



കേരള ഗസറ്റ് KERALA GAZETTE

അസാധാരണം EXTRAORDINARY

ആധികാരികമായി പ്രസിദ്ധപ്പെടുത്തുന്നത്
PUBLISHED BY AUTHORITY

വാല്യം 13
Vol. XIII

തിരുവനന്തപുരം,
ബുധൻ

Thiruvananthapuram,
Wednesday

2024 ഡിസംബർ 18
18th December 2024

1200 ധനു 3
3rd Dhanu 1200

1946 അഗ്രഹായണം 27
27th Agrahayana 1946

നമ്പർ
No.

4019

GOVERNMENT OF KERALA

Election (General) Department

NOTIFICATION

No. EL2/594/2024-ELEC.

Dated, Thiruvananthapuram, 11th December, 2024.

Notification No. 82/KL-LA/9/2021 dated 3rd December, 2024 of the Election Commission of India, is hereby published along with judgment/Order of Hon'ble High Court of Kerala dated 5th November, 2024 passed in the Election Petition No. 9 of 2021.

By Order,

DR. RATHAN U KELKAR IAS,
Chief Electoral Officer and Secretary.



To be published in an
extraordinary issue of
the Kerala State Gazette

By Post

भारत निर्वाचन आयोग
ELECTION COMMISSION OF INDIA

निर्वाचन सदन,
अशोक रोड, नई दिल्ली-110001

Nirvachan Sadan,
Ashoka Road, New Delhi-110001

No 82/KL-LA/9/2021

Dated: 3rd December, 2024
12 Agrahayana, 1946 (Saka)

NOTIFICATION

No 82/KL-LA/9/2021 – 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 Kerala dated 05.11.2024 passed in the Election Petition No. 9 of 2021.

(HERE PRINT THE JUDGMENT / ORDER ATTACHED)

By Order


(Binod Kumar)
SECRETARY
ELECTION COMMISSION OF INDIA





2024:KER:81633

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

TUESDAY, THE 5TH DAY OF NOVEMBER 2024/14TH KARTHIKA, 1946

EL.PET.NO.9 OF 2021

PETITIONER:

C.V.JOHN, AGED 58 YEARS, S/O.VARKEY,
CHERUTHANICKAL HOUSE, PALAKKADU,
MEENACHIL P.O.-686577, KOTTAYAM DISTRICT
PARTY IN PERSON)

BY ADV.SUNIL CYRIAC

RESPONDENTS:

- 1 MANI C.KAPPEN, KAPPIL HOUSE, MUNDAKAL P.O.,
PALA - 686 574, KOTTAYAM DISTRICT.
- 2 JOSE K.MANI, KARINGOZHACKAL HOUSE, VELLAPPADU,
PALA P.O., PIN-686 575, KOTTAYAM DISTRICT.
- 3 DR.PRAMEELA DEVI.J, APARNA, ANAKKALLU P.O.,
KANJIRAPPALLY, PIN-686 508, KOTTAYAM DISTRICT.
- 4 JOY THOMAS VAZHAKMATTAM,
VAZHAKMATTAM HOUSE, ELIKKULAM P.O.,
KOTTAYAM DISTRICT, PIN-686 577.
- 5 ALBIN MATHEW, MURINGAYIL HOUSE, EDAPPADY P.O.,
BHARANANGANAM, PIN-686 578, KOTTAYAM DISTRICT.





2024:KER:81633

2

- *6 THOMAS J.NIDIRY, EDAPPALLIL HOUSE, S.H.MOUNT P.O.,
KOTTAYAM DISTRICT, PIN-686 575. [DIED]

*THE DEATH OF R6 IS RECORDED AS PER ORDER DATED
23.09.2024 IN MEMO DATED 23.09.2024.

- 7 MANI.C.KURIAKOSE, CHAKKAPPALLIL HOUSE, VALIYAPARA,
KUTHUKUZH P.O., KOTHAMANGALAM,
ERNAKULAM DISTRICT, PIN-686 691.
- 8 SREEJITH V.S., VALIYAVEETIL HOUSE,
KIZHATHIRI P.O., KOTTAYAM DISTRICT, PIN-686 576.
- 9 SANTHOSH PULICKAL, PULICKAL HOUSE, KAROOR P.O.,
PALA, PIN-686 574, KOTTAYAM DISTRICT.
- 10 SUNIL ALANCHERIL, ALANCHERIL HOUSE,
MEENACHIL P.O., PIN-686 577, KOTTAYAM DISTRICT.
- 11 ELECTION COMMISSION OF INDIA
(THIRD PARTY)

BY ADVS.
DEEPU THANKAN
TOM JOSE (PADINJAREKARA)
SEBASTIAN JOSEPH
P.C.HARIDAS
DEEPU LAL MOHAN, SC, ELECTION COMMISSION OF INDIA
LAKSHMI SREEDHAR
UMMUL FIDA
ELIZEBATH GEORGE
EMMANUEL CYRIAC
THAREEQ ANVER K. (K/000942/2018)
T.KRISHNANUNNI (SR.) (K/280/1973)
P.FAZIL, ADVOCATE COMMISSIONER

THIS ELECTION PETITION HAVING COME UP FOR ADMISSION ON
04.11.2024, THE COURT ON 05.11.2024, DELIVERED THE
FOLLOWING:





2024:KER:81633

'C.R'

JUDGMENTDated, this the 5th day of November, 2024

"At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper—no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of that point."
— **Winston Churchill** [House of Commons, 31.10.1944].

The mandate of the little men from Pala constituency (093) in the election of the Legislative Assembly held on 06.04.2021 is under challenge in this Election Petition. The specific ground canvassed is contravention of Section 77, propounded as a deemed corrupt practice under Section 123(6) of the Representation of the People Act, 1951 ('the R.P. Act', for short). Are the charges of corrupt practice to be equated to criminal charges, warranting proof - not by the yardstick of preponderance of probability - but beyond doubt? Does the principles of equity has any relevance in adjudging an Election Petition? Is the court bound to make a finding in favour of the election petitioner, invoking Order VIII, Rule 5, for non-traverse of the allegations, in the written statement? Is contravention of Section 77(1) and (2) a corrupt practice



Election Petition No.9/2021



2024:KER:81633

2

as prescribed by Section 123(6)? Interesting will it be to unfurl the answers to these questions which arise in this Election Petition.

2. Petitioner was a contestant from Pala constituency in the Legislative Assembly Election of 2021. The 1st respondent is the returned candidate, who won by a margin of 15,378 votes over respondent no.2, who secured the 2nd position, as per the election results declared on 02.05.2021. Other respondents were also contestants in the said election.

3. The pleadings:

Before addressing the pleadings, it requires to be pointed out that this Election Petition was initially preferred by the petitioner as party-in-person. Later, Adv.Sunil Cyriac was appointed as the counsel for the petitioner by the Honourable Supreme Court in a proceeding carried from an Order passed by this Court. Thereupon, an amendment was sought for to the Election Petition, which was allowed. This Court will therefore refer to the pleadings in the amended Election Petition here below:

As per the hand book issued by the Election Commission of India for candidates, the maximum amount that a contesting candidate can



Election Petition No.9/2021



2024:KER:81633

3

spend in the assembly elections is Rs.30,80,000/-. A common man cannot afford this amount and he cannot contest in a fair election. As per the hand book afore referred, every candidate is required to keep by himself or his election agent a separate and correct account of all expenditure incurred or authorised by him or his election agent, from the date on which the candidate is nominated till the date of declaration of result, both days inclusive. As per Section 77(3) of the R.P. Act, the total of the said expenditure shall not exceed such amount prescribed. Incurring or authorising of expenditure in excess of the limit prescribed, is a corrupt practice under Section 123 of the R.P. Act. The District Election Officer issued election proceedings dated 10.03.2021 stipulating that the total expenditure shall not exceed Rs.30,80,000/-. It also provides for a rate chart for monitoring the election expenditure in the Legislative Assembly election of the year 2021. As per the hand book for candidates, each candidate is required to maintain the day-to-day accounts of the election expenditure in a register, with supporting documents, which register shall be made available for inspection on three occasions at least, to the returning officer/expenditure observer appointed by the Commission. The 1st respondent had not maintained the account properly and he failed to make available the register for inspection as provided. As many as three notices were issued to the



