i.e., IA No. 1 of 2023 and opposing the petition submitted that even though the petition runs into more than 40 pages, it lacks material particulars. The petitioner has not made out any cause of action for seeking the relief's from this Court. Under such circumstances, the petition is liable to be dismissed. Since the petition lacks the required particulars and the facts to give rise to a cause of action to attract any of the provisions of RP Act, the petition is liable to be dismissed in *limine*.
9. Learned senior advocate submitted that the caste and income certificate submitted by the respondent, copy of which is produced as per Annexure-A was issued by the Tahsildar of Chittapur in Form-D as prescribed under law. As per this certificate, the respondent belongs to Scheduled caste, which was never disputed by the petitioner. It is not the contention of the petitioner that the respondent does not belong to Scheduled Caste or that he belongs to any other category and was not qualified to contest from Chittapur constituency which was reserved for SC. The only contention raised by the petitioner is that, in the certificate, the Tahsildar has mentioned that the certificate is meant for Gram Panchayat election for the period 2020-2021. By that itself, the respondent will not be liable for disqualification under any of the provisions of law.
10. Learned senior advocate referred to Section 33(2) of RP Act to contend that it is the requirement of law to submit a declaration regarding the caste of the candidate and such requirement is complied by producing the caste certificate issued by the Tahsildar of Chittapur and also by declaring it in the nomination paper. Merely because the Tahsildar has mentioned in the caste certificate that it is meant for Gram Panchayat election for the period 2020-21, it

will not in any manner violate the requirement of law under RP Act. Learned senior advocate submitted that Annexure-J1 is the copy of nomination paper submitted by the respondent, wherein, he has declared that he is the member of Mahar Caste, which is a scheduled caste. It is in compliance of Section 33(2) of RP Act and this fact is never denied by the petitioner. Under such circumstances, this ground is not available for the petitioner to succeed in the matter.

11. Learned senior advocate also contended that on filing of the nomination by the respondent, during scrutiny by the Returning Officer, no one have raised any objection about the caste certificate or disputed his caste. It was never an issue before the Returning Officer. It is also not the contention of the petitioner that the respondent was ineligible to contest the seat for any reason whatsoever. Learned senior advocate placed reliance on the handbook for Returning Officer – Edition-2 August-2022 published by Election Commission of India to highlight about the grounds for rejection of nomination papers by the Returning Officer. Only if it is the fact that the candidate does not belong to Scheduled Caste and if he files a nomination paper to contest a seat reserved for such caste, then only the Returning Officer can reject the nomination paper. Learned senior advocate also referred to the note appended to clause 6.10.1 (viii) to highlight that in order to prevent non SC/ST persons contesting election from reserved constituencies, the Returning Officer at the time of scrutiny of nominations should satisfy himself that the candidates contesting from reserved constituency belong to such caste or tribe as the case may be and whenever there is doubt in the mind of the Returning Officer, he can insist for production of caste certificate issued by the competent authority. But when the Returning Officer is satisfied by verifying the caste certificate of the candidate that he belongs to Scheduled Caste and is contesting for the seat reserved for such category and more so, when no such objections were raised before the Returning Officer, the petitioner cannot have any grievance for seeking disqualification of the respondent on that ground.
12. Learned senior advocate further submitted that no format is prescribed to declare the caste of the candidate under any of the statutes, particularly under RP Act. Section 33(2) of RP Act only mandates a declaration to be filed by the candidate. Such declaration in compliance of the requirement under Section 33(2) of RP Act is filed by the respondent and the copy of which is produced in the petition by the petitioner himself. Under such circumstances, the contention of the petitioner regarding defect in the caste certificate produced which is issued by the competent authority, i.e., the Tahsildar, who is authorized to issue such certificate, cannot be found fault with.