Election Petition No.9/2021



2024:KER:81633

4

1st respondent by the expenditure observer, but no reply even was given by the 1st respondent. As per the expenditure statement submitted by the 1st respondent, which the petitioner obtained under the Right to Information Act, the total expenditure incurred is Rs.23,39,388.30/-. However, in page no.3 of the register, the total expenditure is Rs.23,32,397.30/-. Thus, the statement made by the 1st respondent in the register is incorrect. Further, the total expenditure incurred by the 1st respondent, as per the register maintained by the expenditure observer, is Rs.30,40,911/-. A sum of Rs.3,34,400/-, which was given for booth expenditure is not included in the statement prepared by the expenditure observer, which amount is, however, reflected in the register maintained by the 1st respondent. If that amount is also calculated, the election expenses incurred by the 1st respondent will cross the limit fixed. Thus, the 1st respondent has committed corrupt practice by contravening Section 77(3) of the R.P. Act. Moreover, the 1st respondent had not raised any objection to the statement prepared by the expenditure observer as regards his election expenditure. Candidates sponsored by the leading alliances of Kerala has been spending around ten fold of the maximum amount fixed and submitting fake accounts. There are 71,091 residential buildings in the Grama Panchayats and Municipality in the Pala Assembly constituency.



Election Petition No.9/2021



2024:KER:81633

5

According to the 1st respondent, he had printed only 5,000 pamphlets for distribution, which is apparently a false statement, since pamphlets will be given to every house in the constituency. Therefore, the expenditure incurred for printing pamphlets shown as Rs.5,368/- is wrong and the same will be more than 20 times the expenditure shown. Since the election expenditure made by respondents 1 to 3 was huge, well beyond the prescribed limit, the petitioner's candidature did not get the required public notice. He gave a complaint to the Chief Electoral Officer for curbing huge money spent by the opponent candidates, but the authorities refused to take action. The violation in this regard was done by respondents 1 to 3 during the period from 22.03.2021 to 06.04.2021. 1st respondent had placed so many boards, banners and posters as part of the election campaign and the expenditure in this regard shown is Rs.7,70,796/-. These boards, banners and posters were placed against the rules amounting to corrupt practice and violation of Section 127-A of the R.P. Act. On such premise, the petitioner sought for a declaration that election of the 1st respondent from Pala Assembly constituency (093) in the Kerala Legislative Assembly election, 2021 be declared void and inoperative and also, to set aside the same. The petitioner also prayed for costs of the proceedings.



Election Petition No.9/2021



2024:KER:81633

6

4. This Court may incorporate a caveat here, that each and every pleading in the Election Petition has not been narrated above, inasmuch as several pleadings are completely irrelevant, in the context of declaring an election void and setting aside the same.

5. The 1st respondent filed a written statement. Before addressing the contents thereof, it is noticed that the written statement only answers the allegations and averments contained in the original Election Petition. It does not refer to any of the averments amended and incorporated to the Election Petition, though the written statement was filed after such amendment. The contentions in the 1st respondent written statement are summarised thus:

The Election Petition is not maintainable in law or facts and it lacks material facts to constitute a valid cause of action, rendering the petition liable to be dismissed *in limine*. The maximum expenditure fixed in the subject election is admitted as Rs.30,80,000/-. Though it is alleged that the 1st respondent, along with the respondents 2 to 3, have committed corrupt practices in the Pala constituency, the details regarding the same are not given. The allegation that candidates have been spending around ten fold of the amount fixed and submit fake accounts before the Election Commission, is specifically denied as not



Election Petition No.9/2021



2024:KER:81633

7

true. As regards the allegation of the number of pamphlets shown as 5,000, as against more than 70,000 houses, it is contended that the same is wrong, cryptic and merely a guess work of the petitioner. It was specifically contended that violation, if any, of Section 127-A amounts only to an electoral offence, which will not come within the ambit of a corrupt practice. It was contended that it was not specifically pleaded that the respondent had printed pamphlets over and above the prescribed limits; nor was any pamphlet produced along with the Election Petition. The allegations are just an imagination of the petitioner, who should be put to strict proof of the same. The Election Petition is alleged to be devoid of the material facts constituting the alleged corrupt practices. The Election Petition does not satisfy the requirements of Section 83(1)(a) of the R.P. Act. The allegations are vague, general, frivolous, vexatious and indefinite and were hence denied. The further allegation in paragraph no.5 about a complaint preferred by the petitioner to the Electoral Officer regarding the huge expenditure of the candidates were all denied, as matters to be proved by the petitioner. Neither the details of the complaint, nor the fate of the same, was pleaded. In paragraph no.11 of the written statement, the specific allegation of the expenditure having exceeded the prescribed limit is dealt with and denied. It was pleaded that the



Election Petition No.9/2021



2024:KER:81633

8

expenditure incurred by the 1st respondent never contravened Section 77 of the R.P. Act. No material facts or particulars have been pleaded in the Election Petition to attract Section 123(6) of the R.P. Act. No case was registered against the 1st respondent by the returning officer alleging violation of the expenditure limit. The election expenses submitted by the 1st respondent has been accepted by the Election Commission and allegations to the contrary are to be rejected. An Election Petition on the alleged violation of Section 77 is therefore not maintainable. The affidavit accompanying the Election Petition does not contain the details of the corrupt practices alleged, thus, failing to satisfy the requirements of Section 83 of the Act. The election is not liable to be interfered with on any of the grounds under Section 100 of the R.P. Act. The petitioner is not entitled to the reliefs sought for. Accordingly, the 1st respondent sought for dismissal of the Election Petition.

6. The 2nd respondent, though supported the election petitioner, has not chosen to file any written statement.

7. Other respondents, except R9, also have not filed any written statement. The 9th respondent, in his written statement, had opposed



Election Petition No.9/2021



2024:KER:81633

9

the Election Petition and had supported the 1st respondent/returned candidate. The contentions canvassed by the 1st respondent as regards absence of material facts, specific allegations of corrupt practice, cause of action and absence of particulars in the affidavit accompanying in the Election Petition etc. were also canvassed by the 9th respondent. The allegations pertaining to pamphlets, as also, the alleged violation of Section 127-A of the R.P. Act, were all denied, being not specific, but only wild. The 9th respondent also wants to put the Election Petitioner to adduce strict proof of his allegations. It was contended that violation, if any, of Section 127-A is not a corrupt practice, as contemplated by Section 123 of the R.P. Act for invalidating an election. The 9th respondent also thus prayed for dismissal of the Election Petition.

8. The election petitioner filed a reply affidavit dated 26.11.2021 denying the contentions in the written statement and reiterating his claim in the Election Petition. The pleadings in the ground (F) of the Election Petition that the election expenses exceeded the prescribed limits, rendering the election liable to be set aside under Section 100(1) (b), d(ii) and d(iv) of the R.P. Act, was specifically pointed out in the reply affidavit.



Election Petition No.9/2021



2024:KER:81633

10

9. Before referring to the issues framed, it is relevant to refer to the Common Order passed by this Court on 08.03.2021 in I.A. Nos.3/2021, 1/2022, 3/2022, 1/2023 and 2/2023. The first interlocutory application, I.A.No.3/2021, preferred by the 1st respondent/returned candidate was under order VII, Rule 11 of the Code of Civil Procedure, seeking rejection of the Election Petition, alleging want of cause of action. I.A.No.1/2022 was preferred by the election petitioner under Order VI, Rule 17 of the C.P.C. for amendment of the Election Petition. I.A.No.3/2022 was also one preferred by the 1st respondent/returned candidate seeking I.A.No.3/2021 to be heard first. I.A.No.1/2023 is preferred by the election petitioner seeking acceptance of the additional documents filed. I.A.No.2/2023 is filed after completion of hearing the above I.As., but only for incorporating certain cosmetic changes to the amendment petition, I.A.No.1/2022 referred above. After hearing the parties, I.A. No.3/2021 for rejection of the Election Petition was dismissed and other interlocutory applications were allowed, by virtue of the Common Order afore referred. Although the above Common Order was challenged before the Honourable Supreme court vide S.L.P.Nos.6697-6698/2023, the Leave Petitions were dismissed.