13. Learned senior advocate further submitted that any defect in the nomination papers cannot lead to rejection of the same. As per Section 36(4) of RP Act, only if the defect in the nomination paper is of substantial character, then only the Returning Officer can consider rejection of the same. Moreover, any such objection regarding the defect in the nomination paper is to be raised by the Returning Officer. A specific procedure is prescribed in the Returning officer's handbook at clause 6.10.1 Note on item (viii). Admittedly, no such objection was raised before the Returning Officer either by the petitioner or by any other person. Under such circumstances, the contention of the petitioner in that regard is to be rejected out rightly.
 14. Learned senior advocate submitted that the dispute regarding the caste of respondent that he does not belong to 'Mahar' caste or that the same is not notified in the State of Karnataka as Scheduled Caste was raised for the first time by filing rejoinder after the respondent filed IA No. 1 of 2023, seeking rejection of the petition. There is absolutely no such contention taken in the petition.
 15. Learned senior advocate further contended that regarding educational qualification of the respondent, there is absolutely no dispute that he studied only upto PUC. No one has disputed the said fact as declared in the nomination paper. The contention of the petitioner is with regard to a paper publication dated 12.06.2023, which is much after declaration of election results. No such declaration that the respondent is a law graduate was made in the nomination paper to see disqualification of the respondent. Moreover, it is only the paper cutting produced by the petitioner, which cannot be relied on to form any opinion regarding misleading of the general public as required under RP Act.
 16. Learned counsel placed reliance on the decision of the Hon'ble Apex Court in ***People's Union for Civil Liberties (PUCL and another) Vs Union of India and another¹*** to contend that the Hon'ble Apex Court has made it very clear that information relating to educational qualification of contesting candidates does not serve any useful purpose and by non disclosure of educational qualification of a candidate to enable the general public to know about the same would not in any manner violate Article 19(1)(a) of the Constitution of India. Thus, the Hon'ble Apex Court held that disclosure of information regarding educational qualification of a candidate is not an essential component of Right to Information flowing from Article 19(1)(a) of the Constitution of India. Under such circumstances, even if the respondent has proclaimed that he is a law graduate, it will not
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entitle the petitioner to seek the relief as claimed in the petition. But when admittedly, no such declaration is made by the respondent while filing his nomination paper or during elections, even that ground is not available under Section 123 of RP Act.

17. Learned senior advocate contended that even though it is the contention of the petitioner that Crime No.113 of 2023 of Chowk Police Station was registered against one Manikanta Rathod, the same was after the Assembly Election as it was registered on 19.06.2023. Moreover, the respondent is not the informant, who registered the FIR. Regarding Crime No.33 of 2023 of Sadashivnagara Police Station, it was registered on 13.02.2023 i.e., before declaration of Assembly Election in Karnataka. No further material facts are pleaded nor any particulars were provided to seek disqualification of the respondent on such ground.
18. Learned senior advocate submitted that even though the main contention of the petitioner is that the respondent had indulged in corrupt practices by publishing the Assembly Election manifesto-2023, the petitions filed making similar allegations were already rejected by the co-ordinate Benches of this Court by order dated 26.03.2024 dismissing Election Petition No.14 of 2023 and order dated 25.04.2024 dismissing Election Petition No.15 of 2023. Both the coordinate Benches discussed at length about the very same election manifesto, which is highlighted by the petitioner in this petition and came to a consistent conclusion that the petitioner is not entitled for any relief in the petition and accordingly, the application similar to IA No.1 of 2023 came to be allowed.
19. Learned senior advocate further submitted that even though civil appeals were filed before the Hon'ble Apex Court, challenging both these orders, the same came to be dismissed vide order dated 17.05.2024 keeping open the question of law raised therein to be decided in an appropriate case. Therefore, on facts similar petitions came to be dismissed and the orders reached finality. He further submitted that the similar Election Petition No.13 of 2023 was also dismissed vide order dated 22.04.2025 by the co-ordinate Bench of this Court by allowing the application filed under Order VII Rule 11(a) of CPC, rejecting the petition. Under such circumstances, the petitioner cannot succeed in the present matter.
20. Learned senior advocate placed reliance on the decision of the Hon'ble Apex Court in **S Subramaniam Balaji v/s State of Tamil Nadu**² in support of his contention that the Hon'ble Apex Court considering a similar set of facts where promise was made about freebies by a political party in the State of Tamil Nadu categorically held that scheme for distribution of free goods or freebies as part of public welfare scheme in fulfillment of election

² 2013 9 SCC 659

promises made by the winning political party in its election manifesto, upon coming to power will not amount to corrupt practice. Learned senior advocate submitted that the Hon'ble Apex Court while answering the issue as to whether promises of a political party do constitute a corrupt practice recorded a categorical finding that it does not.

21. Therefore, it is a fit case for rejection of the petition as it does not disclose any cause of action. In view of the above, learned senior advocate prayed for allowing IA No. 1 of 2023 and to reject the election petition as devoid of merits in the interest of justice.