Election Petition No.9/2021



2024:KER:81633

11

10. Based on the above pleadings, this Court framed the following issues:

(i) Whether the expenditure in connection with the election to the Kerala Legislative Assembly from 093 Pala Constituency held during the year 2021 incurred/authorised by the 1st respondent/returned candidate has exceeded the prescribed limit of Rs.30,80,000/-? If yes, whether the same amounts to a corrupt practice under Section 123(6) of the Representation of the People Act, 1951?

(ii) Whether the 1st respondent/returned candidate failed to keep separate and correct accounts of all the expenditure in connection with the election to the Kerala Legislative Assembly from 093 Pala Constituency held during the year 2021 incurred/authorised by him or his election agent in terms of Section 77 of the Representation of the People Act, 1951? If yes, whether the same has materially affected the result of the election as envisaged in Section 100(1)(d)(iv) [erroneously stated as Section 100(1)(b)(iv) in the order framing issues] of the Representation of the People Act, 1951?

(iii) Whether the allegations of corrupt practice alleged by the petitioner answer the requirements of Section 83(1)(b) of the Representation of the People Act, 1951?

(iv) Whether the allegations in the petition are so vague, imprecise and ambiguous, dis-entitling the petitioner from the reliefs sought for?



Election Petition No.9/2021



2024:KER:81633

12

(v) Whether the allegations in the petition disclose a proper cause of action enabling the petitioner the reliefs claimed for?

(vi) Whether the election of the 1st respondent/returned candidate to the Kerala Legislative Assembly from 093 Pala Constituency is liable to be declared as void?

(vii) Whether the election petitioner is entitled for the costs of the proceedings from the 1st respondent/returned candidate?

11. The evidence in this case consists of oral evidence of PW1 to PW6, through whom, Exts.X1 to X8(a) were marked, on the part of the election petitioner. Ext.X1 is the register of day-to-day accounts of the election expenditure maintained by the 1st respondent/returned candidate. Ext.X2 is the affidavit sworn to by the 1st respondent and his statement of election expenditure, wherein, the total expenditure is stated to be Rs.23,39,388/-. Ext.X3 is the shadow observation register maintained by the accounting team as regards the day-to-day election expenditure of the 1st respondent/returned candidate, as per which, the total expenditure of the 1st respondent/returned candidate is Rs.30,40,911/- (see page no.89). Ext.X4 is the objection preferred by the 1st respondent against his election expenditure as found in Ext.X3



Election Petition No.9/2021



2024:KER:81633

13

shadow observation register. Ext.X5 is the proceedings of the District Expenditure Monitoring Committee dated 31.05.2021, rejecting the objection of the 1st respondent/returned candidate and confirming the expenditure of Rs.30,40,911/-, as found by the accounting team, vide Ext.X3. Ext.X6 is the document evidencing appointment of Sri.Aji Jose as the election agent of the 1st respondent/returned candidate, which also contains the specimen signatures of the candidate and the election agent. Ext.X7 is the declaration made by the returning officer under Section 66 of the R.P. Act declaring the 1st respondent as the successful candidate. Ext.X8 is the photocopy of the order appointing PW3 as Election Expenditure Observer for 093 Pala Assembly constituency. Ext.X8(a) is a list indicating the deployment of Expenditure Observers, serial no.25 of which indicates the appointment of Shaikh Aminkhan Yasinkhan, as the Expenditure Observer for the Pala constituency (093). PW1 is the District Election Officer, who produced Ext.X1 register, Ext.X2 affidavit under Part-IV, Ext.X3 shadow observation register, Ext.X4 objection and Ext.X5 proceedings of the District Expenditure Monitoring Committee dated 31.05.2021. PW2 was the returning officer, through whom, Ext.X6 document appointing the election agent of the 1st respondent was produced and marked. Ext.X7 declaration of results was also marked through PW2. PW3 was the expenditure



Election Petition No.9/2021



2024:KER:81633

14

observer appointed vide Ext.X8. Ext.X8(a) was also marked through him. PW4 was the District Election Officer in the subject election. She was the custodian of the various documents produced and marked through other witnesses. She specifically spoke about Ext.X5, which rejected Ext.X4 objection of the 1st respondent/returned candidate and confirming the election expenditure vide Ext.X3. PW5 was the Assistant Election Expenditure Observer of the Pala constituency. He is the one, who prepared Ext.X3. PW6 is the election petitioner.

12. On behalf of the 1st respondent/returned candidate, DW1 was examined. DW1 is the person, who prepared Ext.X1 expenditure register of the 1st respondent/returned candidate. It was he, who explained the 'booth expenses', a pivotal item of expenditure, based upon which, the allegation of the expenditure exceeding the prescribed limit was made. No documentary evidence was adduced by the 1st respondent. No evidence, oral or documentary, was adduced by other respondents.

13. Before answering the above issues, this Court will first refer to the nature and special status of an Election Petition, which is by and large civil in nature. Section 87(1) of the R.P. Act stipulates that the trial in an



Election Petition No.9/2021



2024:KER:81633

15

Election Petition may be as nearly as in accordance with the procedure applicable under the Code of Civil Procedure. However, insofar as the special onus of an election petitioner is concerned, it has certain trappings of a quasi criminal proceeding, if it may be said so, as enunciated by the Honourable Supreme Court in various decisions, which are referred to here below:

14. A three Judges bench of the Honourable Supreme Court in **Surinder Singh v. Hardial Singh and others** [(1985) 1 SCC 91] - after referring to a catena of decisions including **Guruji Shrihar Baliram Jivatode v. Vithalrao and others** [1969 SCR (2) 766]; **Mahant Shreo Nath v. Choudhry Ranbir Singh** [1970 (3) SCC 647], **Abdul Hussain Mir v. Shamsul Huda and another** [(1975) 3 SCR 106]; **Ch. Razik Ram v. Ch. Jaswant Singh Chouhan and Others** [AIR 1975 SC 667] - concludes thus in paragraph no.23:

"23. It is thus clear beyond any doubt that for over 20 years the position has been uniformly accepted that charges of corrupt practice are to be equated with criminal charges and proof thereof would be not preponderance of probabilities as in civil action but proof beyond reasonable doubt as in criminal trials. We are bound by the decision of the larger Bench in Mohan Singh's case (supra) as also by decisions of coordinate benches and do not feel inclined to



Election Petition No.9/2021



2024:KER:81633

16

take a different view....."

15. The next aspect to be noted is that equity and equitable principles have no role, whatsoever, insofar as election proceedings are concerned. They are strict statutory proceedings; and the result of an election is not liable to be interfered with lightly, as held by a five Judges bench of the Honourable Supreme Court in **Jagannath v. Jaswant Singh and others** [(1954) 1 SCC 57]. The relevant findings are extracted here below:

"7.....It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law....."

16. On application of the principle of equity, the Supreme Court held in **Harcharan Singh v. S.Mohinder Singh and others** [AIR 1968 SC 1500] thus:

"8. The statutory requirements of election law must be strictly observed. An election dispute is a statutory proceeding unknown to the common law; it is not an action at law or in equity."



Election Petition No.9/2021



2024:KER:81633

17

17. With this prelude, this Court will now address the issues framed. The first issue framed is the foremost one, which is essentially canvassed in the Election Petition, and pressed before this Court by the learned counsel for the petitioner. The issue pertains to the question whether the election expenditure of the 1st respondent/returned candidate has exceeded the prescribed limit of Rs.30,80,000/-, thus amounting to a corrupt practice under Section 123(6) of the R.P Act.