22. *Per contra*, learned senior advocate for the petitioner opposing IA No.1 of 2023 contended that very serious allegations are made against the respondent in the petition, which requires a detailed consideration by this Court. Learned senior advocate contended that the co-ordinate Benches in Election Petition Nos.14 and 15 of 2023 have not taken into consideration the contentions taken by the petitioners, while passing the order. She also submitted that due to health reasons, she could not appear before the Hon'ble Apex Court when the civil appeals came to be disposed off. Therefore, a review petition is filed seeking permission to address the arguments on merits in detail. Such a request was accepted by the Hon'ble Apex Court and the matter is now pending for consideration. Therefore, she submits that the decisions rendered by the co-ordinate Benches of this Court in Election Petition Nos.14 and 15 of 2023 are pending before the Hon'ble Apex Court and the same cannot be a basis to allow IA No. 1 of 2023.

23. Learned senior advocate further submitted that the facts and circumstances of the case made out in ***S Subramaniam Balaji (supra)*** were entirely different. The summary of the case as highlighted in paragraph 84 discloses that judicial interference is permissible when the acts of respondent is unconstitutional or contrary to the statutory provisions, and when the expenditure that are being incurred is not for the benefit of the State. The Hon'ble Apex Court has also made it clear that when the schemes challenged are not in consonance with Article 14 of the Constitution of India, interference by the Court is mandated. The Hon'ble Apex Court has also made it very clear that the constitution has provided various checks and balances before implementing the scheme. The observation of the Hon'ble Apex Court regarding passing of suitable appropriation bill for implementation of such schemes is no more *res-integra* in view of its later decision in ***Bhim Singh Vs Union of India***³, wherein, the Hon'ble Apex Court settled the scheme for its proper implementation. Therefore,

³ (2010) 5 SCC 538

a scheme for implementation is before us and the manifesto, which is under challenge in this petition could be considered under the said scheme.

24. Learned senior advocate alternatively contended that Article 323-A(2)(d) of the Constitution of India excludes the jurisdiction of either the High Court or Supreme Court, except the jurisdiction of Hon'ble Apex Court under Article 136 of the Constitution of India to entertain any matter pertaining to the process of election. Article 323(b)(f) of the Constitution of India refers to elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in Articles 329 and 329A and accordingly, the RP Act was enacted. It is only the Election Tribunal which is constituted in accordance with the provisions of Constitution of India will have the right to consider all these questions pertaining to the elections. She also referred to Article 329-B of the Constitution of India to contend that there is a bar for interference in such matters even by the constitutional Court except under Article 136 of the Constitution of India. But the Hon'ble Apex Court in ***S Subramaniam Balaji (supra)*** assumed jurisdiction to consider all these questions and to give a finding while acting under its writ jurisdiction. Therefore, the said decision is without jurisdiction and without authority of law. Hence, it is to be ignored by this Court. It is only the Election Tribunal constituted under the provisions of Constitution of India is competent to consider any such matters but not either the High Court or Supreme Court invoking the writ jurisdiction.
25. Learned senior advocate referred to the preamble of RP Act, 1951, to contend that the Parliament has enacted the law to guide conduct of elections to the House of Parliament and House of Legislature of each State and also to consider qualifications or disqualifications of the members. It is to check the corrupt practices and other offences connected with such elections and also to consider the disputes arising out of or in connection with such elections.
26. Learned senior advocate by referring the definitions of the word 'appropriate authority', 'election' and 'political party' as defined under Section 2(b), (d) and (f) of RP Act, 1951 along with Section 29-A of RP Act in part IV-A, contended that the Karnataka Pradesh Congress Committee (KPCC) is not a political party recognized under the Act. It is only the Indian National Congress which was registered as a political party is recognized by law. She further submitted that the election manifesto produced as per Annexure-F was not issued by Indian National Congress as tried to be projected, but it was by KPCC, which makes all the difference. Learned senior advocate also referred to Section 2(h) of the Election Symbols (R & A) Order 1968 in support of her such contention. Under such circumstances, KPCC not being a registered political party, could not have issued the election manifesto promising to