18. The relevant pleadings in the amended Election Petition, contained in paragraph no.2 are extracted here below:

"It is further submitted that the election expenditure of the 1st respondent was calculated by the expenditure observer of the Pala Constituency as per Annexure B11 of the Rules. The petitioner obtained a copy of the Annexure B11 submitted by the expenditure observer of Pala constituency as per Right to Information Act. As per Annexure B11 submitted by the expenditure observer, the total expenditure incurred by the 1 respondent is Rs.30,40,911-00. It is submitted that an amount of Rs.3,34,400-00, which was given for booth expenditure is not included in the Annexure B11 submitted by the expenditure observer, but the said amount is reflected in the register maintained by the 1st respondent. If that amount is also calculated, the expenses incurred by the 1st respondent will cross the limit fixed by the proceedings of the District Election Officer and District



Election Petition No.9/2021



2024:KER:81633

18

Collector of Kottayam bearing No.DCKTM/1482/2021/F2 dated 10-03-2021. So1 respondent has committed corrupt practice as per Section 77 (3) of the Representation of Peoples Act, 1951."

19. To the same effect is the evidence adduced by the election petitioner (examined as PW6), as could be seen from page no.4 of the proof affidavit, the relevant portion of which is also extracted here below:

"As per expenditure register pertaining to the 1st respondent prepared and submitted by the expenditure observer, the total expenditure incurred by the 1st respondent is Rs.30,40,911-00. An amount of Rs.3,34,400-00, which was given by the 1st respondent for booth expenditure is not included in the expenditure account pertaining to the 1st respondent submitted by the expenditure observer. But the said amount is reflected in the register of expenditure maintained by the 1st respondent. When that amount is also added to the total expenditure as fixed by the expenditure observer, the expenses incurred by the 1st respondent will exceed the limit fixed in terms of Section 77(3) of the Representation of Peoples Act, 1951 read with Rule 90 of the Conduct of Election Rules, 1961. So the 1st respondent has committed corrupt practice under section 123(6) of the Representation of Peoples Act, 1951."



Election Petition No.9/2021



2024:KER:81633

19

20. It could thus be seen that the specific pleading, and proof sought to be adduced, by the election petitioner is that the booth expenditure of Rs.3,34,400/-, which was included in Ext.X1 (the register of expenditure prepared by the candidate and filed before the District Election Officer) does not find a place in Ext.X3 shadow observation register, maintained by the Expenditure Observer. According to the petitioner, if the said amount of Rs.3,34,400/- is clubbed with the total expenditure of Rs.30,40,911/-, as reflected in Ext.X3, the election expenditure of the 1st respondent/returned candidate will exceed the prescribed limit of Rs.30,80,000/-. It could thus be seen that the sustainability/maintainability of the above case of the election petitioner is the fulcrum of the issue to be resolved in this Election Petition.

21. In answer to the above plea, learned Senior Counsel appearing for the 1st respondent would submit that the said amounts are not liable to be clubbed. According to the learned Senior, Rs.3,34,400/- is the sum total of the amounts given by the 1st respondent towards booth expenses on 01.04.2021, which was expended from the said date, up to the election date, i.e., 06.04.2021. This amount will be spent for various purposes by the persons to whom the amounts have been entrusted;



Election Petition No.9/2021



2024:KER:81633

20

and the same is not liable to be reflected as such in Ext.X3 register maintained by the Election Observer. Instead, only the expenditure made, by utilising the said money, may be reflected in Ext.X3 register, provided the same is visible and comes to the notice of the Election Observer. As regards the booth expenses of Rs.52,800/- on 06.04.2021, the date of election, which finds a place in Ext.X3, the explanation offered by the learned Senior Counsel is that the same are expenses incurred for making arrangements in the election booths, altogether 176 in number, on the date of voting, including erection of shelters, kiosks etc. Since such kiosks etc. being visible, the expenditure thereof was straight away reckoned by the Expenditure Observer and hence the same finds a place in Ext.X3 register maintained by the Observer, as against the date 06.04.2021, the date of voting.

22. In answer to the above contention, learned counsel for the election petitioner argued that no pleadings are there in the written statement of the 1st respondent, in respect of the above explanation. It was pointed out that no additional written statement was filed, pursuant to the amendment of the election petition. Nor was the issue dealt with in the original written statement. Therefore, the evidence adduced by DW1 in the form of an explanation, both in respect of the



Election Petition No.9/2021



2024 : KER : 81 633

21

booth expenses incurred on 01.04.2021, as also, on 06.04.2021 cannot be taken stock of, is the submission made. Learned counsel would rely on the settled position that any extent of evidence, in the absence of necessary pleadings, cannot be of any avail.

23. To the above submission of the learned counsel for the election petitioner, learned Senior Counsel would submit that written statement was filed after amendment, but at a time when this Court had fixed an outer limit for filing the same, wherefore the pleadings in the amended election petition could not be specifically and separately dealt with. However, the same would not loom large because of the peculiar nature of the burden of proof in an election petition. The special burden, which the election petitioner has to discharge, is not proof in accordance with the preponderance of probability; but proof beyond reasonable doubt, as expatiated by the Honourable Supreme Court in a catena of decisions. According to the learned Senior Counsel, even if the respondent maintains silence to the allegations leveled, the same cannot automatically amount to an admission, enabling the election petitioner to the reliefs sought for. Even then, the election petitioner is duty bound to prove the allegations, inasmuch as a challenge to an election is, in fact, a challenge to the mandate of the people, as



Election Petition No.9/2021



2024:KER:81633

22

reflected from the results of the election. In support of this proposition, learned counsel relied upon a three judges bench of the Hon'ble Supreme Court in **Dr.Jagjit Singh v. Giani Kartar Singh and others** [AIR 1966 SC 773].

24. In addressing this point, this Court will straight away refer to the written statement preferred by the first respondent. At the outset, it has to be noticed that the first respondent has pleaded that the election petition lacks material facts constituting a valid cause of action and hence, liable to be dismissed. In paragraph no.7 of the written statement, the first respondent would allege that the details regarding the corrupt practices are not given. The averments and allegations in paragraph no.3 of the election petition are seen denied as frivolous and vexatious. In paragraph no.10, it is allegedly stated that the averment of the first respondent's expenditure exceeding prescribed limit is a matter to be proved by the petitioner. More importantly, the issue is seen dealt with in paragraph no.11 of the written statement, which is extracted here below:

"11. The expenditure incurred by this respondent never contravened Section 77 of the R.P. Act. There are no material facts or material particulars or relevant facts pleaded in Election Petition to attract



Election Petition No.9/2021



2024:KER:81633

23

Section 123(6) of the R.P. Act. The Returning Officer has not registered any case against this respondent on the alleged violation of the maximum limit of expenditure. However, it is submitted that the election expenses submitted by this respondent has been accepted by the Election Commission. Thereby, all the averments contra to the same have to be rejected. In such case, the election petition on an allegation of violation of the section 77 is not maintainable. "

25. In this regard, it is relevant to note that the written statement does not address anything on the basis of the amended election petition. The denial contained in the written statement is to the averments contained in the original election petition. However, the specific ground raised, as to the election expenditure of the first respondent exceeding the prescribed limit, is seen denied in paragraph no.11 extracted above. Therefore, it cannot be said that the case pleaded in the election petition - as regards expenditure exceeding the limit - is liable to be treated as admitted, for not traversing the same in the written statement.

26. Coupled with the above, this Court will also refer to the judgment of the Honourable Supreme Court relied upon by the learned Senior



Election Petition No.9/2021



2024:KER:81633

24

Counsel for the first respondent in **Dr.Jagjit Singh** (supra). In that case, a contention was raised that the specific allegations in the election petition were not traversed by the respondent. It was argued that, unless the material allegations are specifically controverted, the Tribunal should not have allowed the respondent to lead evidence in rebuttal and should have ignored such evidence adduced. The argument was one based on the provisions of Order 8, Rule 5 of the Code of Civil Procedure. The said argument is seen repelled by the Honourable Supreme Court in paragraph no.25 in the following words:

"25. We are not impressed by this argument. In considering the question as to whether the strict rule of pleadings prescribed by Order 8, Rule 5 applies to election proceedings with all its rigour, we must bear in mind the fact that the charge like the present is in the nature of a criminal charge and the proceedings in respect of its trial partake of the character of quasi-criminal proceedings. It is true that Section 90 of the Act provides that subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits. This provision itself emphasises the fact that the whole of the Code of Civil Procedure is not fully applicable. What the section provides is that the proceedings



Election Petition No.9/2021



2024:KER:81633

25

should be tried "as nearly as may be" according to the Code of Civil Procedure. If the contention raised by Mr. Garg is accepted at its face value, it may logically lead to this consequence that if a returned candidate does not controvert the allegations made by the petitioner in his election petition alleging the commission of a corrupt practice by the returned candidate, a finding would have to be made in favour of the petitioner without any evidence at all. In other words, the question is: can a corrupt practice prescribed by Section 123(4) of the Act be held to be proved merely on the ground that no specific denial has been made by the returned candidate in his written statement in that behalf? In considering this point, we cannot overlook the fact that the onus to prove the essential ingredients of Section 123(4) is on the petitioner, and so, it would be for him to prove that the statement is false, and that the other requirements of the section are satisfied. Having regard to the nature of the corrupt practice which is prescribed by Section 123(4), we are not prepared to hold that the strict rule of pleadings prescribed by Order 8, Rule 5 of the Code can be blindly invoked in election proceedings of this type.