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- distribute freebies which is detrimental to the fiscal health of the State. The Committee could not have indulged in corrupt practice of polluting the minds of the voters for the purpose of getting the votes and spend public money lavishly unmindful of the development of the State.
27. Learned senior advocate referring to IA.1 of 2023 filed under Order VII Rule 11(a) of CPC read with Section 87 of RP Act contended that none of these provisions are applicable for the respondent to seek rejection of the petition. The election petition is filed by the petitioner as per the procedure contemplated under High Court Rules. The requirement as referred to in Sections 81, 82, 83 and 117 of RP Act are complied with in letter and spirit. Order VII Rule 11(a) of CPC refers to rejection of the plaint when it does not disclose cause of action. The petitioner has stated in so many words about the cause of action for filing the petition. Hence, the application cannot be entertained.
28. Learned senior advocate referring to the decisions of the constitution Bench of the Hon'ble Apex Court in **Minerva Mills Ltd. and Others Vs Union of India and Others⁴** and **S R Bommai Vs Union of India⁵** contended that the Hon'ble Apex Court ignored the verdict of two larger Benches while deciding **S Subramaniam Balaji (supra)** and thus, exceeded its authority and passed the order without jurisdiction. Since the decision of **S Subramaniam Balaji (supra)** is *per-incurium*, this Court is bound to ignore the same.
29. Learned senior advocate referring to the points for consideration raised in **S Subramaniam Balaji (supra)** in paragraph 55 contended that the facts of the case considered by the Hon'ble Apex Court was entirely different as the Court was considering the scheme referred to therein to give a finding as to whether it is violative of Article 14(2) of the Constitution of India. She referred to Annexure-F - Election manifestation ensuring 5 guarantees to contend that the same would not fall under the purview of public purpose which is referred to in Chapter-IV of the Constitution of India. While Article 14(2) of the Constitution of India falls under Chapter-III which refers to equality before law, the 5 guarantees declared in the election manifesto are in clear violation of Article 14(2) of the Constitution of India. Free bus, Gruhalakshmi and other guarantees were restricted only for ladies without there being any reasonable justification. When the schemes violate Article 14(2) of the Constitution of India and this discrimination is only on the basis of sex, even
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according to the decision of **S Subramaniam Balaji** (*supra*), this Court is required to interfere with.

30. Learned senior advocate submitted that in **S Subramaniam Balaji** (*supra*), the Court has not decided its jurisdiction and the same was kept open. With reference to Order VII Rule 11(d) of CPC, she submitted that it refers to the words 'barred by any law'. Since the word "law" not only refers to the law enacted by Parliament or State Legislature, but it also includes the law laid down by the Hon'ble Apex Court by virtue of Article 141 of Constitution of India.
31. Learned senior advocate referred to Article 323-A of Constitution of India which refers to Administrative Tribunals and highlighted Article 323A(2)(d) of the Constitution of India to contend that the Tribunal constituted in this Chapter excludes the jurisdiction of all Courts, except the jurisdiction of Supreme Court under Article 136 of Constitution of India. When there is clear exclusion of jurisdiction of even the Hon'ble Apex Court, except its jurisdiction under Article 136 of Constitution of India, it could not have been proceeded to decide the matter, exercising its power under Articles 32 and 226 of Constitution of India. Therefore, the decision of the Hon'ble Apex Court in **S Subramaniam Balaji** (*supra*), is without jurisdiction. Hence, the same may be ignored.
32. Learned senior advocate further submitted that it is the settled proposition of law that under Order VII Rule 11 of CPC, to consider as to whether the plaint is to be rejected or not, only the averments made in the plaint is to be taken into consideration along with the documents relied on by the plaintiff. The defence taken by the respondent in the objection statement or the documents that are produced by him are not relevant to be taken into consideration at this stage. Moreover, the averments made in the plaint is to be considered as a whole. It is also the settled proposition of law that if complicated question of law is to be decided, then the Court will not venture to proceed to reject the plaint at the threshold, but an opportunity will have to be given to the petitioner to prove his contention and the decision could be taken regarding the defence taken by the respondent only after full-fledged trial.
33. Learned senior advocate referred to the decision of the Hon'ble Apex Court in **Kimneo Haokip Hangshing v/s Kenn Raikhan and Others**⁶ to contend that the election petition cannot be rejected at the threshold when disputed facts are raised by the petitioner, which is to be considered after full-fledged trial.

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34. Learned senior advocate referred to the decision of Hon'ble Apex Court in ***Dahiben Vs Arvindbhai Kalyanji Bhanusali & Others***⁷ particularly paragraph Nos.23.3 to 23.6 to contend that even if this Court finds that there is no cause of action specifically stated by the petitioner or disclosed in the petition, the Court is required to scrutinize the entire petition and the documents that are produced in support of such contentions. If the contentions taken by the petitioner give rise to a cause of action, then the petition is not liable for rejection. Learned senior advocate submitted that a pen drive containing the speeches made by the respondent and voluminous documents which are relevant to be taken into consideration at the time of trial are produced. Therefore, a full-fledged trial is to be held to enable the petitioner to prove the allegations, but it is not a case to throw away the petition of the petitioner at the threshold.
35. Learned senior advocate contended that even though the respondent contends that the co-ordinate Benches of this Court have rejected the petition in similar matters, nonfiling of the caste certificate in the prescribed format, filing of several criminal cases either to threaten or to influence the voters are the peculiar facts pleaded in the present petition. Under such circumstances, the decision of the co-ordinate Benches will not have any bearing in this matter.
36. Learned senior advocate further submitted that in ***S Subramaniam Balaji (supra)***, at paragraph No.81, it is categorically held that the correct forum to decide the issue is the Election Tribunal and not the writ Court in a writ petition. In paragraph 83, the Hon'ble Apex Court made it clear that the point of jurisdiction of the Hon'ble Apex Court is kept open. In paragraph 84, it recorded the summary of the finding to hold that the scheme challenged in that petition is in consonance with Article 14 of Constitution of India. Whereas in the present case, some of the guarantees declared are meant only for women, which is in clear violation of Article 14 of Constitution of India. It amounts to discrimination and denial of equality before the law to all persons within the State, which is the mandate of the Constitution of India.
37. Learned senior advocate contended that even though the scheme of freebies is not challenged in this petition by seeking a specific prayer, the petition is well within Section 100 of RP Act, which is a self-contained enactment. Learned senior advocate referred to the decision of the Hon'ble Apex Court in ***Kanimozhi Karunanidhi v/s A Santhana***
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Kumar & Ors^s and pointed to Paragraphs 18, 19 and 20 to contend that the position of law is made very clear by the Hon'ble Apex Court. Therefore, it is contended by the learned senior advocate that this Court being the Election Tribunal is having jurisdiction to decide the issue that is to be framed on the basis of pleading of the parties. No grounds are made out for rejection of the petition at the threshold. Hence, she prays for dismissal of IA No.1 of 2023 and for framing issues.

38. In view of the rival contentions urged by learned counsel for the parties, the point that would arise for my consideration is:

"Whether the respondent has made out any ground to allow IA No.1 of 2023 filed for rejection of the petition?"

My answer to the above point is in the 'Affirmative' for the following:

REASONS

39. It is noticed that the petitioner has approached this Court under Section 81 of RP Act to declare that the respondent has followed corrupt practice and was not qualified to be chosen to contest the Assembly Election from 40-Chittapur(SC) constituency and therefore, the declaration of election result in favour of the respondent is to be held as void. Broadly, the contention of the petitioner could be classified into 4 categories. Primarily, it is the contention of the petitioner that since the Karnataka Pradesh Congress Committee published its election manifesto, assuring of providing five guarantees if they win in the election, it amounts to corrupt practice. Since the respondent is also part of the Committee as he has proclaimed such guarantees if he is successful in the election and in view of the same he got elected, he is to be disqualified in view of Sections 123(1), 123(2), 123(4), 123(6) of RP Act. Secondly, it is the contention of the petitioner that the caste certificate produced by the respondent while filing the nomination was meant for Gram Panchayat election for the period 2020-21. The same was not valid for the Assembly Election and therefore, the respondent is to be disqualified. Thirdly, it is the contention of the petitioner that the respondent has misled the voters regarding his educational qualification by giving different versions at different times. It is stated that he proclaimed that he is a law graduate even though he declared that he studied only upto PUC in the earlier nomination papers. Fourthly, it is the contention of the petitioner that a false criminal cases

were registered by the respondent against others to threaten them from participating freely in the general election.