(underlined by me, for emphasis)

27. It could therefore safely be concluded that the corrupt practice



Election Petition No.9/2021



2024:KER:81633

26

alleged is not liable to be treated as admitted and proved only for reason of its non-traverse, dehors and independent of the fact that the allegations are denied by the 1st respondent in his written statement. This Court is therefore justified in looking at the evidence adduced by DW1, inasmuch as the allegations are seen denied in the written statement and explained in the evidence adduced by DW1. DW1 is the person who claims to have handled the expenditure of the first respondent/returned candidate. He retired as Branch Manager of a Co-operative Bank. He would state that there were 176 polling booths in Pala Constituency and there are 34 entries of Rs.9,500/- each, at pages 17, 18, 19 and 20 of Ext.X1. These amounts were disbursed to 34 persons on the basis of five booths per person, at the rate of Rs.1,900/- per booth. The amounts were disbursed to the said 34 persons based on vouchers. Besides, there are two entries at page no.20 of Ext.X1, showing payment of Rs.5,700/- each, which amount was given for 3 booths, at the rate of Rs.1,900/- each. Similarly, Rs.1,900/- each was given for 176 booths on 01.04.2021. According to DW1, he cannot say as to what all expenses have been incurred by utilising the said amounts. In cross examination, DW1 would state that he is not aware as to how the accounts in Ext.X3 was prepared by the shadow observer team. He has been cross examined to depose that he had not even



Election Petition No.9/2021



2024:KER:81633

27

seen Ext.X3.

28. As a matter of fact, this evidence does not have much significance, in the context of the issue which is required to be resolved by this Court. According to the election petitioner, the amount of Rs.3,34,400/- is liable to be clubbed with the total amount shown in Ext.X3, that is to say, Rs.30,40,911. If it is so done, the election expenditure will exceed the upper limit of Rs.30,80,000/- as prescribed by the Election Commission in accordance with the Rules.

29. It is significant to note that the two amounts above referred are reflected in two expenditure registers maintained by two different persons. Ext.X1 is the expenditure register maintained by a candidate, which includes the expenditure made by him in cash and through banks. Per contra, Ext.X3 is the shadow observer's register of expenditure of the first respondent/returned candidate. Ext.X3 was prepared by PW5, the Assistant Expenditure Observer, Pala Constituency. This will be cross checked by PW3, who was the expenditure observer. PW5 would state that the details of the expenditure of each candidate will be taken note of and entered into in the register on the basis of video footages, marked by the video



Election Petition No.9/2021



2024:KER:81633

28

viewing team. As against the items of expenditure identified so, the rates fixed based on the approved rate chart will be applied. In cross, it was stated that the expenditure which stems from the media certification monitoring committee will also be reckoned and entered.

30. It could thus be seen that each and every expenditure made by a candidate is not expected to be reflected in Ext.X3 register. Ext.X3 will reflect only those expenditures, which are visible and which comes to the notice of the observation team, through video footages or otherwise. Standard rates are fixed by the consent of all the candidates prior to the election, which rates will be applied to each expenditure item. Suffice to say that, the expenditures reflected in Ext.X3 will not be and cannot be precise and accurate; whereas, the expenditures shown in Ext.X1, maintained by the candidate, is expected to be more precise and accurate. It should contain expenditure, both by way of cash and through bank. The above matters are referred only to point out that an item of expenditure which is reflected in Ext.X1, but which is not so reflected in Ext.X3, is not liable to be clubbed, as such. This is so for other reasons as well, as dealt with here below:

31. The election petitioner has no case that any specific item of



Election Petition No.9/2021



2024 : KER : 81633

29

expenditure, which has been incurred by the first respondent/returned candidate, was not included in Ext.X1. Instead, his case is that, an item which is included in Ext.X1 register is liable to be clubbed with the total figure arrived at by the Observer in Ext.X3, which proposition appears to be fallacious. As rightly pointed out by the learned Senior Counsel, amounts entrusted by the candidate to his allies for the purpose of expenditure may not come to the notice of the Observer. Nor is he expected to have any knowledge about such amounts entrusted. Therefore, it will not be reflected in Ext.X3. Instead, the expenditure incurred by such allies of the candidate on various items by utilising such funds entrusted, if visible and which comes to the notice of the observer, alone will be reflected in Ext.X3. In other words, those items on which the amounts were spent are liable to be reflected in Ext.X3; and not the amounts entrusted to the allies by the candidate concerned. Though not strictly, the sum of Rs.3,34,400/- entrusted for expenditure as seen from Ext.X1, is more or less in the nature of an '*income/source for expenditure*' at the hands of the allies of the candidate; whereas the amounts which are reflected in Ext.X3 register is in the nature of '*expenditure*', as such, which comes to the notice of the Observer. In short, an entry which partakes the character of more or less an '*income*' reflected in Ext.X1, cannot be clubbed with the total



Election Petition No.9/2021



2024:KER:81633

30

figure of '*expenditure*' as referred in Ext.X3. The proposition made in the Election Petition is theoretically and impregnably wrong, rendering it impossible to be recognised in law.

32. But for the above claim for clubbing, no specific contention is seen urged either in the election petition, or in the evidence adduced, as regards the expenditure exceeding the limit. True that the election petitioner had spoken about various expenditure of the first respondent/returned candidate in his proof affidavit. However, he himself would admit that they were not pleaded in the election petition. Having regard to the standard of proof required in election petitions, such *ipse dixit* of the election petitioner, when examined as PW6, cannot be taken stock of. The situation is equally precarious for the petitioner as regards his contention regarding expenditure for the pamphlets printed for the election. Here, what lacks is evidence. Apart from taking a contention that there are more than 70,000 houses in the constituency, wherefore, the 1st respondent's claim that only 5,000 pamphlet were printed and the expense of Rs.5,368/- shown is false, no endeavour has been taken and no evidence, whatsoever, was adduced by the petitioner to prove the above allegation. Therefore, the said contention, though pleaded, will stand repelled.



Election Petition No.9/2021



2024:KER:81633

31

33. Before parting with the point, learned counsel for the election petitioner would invite the attention of this Court to an aspect, which was spoken to by PW5 in the chief examination, as also, in the cross examination. In chief, PW5, the Assistant Expenditure Observer, who prepared Ext.X3 had answered that the disputed entries in Ext.X1 should have been entered into by the expenditure observer team in Ext.X3 also. He would reiterate that the expenditure incurred by the returned candidate, as recorded in Ext.X1, ought to have been included in Ext.X3. Based on this, it is the contention of the learned counsel for the election petitioner that the entries revealing booth expenses is liable to be clubbed with the total expenditure reflected in Ext.X3.

34. This Court cannot accept the above proposition put forward by the learned counsel. It is important to note that none other than PW5 deposed in chief examination that the source of information of the election observer team is based on the video footages. In cross examination, he would also add the source of information from the media certification monitoring committee. If these are the sources spoken to by PW5, coupled with such other sources which are visible in the constituency for the purpose of expenditure, how can it be conceived in law that certain amounts entrusted by the candidate, to



Election Petition No.9/2021



2024:KER:81633

32

his allies, for the purpose of expenditure, would automatically come to the notice of the observation team and hence, liable to be clubbed with the total amount found in Ext.X3? Assume a situation where the amounts entrusted by the first respondent/returned candidate to the extent of Rs.3,34,400/- has been expended by his followers/allies, and if some items of expenditure have already come to the notice of the election observation team. Accordingly, if such expenses are reckoned in Ext.X3, will it not be a duplication to contend that amounts entrusted by the candidate should also be reflected as an expenditure item in Ext.X3? At the cost of repetition, this Court may iterate that what is liable to be reflected in Ext.X3 are the visible expenditure, which comes to the notice of the election observation team in any manner; and not something in the nature of an income which has been entrusted by the candidate to his allies for the purpose of expenditure. The contention, therefore, stands rejected.

35. One another point argued by the learned counsel for the petitioner is that the booth expenses of Rs.3,34,400/-, reflected in Ext.X1, is liable to be clubbed with the total expenditure found in Ext.X3, inasmuch as a sum of Rs.52,800/- had already been reckoned in Ext.X3 as booth expenses. The argument advanced is that the



Election Petition No.9/2021



2024:KER:81633

33

difference between these two amounts, both being admittedly booth expenses, has to be clubbed with the total figure in Ext.X3. This argument also will not hold the ground. It is significant to note that Rs.52,800/- reckoned in Ext.X3 is the booth expenses incurred on the date of election, i.e., 06.04.2021. An explanation has already been offered in this regard that the said expense was for erecting shelters, kiosks near to the polling booth, which are quite visible to the observer. *Au contraire*, the booth expenses of Rs.3,34,400/- reflected in Ext.X1 is as against the date 01.04.2021. The explanation offered by DW1, who prepared Ext.X1, is that the said amount was disbursed to 34 persons on the basis of five booths per person, at the rate of Rs.1,900/- per booth. Therefore, clubbing of the 'booth expenses' as reflected in Exts.X1 and X3 cannot be sought for, only for the reason that an expenditure under the head booth expenses is reflected in Ext.X3 as well. The contention will therefore stand rejected. In the circumstances, issue no.1 is found against the election petitioner.

36. Issue no 2:

This issue pertains to the question whether the candidate failed to keep separate and correct accounts of all expenditure in connection with the election in terms of Section 77 of the R.P. Act; and if the answer is in



Election Petition No.9/2021



2024 : KER : 81 633

34

the affirmative whether the same has materially affected the result of the election as envisaged in Section 100(1)(d)(iv) of the R.P.Act.

37. Before commencing the discussion on this issue, it is necessary to deal with a line of argument sought to be canvassed by the election petitioner. According to the election petitioner, violation of Section 77 (1) and (2) also will amount to a corrupt practice, hit by Section 123(6) of the R.P. Act. In this regard, learned counsel would give emphasis to the expression '*in contravention of Section 77*' as employed in Section 123(6). According to the learned counsel for the petitioner, incurring or authorising of expenditure in contravention of Section 77 would take within its sweep the violation of Section 77(1) and (2) as well. In order to substantiate violation of Section 77(1), learned counsel would point out that the total expenditure incurred by the first respondent/returned candidate as shown in Ext.X1, Part-A, at page no.3 is Rs.23,32,397/-. However, the total expenditure as shown in page no.22 of Ext.X1 is Rs.23,39,388/-. Thus, there is a difference of Rs.6,991/-, which would clearly indicate that the accounts tendered by the first respondent were not correct. Thereafter, the learned counsel would point out that the total amount in column no.8, page no.113 of Part B, which deals with the expenditure in cash, is Rs.4,41,166/- and the total amount



Election Petition No.9/2021



2024:KER:81633

35

expended through bank, reflected in Part-C, at page no.196, is Rs.23,64,604/- *(In this regard, it is to be noticed that the total of the various figures in column no.8 is not stated in page no.196 of Part-C. The above amount of Rs.23,64,604/- is the total, as calculated by the learned counsel for the election petitioner).* The sum total of the amounts reflected in Part B and C is Rs.28,05,770/-. Theoretically, this should tally with the total amount in Part-A. However, there is substantial difference between the total amount of Rs.23,39,388/- as shown in part-A and the total of the amounts shown in part -B, which is calculated to be Rs.28,05,770/-. Again, the figure shown in Ext.X2, the statement filed by the returned candidate under Section 78 of R.P. Act, is Rs.23,39,388/-, a figure different from the two amounts above referred.

38. Based on the above input, learned counsel would submit that the first respondent/returned candidate failed to keep a correct account of all the expenditures in connection with the election, incurred or authorised by him or his election agent, thus violating the mandate of Section 77(1). Learned counsel would point out that Section 77(1) employs the term 'shall'. Learned counsel would also canvass that there is violation of Section 77(2) as well, inasmuch as the accounts



Election Petition No.9/2021



2024:KER:81633

36

submitted are not containing the prescribed particulars as contained in Rule 86 of Conduct of Election Rules, 1961. Thus, violation of Section 77(1) and (2) would attract a corrupt practice, as stipulated in Section 123(6), is the argument advanced.

39. The above argument is squarely in the teeth of a three judges bench judgment in **L.R.Shivaramagowda and others v. T.M.Chandrasekhar and others** [AIR 1999 SC 252]. The relevant findings are contained in paragraph no.18 to 22, which is extracted here below:

"18. We shall now proceed to the second limb of the argument of the appellant's counsel. The High Court has held that the appellant had not maintained true and correct account of expenditure incurred or authorised and the same amounted to corrupt practice. 'Corrupt practices' have been set out in Section 123 of the Act. According to the first respondent, the appellant is guilty of a corrupt practice described in sub-section (6) of Section 123. Under that sub-section the incurring or authorising of expenditure in contravention of Section 77 of the Act is a corrupt practice. Section 77 provides that every candidate at an election shall keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent and that the accounts shall



Election Petition No.9/2021



2024:KER:81633

37

contain such particulars as may be prescribed. Rule 86 of the Conduct of Election Rules, 1961 sets out the particulars to be contained in the account of election expenses. Sub-sections (1) & (2) of Section 77 deal only with the maintenance of account. Sub-section (3) of Section 77 provides that the total of the election expenses referred to in sub-section (1) shall not exceed such amount as may be prescribed. Rule 90 of the Conduct of Election Rules prescribes the maximum limit for any Assembly Constituency: In order to declare an election to be void, the grounds were set out in Section 100 of the Act. Sub-Section (1)(b) of Section 100 relates to any corrupt practice committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent. In order to bring a matter within the scope of sub-section (1)(b), the corrupt practice has to be one defined in Section 123. What is referred to in sub-section (6) of Section 123 as corrupt practice is only the incurring or authorising of expenditure in contravention of Section 77. Sub-section (6) of Section 123 does not take into its fold, the failure to maintain true and correct accounts. The language of sub-section (6) is so clear that the corrupt practice defined therein can relate only to sub-section 3 of Section 77 i.e, the incurring or authorising of expenditure in excess of the amount prescribed. It cannot by any stretch of imagination be said that non-compliance with Section 77 (1)&(2) would also



Election Petition No.9/2021



2024:KER:81633

38

fall within the scope of Section 123 (6). Consequently, it cannot fall under Section 100 (1) (b). The attempt here by the first respondent is to bring it within Section 100(1)(d) (iv). The essential requirement under that sub-section is that the result of the election insofar as it concerns that returned candidate has been materially affected. It is needless to point out that failure on the part of the returned candidate to maintain accounts as required by Section 77 (1) & (2) will in no case affect, and much less materially, the result of the election.

19. This view has been expressed by this Court in Dalchand Jain v. Narayan Shankar Trivedi and Anr., [1969] 3 SCC 685. A Bench of three Judges held that it is only sub-section 3 of Section 77 which can be invoked for a corrupt practice under Section 123 (6) and the contravention of Section 77 sub-section (1) & (2) or the failure to maintain correct accounts with the prescribed particulars does not fall under Section 123 (6). The Bench has referred to several earlier decisions of the High Court and the decision of this court in CA. No.1321 of 1967 dated 22.3.1968."