40. The respondent has filed IA.1 of 2023 seeking rejection of the petition under Order VII Rule 11 of CPC. On consideration of the rival contentions as highlighted above, learned senior advocate for the respondent has contended broadly that there is no format prescribed under RP Act to declare the caste of the candidate. Section 33 (2) of RP Act only mandates declaration of his caste which the respondent has declared in the nomination paper. The copy of nomination paper is produced before this Court where the respondent has specifically declared that he is a member of Mahar - which is a scheduled caste. It is not the contention of the petitioner that the respondent does not belong to Mahar caste nor it is his contention that Mahar caste is not a Scheduled Caste. The only contention raised by the petitioner is that the format produced as per Annexure-A is meant to be submitted to the Gram Panchayat election for the years 2020-21 and not for Assembly Election. Section 33(2) of RP Act mandates to provide a declaration by the candidate specifying the caste or tribe of which he is a member and the area in relation to which caste or tribe is a Scheduled Caste or as the case may be a Scheduled Tribe of the State. Therefore, it is the requirement of law under the special enactment that the candidate shall not be qualified to be chosen to fill the seat unless the nomination paper contains such declaration.
41. The materials produced before the Court, in particular Annexure - A is a certificate in Form-B issued by the Tahsildar of Chittapur certifying that the respondent is a member of Mahar - a scheduled caste. The copy of nomination paper submitted by the respondent to the Returning Officer clearly discloses that it contains a declaration that he is a member of Mahar - the Scheduled Caste of the State of Karnataka in relation to Chittapur area. Under such circumstances, the contention of the petitioner that the respondent has not submitted caste certificate in the prescribed format cannot be accepted, that too, when the petitioner never disputed the fact that the respondent is a member of Mahar - Scheduled Caste.
42. The other contention raised by the petitioner is with regard to the respondent indulging in corrupt practice with reference to Section 123 of RP Act. This contention is with reference to the election manifesto relied on by the respondent while contesting the election promising various guarantees which is termed as freebies, to win over the voters.
43. In this regard, learned senior advocate for the respondent placed reliance on decision of the Hon'ble Apex Court in **S Subramaniam Balaji (supra)**, the Hon'ble Apex Court considered the following point as referred to in paragraph

55.1(i) as under:

"55.1(i) Whether the promises made by the political parties in the election manifesto would amount to 'corrupt practices' is as per Section 123 of RP Act?"

44. The Hon'ble Apex Court gave a finding on the above point at paragraphs 57, 61, 61.1, 61.2, 61.3 and 61.4 as under:

"57. Keeping the parameters fixed in the above section, we have to analyse the claim of both the parties hereunder. A perusal of clauses (1) to (8) of Section 123 makes it clear that it speaks only about a candidate or his agent or any other person. There is no word about political parties. Taking note of the conditions mandated in those sub-sections, let us test the respective stand of both the parties.

61. As appealing this argument may sound good, the implementation of this suggestion becomes difficult on more than one count:

61.1. Firstly, if we are to declare that every kind of promises made in the election manifesto is a corrupt practice, this will be flawed. Since all promises made in the election manifesto are not necessarily promising freebies per se, for instance, the election manifesto of a political party promising to develop a particular locality if they come into power, or promising cent per cent employment for all young graduates, or such other acts. Therefore, it will be misleading to construe that all promises in the election manifesto would amount to corrupt practice. Likewise, it is not within the domain of this Court to legislate what kind of promises can or cannot be made in the election manifesto.

61.2. Secondly, the manifesto of a political party is a statement of its policy. The question of implementing the manifesto arises only if the political party forms a Government. It is the promise of a future Government. It is not a promise of an individual candidate. Section 123 and

other relevant provisions, upon their true construction, contemplate corrupt practice by individual candidate or his agent. Moreover, such corrupt practice is directly linked to his own election irrespective of the question whether his party forms a Government or not. The provisions of the RP Act clearly draw a distinction between an individual candidate put up by a political party and the political party as such. The provisions of the said Act prohibit an individual candidate from resorting to promises, which constitute a corrupt practice within the meaning of Section 123 of the RP Act. The provisions of the said Act place no fetter on the power of the political parties to make promises in the election manifesto.

61.3. Thirdly, the provisions relating to corrupt practice are penal in nature and, therefore, the rule of strict interpretation must apply and hence, promises by a political party cannot constitute a corrupt practice on the part of the political party as the political party is not within the sweep of the provisions relating to corrupt practices. As the rule of strict interpretation applies, there is no scope for applying provisions relating to corrupt practice contained in the said Act to the manifesto of a political party.

61.4. Lastly, it is a settled law that the courts cannot issue a direction for the purpose of laying down a new norm for characterising any practice as corrupt practice. Such directions would amount to amending provisions of the said Act. The power to make law exclusively vests in the Union Parliament and as long as the field is covered by parliamentary enactments, no directions can be issued as sought by the appellant. As an outcome, we are not inclined to hold the promises made by the political parties in their election manifesto as corrupt practice under Section 123 of the RP Act."