40. Though the issue can be set at rest based by the above authoritative pronouncement of the Honourable Supreme Court, commendable efforts have been taken by the learned Senior Counsel to convince this Court, as to why Section 123(6) has to be interpreted



Election Petition No.9/2021



2024:KER:81633

39

confining it to the '*incurring or authorising of expenditure*' alone. Learned Senior Counsel would invite the attention of this Court to the Representation of the People Act, 1951 prior to its amendment in the year 1956. There, the maximum cap of election expenditure is contemplated in Section 77. Section 100 deals with the ground for declaring the election to be void. Section 124 deals with minor corrupt practice. Section 124(4) provides that the making of any return of election expenditure which is false in any material particular or the making of declaration verifying any such return amounts to a minor corrupt practice. There also, contravention of Section 124(4) was not treated as an act, which would vitiate the election per se, but would do so, only if it materially affects the election.

41. In the amendment which took place in the year 1956, the whole of Section 124 was done away with. Noticing this aspect, the law in this point was succinctly stated on by a Division Bench of the Madras High Court in ***C.R. Narasimhan v. M.G. Natesa Chettiar*** [AIR 1959 (MAD) 514]. The issue is seen dealt with by the Division Bench thus:

"8. In this view it is not necessary to deal with the question of law, namely, whether a mere omission to enter an item of expenditure in the expenses account would amount to a corrupt practice mentioned in



Election Petition No.9/2021



2024 : KER : 81 633

40

Section 123(6) of the Act but as the matter was argued before us by the learned Advocate General and there is a possibility of an appeal to the highest court we shall deal with it. The corrupt practice in question is the incurring or authorising of expenditure in contravention of Section 77. The gravamen of the offence is, therefore, the expenditure, that is, the act of spending in contravention of Section 77. Section 77 which we have extracted above consists of three sub-sections. Sub-sections (1) and (2) relate to the keeping of an account of all expenditure in connection with the election. Sub-section (1) enjoins on the candidate the duty of keeping a separate and correct account and Sub-section (2) lays down that such account shall contain such particulars as may be prescribed, Neither of these sub-sections relates to "expenditure", that is, spending money as such. An account obviously relates to a period after the incurring of the expenditure and it contains entries of expenditure already incurred or authorised to be incurred by the candidate. On the plain language of these two sub-sections we find it impossible to hold that any failure on the part of a candidate to keep a correct account or to enter the necessary particulars in the account would amount to incurring or authorising an expenditure. Sub-section (3), however, clearly relates to expenditure as such because it says that the total of the expenditure shall not exceed the prescribed amount. If more than the prescribed amount is expended then such expenditure would be in



Election Petition No.9/2021



2024:KER:81633

41

contravention of that provision and therefore in contravention of Section 77. But any contravention of the provisions of Sub-section (1) and Sub-section (2) of Section 77 would be not a corrupt practice which would fall within Section 123(6) of the Representation of the People Act, because such contravention would not involve any incurring or authorising of expenditure."

42. The issue fell for consideration of the Honourable Supreme Court in **Shri Kishen v. Sat Narain and others** [37 ELR 13]. It was held by the Honourable Supreme Court that, Section 123(6) could be intended only to refer to sub-Section (3) of Section 77 (see paragraph no.5).

43. The issue was again considered by the Honourable Supreme Court in **Dalchand Jain v. Narayan Shankar Trivedi and another** [(1969) 3 SCC 685]. The Supreme Court refused to accept the contention that failure to keep correct account under Section 77(1) will amount to a corrupt practice under Section 123(6). In paragraph no.14 the Honourable Supreme Court held that every contravention of Section 77 does not fall within Section 123(6) and that the '*incurring or authorizing of expenditure in contravention of Section 77*' alone is a corrupt practice. The further discussion as contained in paragraph Nos.



Election Petition No.9/2021



2024:KER:81633

42

14 and 15 are relevant and extracted herein:

"14. Section 77 Sub-section (1) requires the candidate to keep a separate and correct account of all election expenses incurred or authorised by him within certain dates. Section 77 Sub-section 2 provides that the account shall contain such particulars as may be prescribed. Section 77 Sub-section (3) requires that the total of the said expenditure shall not exceed the prescribed amount. Section 123(6) is related to Section 77(3). If the candidate incurs or authorises expenditure in excess of the prescribed amount in contravention of Section 77(3) he commits corrupt practice Under Section 123(6). The contravention of Section 77 Sub-sections (1) and (2) or the failure to maintain correct accounts with the prescribed particulars does not fall within Section 123(6), see Shri Krishna v. Sat Narain. The same opinion has been expressed in several decisions of the High Courts, see Savitri Devi v. Prabhawati Misra; N.L. Varma v. Muni Lal; Narasimhan v. Natesa, and the cases referred to therein.

15. Section 124(4) as it stood before its amendment by Act XXVII of 1956 provided that the making of any return which was false in material particulars was a minor corrupt practice. That provision has now been deleted and the submission of an Incorrect return of expenses is no longer a corrupt practice."



Election Petition No.9/2021



2024:KER:81633

43

44. It is thereafter that the three Judges Bench of the Hon'ble Supreme Court held in **L.R. Shivaramagowda** (supra) held that the vice in Section 123(6) is traceable only to the violation of Section 77(3); and not Section 77(1) or Section 77(2). Therefore, the contention that the so called violation in not keeping correct and true accounts as against the mandate of Section 77(1) will amount to a corrupt practice within the contours of Section 123(6) is liable to be rejected. It is so done.

45. The next point urged by the learned counsel for the petitioner is that, even if the violation of Section 77(1) is not a corrupt practice under Section 123(6), still the same would afford adequate ground for declaring the election void under Section 100(1)(d)(iv), which deals with non-compliance with the provisions of the Constitution, or of the Representation of the People Act, or of the Rules or orders made under the said Act. Learned counsel would submit that the 1st respondent failed to keep a correct account of all expenditure, thereby violating Section 77(1) blatantly, for which reason, the election is liable to be declared void.

46. Here, this Court notice that, unlike in the case of any



Election Petition No.9/2021



2024:KER:81633

44

disqualification of the candidate dealt with in Section 100(1)(a), or in the case of a corrupt practice dealt with in Section 100(1)(b), or in a case of improper rejection of nomination dealt under Section 100(1)(c), for grounds under Section 100(1)(d), the election is not liable to be declared void, unless the violation thereof has materially affected the result of the election, insofar as the returned candidate is concerned. In the instant case, no proof, whatsoever, has been adduced by the petitioner in that direction. There is no pleading as well to the effect that non-compliance of Section 77(1) had materially affected the result of the election, leading to the success of the first respondent/returned candidate. Going by the yardstick of proof beyond doubt, which is expected to be adduced by an election petitioner, this Court cannot, but find that the election petitioner has miserably failed to make necessary pleadings, as also, to adduce evidence in this regard. In the circumstances, the ground canvased under Section 100(1)(d)(iv) would also crumble to the ground.

47. On the top of the above failure on the part of the election petitioner in making necessary pleadings and adducing evidence, the Honourable Supreme Court held in **L.R. Shivaramagowda** (supra) that the failure on the part of the returned candidate to maintain accounts,



Election Petition No.9/2021



2024:KER:81633

45

as required in Section 77(1) and (2) will, in no case, affect, much less, materially, the result of the election. In the circumstances, issue no.2 is also found against the election petitioner.

48. Issue no.3

This issue pertains to the question whether the requirements of Section 83(1)(b) of the R.P Act has been satisfied in the Election Petition preferred by the petitioner. Section 83(1)(b) mandates that an Election Petition shall set forth full particulars of the corrupt practice alleged, including a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of commission of each such practice.

49. This issue was urged before this Court at the preliminary stage of the proceedings, seeking rejection of Election Petition for violation of Section 83(1)(b). This Court passed a detailed Common Order dated 08.03.2023, wherein, other interim applications were also considered and answered. In paragraph nos.12 to 19 of the said order, this issue regarding violation of Section 83(1)(a) and (b) were considered, to hold that an Election Petition is not liable to be dismissed, especially when Section 86(1) mandating dismissal of Election Petition does not



Election Petition No.9/2021



2024:KER:81633

46

contemplate non-compliance of Section 83, whereas, non-compliance of Sections 81, 82 and Section 117 have been specifically reckoned for dismissal of the Election Petition.