45. Thus, the Hon'ble Apex Court considered similar questions as to whether giving promises in the election manifesto by the political parties would amount to corrupt practices or not as referred to under Section 123 of RP Act, recorded a clear finding that it is not. It is held that it is left to the discretion of the Parliament to lay down any norms. Under such circumstances, this Court cannot proceed to give a finding inconsistent with the findings recorded by the Hon'ble Apex Court.
46. Learned senior advocate for the petitioner referring to paragraphs 85 and 86 in **S Subramaniam Balaji** (*supra*) contended that the Hon'ble Apex Court indeed has held that distribution of freebies of any kind undoubtedly influence all people which shakes the root of free and fair election to a large degree and therefore, directed Election Commission to frame guidelines in consultation with the registered political parties which could act as a moral code of conduct for the purpose of reserving purity of the election process and to enable the Commission to hold free and fair election. Accordingly, the Election Commission of India framed model code of conduct after convening the meeting with all the registered political parties. Therefore, it cannot be said that the Hon'ble Apex Court has accepted such corrupt practice of giving guarantees about distribution of freebies by a political party while contesting the election.
47. The Hon'ble Apex Court considered the contentions of the parties before it elaborately where the Government of Tamilnadu had come up with similar election manifesto of distributing colour TVs, Laptops, Mixer Grinders etc., to a group of citizens. It is held that the concept of livelihood and standard of living has changed considerably as the time passes. What was once considered to be a luxury has become a necessary after efflux of time. Since the concept of livelihood is no longer confined to bare physical existence by providing food, cloth and shelter, it was held that distributing largesse in the form of such colour TVs, Laptops etc., to a group of persons is directly related to Directive Principles of State Policy. The Hon'ble Apex Court has also held that the functioning of the Government is controlled by the Constitution, the laws of the land, the Legislature and the Comptroller and Auditor General of India. It refers to Articles 73 and 162 of the Constitution of India, dealing with executive power of Union of India and the State, which is co-extensive with its legislative power, enables the Government to frame a scheme in exercise of its executive powers. It is also noticed that there are various checks and balances within the mandate of Constitution before a scheme can be implemented as long as such schemes are within the realm of public purpose and the money for the scheme is withdrawn with appropriation of bills. Under such circumstances, it was held that the Court has limited power to interfere with such schemes.

The Hon'ble Apex Court considering the rival contentions raised before it summarized its findings at paragraph 84 of the judgment and held that the promises in the election manifesto cannot be read into Section 123 of RP Act for declaring it to be a corrupt practice. Thus, such promises in the election manifesto do not constitute as a corrupt practice under prevailing law. By referring to its earlier decision in **Ramachandra G Kapse Vs Haribansh Ramakbal Singh⁹**, re-iterated that ex-facie contents of a manifesto by itself cannot be a corrupt practice committed by the candidate of that party.

48. It is relevant to note that such schemes were challenged in the said writ petition and in the light of such challenge, it was held that it falls within the realm of fulfilling Directive Principle of State Policy and thereby falling within the scope of public purpose. It is also made clear that judicial interference is permissible only when the action of the Government is unconstitutional or contrary to a statutory provision and not when such action is not wise or that the extent of expenditure is not for the good of the State. The Court held the petition before it is fit for dismissal *dehors* the jurisdiction issue and held that such issue of jurisdiction is left open to be considered by the Court later.

49. The Hon'ble Apex Court, however, held that in reality distribution of freebies of any kind undoubtedly influences all people, it shakes the root of free and fair election to a large degree. It vitiates the electoral process. However, it is stated that the Court has limited power to issue directions to the legislature to legislate on a particular issue. Therefore, the Election Commission of India was called upon to frame guidelines for the same in consultation with all the recognized political parties for election manifesto to be released by political party in the form of model code of conduct for such parties and the candidates. The Hon'ble Apex Court dealt with similar issue of promising distribution of freebies in the election manifesto and observed that such practices would definitely affect the fiscal health of the State and influences the general public in exercising their franchise, which is already highlighted by the Hon'ble Apex Court with necessary directions to the Election Commission. In the meantime, the Court has also exercised restraint to interfere with distribution of such freebies as promised in the manifesto.

50. When the Hon'ble Apex Court after considering the objections regarding its jurisdiction kept it open to be decided in any other appropriate matter, the contention of the learned senior advocate for the petitioner to ignore the decision in **S Subramaniam Balaji (supra)** on the ground that it is inconsistent, passed without jurisdiction or that it is *per-incurium*, cannot be accepted.

51. It is pertinent to note that KPCC, the State unit of Indian National Congress has issued the manifesto providing 5 guarantees to the citizens if they are elected to power. Admittedly, as many as

136 candidates won the elections with the help of same election manifesto. It is a matter of fact that the petitioner has never challenged declaration of results of many such candidates, but has chosen to challenge the election of the respondent. Moreover, there is no reason for not challenging the scheme of such manifesto issued by the political party.

52. It is brought to the notice of the Court that similar petitions were filed before this Court in Election Petition Nos.13, 14 and 15 of 2023, wherein similar contentions were raised. In all these petitions, the applications that were filed under Order VII Rule 11 of CPC were allowed and the Election Petitions were dismissed, as there is no cause of action and there is no triable issue. Admittedly, in Election Petition Nos.14 and 15 of 2023 the orders passed by the co-ordinate Benches of this Court were challenged before the Hon'ble Apex Court, but the same were not entertained. Under such circumstances, I do not find any merit in the contention raised by the learned senior advocate to dismiss the application filed by the respondent.

53. In view of all these facts and circumstances, without discussing much on the subject, I am of the opinion that the contention taken by the petitioner that the election manifesto of which the petitioner is a party, amounts to corrupt practice as referred to in Section 123 of RP Act, is liable to be rejected and accordingly, it is rejected.

54. The next contention raised by the petitioner is with regard to registration of false criminal cases by the respondent against others in order to threaten and prevent them from participating freely in the general election. The materials placed before the Court discloses that Crime No.113 of 2023 of Chowk Police Station was registered against one Manikanta Rathod, but the same was registered on 19.06.2023 i.e., after Assembly Election and moreover, the informant was not the respondent, but it was somebody else. There is reference to Crime No.33 of 2023 of Sadashivanagar Police Station, which was registered on 13.02.2023 i.e., before declaration of Assembly Election in Karnataka. Under such circumstances, even this contention taken by the petitioner cannot be accepted.

55. The other contention raised by the petitioner is with regard to non disclosure of proper educational qualification of the respondent in the nomination paper and thereby misleading the voters. It is contended by the petitioner that there was a paper publication with reference to the respondent that he is a law graduate. But his declaration in the nomination papers is that he studied only upto PUC. Admittedly, even in earlier declarations, the respondent has declared his educational qualification as PUC. Under such circumstances, the paper publication cannot be relied on to contend that the same was with an intention to mislead the voters. Interestingly, this paper publication is dated 12.06.2023, which is much after declaration of election results.

56. The Hon'ble Apex Court in ***People's Union for Civil Liberties (supra)***, made it clear that information relating to education qualifications of contesting candidates do not serve any useful

purpose and non disclosure of the same will not violate Article 19(1)(a) of the Constitution of India. Thus, it is held that the information regarding educational qualification of a candidate is not essential component of Right to information. Moreover, the special enactment does not mandate disclosure of such information while filing the nomination paper. Under such circumstances, even this contention of the petitioner is liable to be rejected and accordingly, it is rejected.

57. It is pertinent to note that after considering the contentions taken by the petitioner, it is not satisfying any of the grounds highlighted under Section 100 of RP Act to declare the election to be void. It is settled proposition of law that in order to exercise power under Order VII Rule 11 of CPC, only the averments made in the plaint is to be taken into consideration. Even after taking into considerations the averments made in the plaint, if it does not disclose cause of action, then the plaint is liable to be rejected. In the present case, the election petition which is in the form of plaint does not disclose any cause of action to try the petition. It is the settled position of law that there has to be pleading of material facts for the purpose of raising serious triable issue. In the absence of any such material facts, it cannot be said there is any triable issue and therefore, the petition is liable to be rejected.

58. In view of the above, I am of the opinion that the petitioner has not made out any grounds to frame an issue to try the same. The grounds made out in the petition do not disclose any cause of action and under such circumstances, the application IA.1 of 2023 filed by the respondent is liable to be allowed. Accordingly, I answer the above point in the affirmative and proceed to pass the following:

ORDER

- I) IA.1 of 2023 filed by the respondent under Order VII Rule 11(a) of CPC read with Section 87 of the Representation of People Act, 1951, is hereby **allowed**.
- II) Consequently, the Election Petition is **rejected**.
In view of the rejection of election petition, all pending IAs stands disposed off.

Sd
(M G UMA)
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).