50. As already referred above, the challenge carried from the Order dated 08.03.2023 before the Honourable Supreme Court by the 1st respondent/returned candidate, vide Special Leave to Appeal nos.6697-6698 of 2023 were dismissed, by Order dated 17.04.2023.

51. Although it was argued by the learned Senior Counsel for the 1st respondent that the principles of *res judicata* will not bind this Court in taking a view, different from one taken during the course of the interlocutory proceeding, this Court is not inclined to reconsider the issues, which have been concluded by virtue of its Order dated 08.03.2023. A few decisions have been pressed into service by the learned counsel for the election petitioner, as also, by the learned counsel for the 2nd respondent as regards the applicability of the principles of *res judicata* as between the proceedings in two different stages of the suit. Nonetheless, this Court is of the opinion that the resolution of the same is not required, inasmuch as, it has already been concluded that reconsideration of the issue is not warranted, especially



Election Petition No.9/2021



2024:KER:81633

47

in view of the conclusions arrived at by this Court on issue nos.1 and 2. Issue no.3 is therefore found in favour of the election petitioner and against the 1st respondent.

52. Issue nos.4 and 5

Issue no.4 relates to the question whether the Election Petition is so vague, imprecise and ambiguous dis-entitling the petitioner from the reliefs sought for. Issue no.5 pertains to the question whether a proper cause of action has been revealed in the Election Petition, so as to claim reliefs.

53. Both these issues can be answered together by stating that going by the amended Election Petition, the above requirements are satisfied. It cannot be said that the amended Election Petition is vague, imprecise or ambiguous. Nor could be it said that the amended Election Petition does not disclose a proper cause of action. Issues are found in favour of the petitioner and against the 1st respondent.

54. Issue no.6

In the light of the above discussion, the election of the 1st respondent/returned candidate to the Kerala Legislation Assembly from



Election Petition No.9/2021



2024:KER:81633

48

093 Pala Constituency is not liable to be declared void.

Resultantly, this Election Petition is dismissed. The parties shall bear their respective costs. In the peculiar facts, the cost deposited by the election petitioner will be returned to him.

Sd/-

C.JAYACHANDRAN, JUDGE

ww/SKP


TRUE COPY
Registrar (Judicial)



Election Petition No.9/2021



2024:KER:81633

49

APPENDIX OF ELE.PET. 9/2021PETITIONER'S ANNEXURES:

ANNEXURE A	TRUE COPY OF CHALAN RECEIPT NO.09/06/2021 DATED 16.06.2021 REMITTING SECURITY AMOUNT.
ANNEXURE A1	THE TRUE COPY OF JUDGMENT IN W.P.(C) NO.5218 OF 2012 DATED 14.01.2021 CONNECTED CASE.
ANNEXURE A2	POLICY ON ROAD SIDE ADVERTISEMENTS BY THE INDIAN ROADS CONGRESS.
ANNEXURE A3	RELEVANT PAGES OF HANDBOOK FOR CANDIDATE BY ELECTION COMMISSION OF INDIA.
ANNEXURE A4	REPLY DATED 14.06.2021 FROM RETURNING OFFICER AND ENGLISH TRANSLATION.
ANNEXURE A5	REPLY DATED 07.07.2021 FROM BINDHU ALEX, PUBLIC INFORMATION OFFICER AND JUNIOR SUPERINTENDENT OF SECTION, COLLECTORATE, KOTTAYAM AND ENGLISH TRANSLATION.
ANNEXURE A6	THE TRUE PHOTOSTAT COPY OF THE HAND BOOK FOR CANDIDATES ISSUED BY THE ELECTION COMMISSION OF INDIA PAGE NO.230-250.
ANNEXURE A7	THE TRUE PHOTOSTAT COPY OF THE PROCEEDINGS OF THE DISTRICT ELECTION OFFICER AND DISTRICT COLLECTOR, KOTTAYAM DATED 10.03.2021.



Election Petition No.9/2021



2024:KER:81633

50

- ANNEXURE A8 THE TRUE PHOTOSTAT COPY OF THE ELECTION EXPENDITURE SUBMITTED BY THE 1ST RESPONDENT.
- ANNEXURE A9 THE TRUE PHOTOSTAT COPY OF THE ELECTION EXPENDITURE OF THE 1ST RESPONDENT SUBMITTED BY THE ELECTION EXPENDITURE OBSERVER.
- ANNEXURE A10 THE TRUE PHOTOSTAT COPY OF THE INFORMATION FROM THE RAMAPURAM GRAMA PANCHAYATH ABOUT THE NUMBER OF WARDS AND NUMBER OF RESIDENTIAL BUILDINGS IN EACH WARD DATED 25-08-2021 OBTAINED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT.
- ANNEXURE A10 (a) THE TRUE PHOTOSTAT COPY OF THE INFORMATION FROM THE KADANAD GRAMA PANCHAYAT ABOUT THE NUMBER OF WARDS AND NUMBER OF RESIDENTIAL BUILDINGS IN EACH WARD DATED 07-09-2021 OBTAINED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT.
- ANNEXURE A10 (b) THE TRUE PHOTOSTAT COPY OF THE INFORMATION FROM THE MELUKAVU GRAMA PANCHAYAT ABOUT RESIDENTIAL BUILDINGS IN EACH WARD DATED 20-09.2021 OBTAINED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT.
- ANNEXURE A10 (c) THE TRUE PHOTOSTAT COPY OF THE INFORMATION FROM THE MOONNILAVU GRAMA PANCHAYAT ABOUT THE NUMBER OF WARDS AND NUMBER OF RESIDENTIAL BUILDINGS IN EACH WARD DATED 01.09.2021 OBTAINED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT.



Election Petition No.9/2021



2024:KER:81633

51

- ANNEXURE A10 (d) THE TRUE PHOTOSTAT COPY OF THE INFORMATION FROM THE THALANADU GRAMA PANCHAYAT ABOUT THE NUMBER OF WARDS AND NUMBER OF RESIDENTIAL BUILDINGS IN EACH WARD DATED 03.09.2021 OBTAINED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT.
- ANNEXURE A10 (e) THE TRUE PHOTOSTAT COPY OF THE INFORMATION FROM THE THALAPPALAM GRAMA PANCHAYAT ABOUT THE NUMBER OF WARDS AND NUMBER OF RESIDENTIAL BUILDINGS IN EACH WARD DATED 22.09.2021 OBTAINED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT.
- ANNEXURE A10 (f) THE TURE PHOTOSTAT COPY OF THE INFORMATION FROM THE BHARANANGANAM GRAMA PANCHAYAT ABOUT THE NUMBER OF WARDS AND NUMBER OF RESIDENTIAL BUILDINGS IN EACH WARD DATED 09.09.2021 OBTAINED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT.
- ANNEXURE A10 (g) THE TRUE PHOTOSTAT COPY OF THE INFORMATION FROM THE KAROOR GRAMA PANCHAYAT ABOUT THE NUMBER OF WARDS AND NUMBER OF RESIDENTIAL BUILDINGS IN EACH WARD DATED 14.09.2021 OBTAINED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT.
- ANNEXURE A10 (h) THE TRUE PHOTOSTAT COPY OF THE INFORMATION FROM THE MUTHOLY GRAMA PANCHAYAT ABOUT THE NUMBER OF WARDS AND NUMBER OF RESIDENTIAL BUILDINGS IN EACH WARD DATED 14.09.2021 OBTAINED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT.



Election Petition No.9/2021



2024:KER:81633

52

ANNEXURE A10(i)	THE TRUE PHOTOSTAT COPY OF THE INFORMATION FROM THE PALA MUNICIPALITY ABOUT THE NUMBER OF WARDS AND NUMBER OF RESIDENTIAL BUILDINGS IN EACH WARD DATED 03.09.2021 OBTAINED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT.
ANNEXURE A10(j)	THE TRUE PHOTOSTAT COPY OF THE INFORMATION FROM THE KOZHUVANAL GRAMA PANCHAYAT ABOUT THE NUMBER OF WARDS AND NUMBER OF RESIDENTIAL BUILDINGS IN EACH WARD DATED 15.09.2021 OBTAINED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT.
ANNEXURE A10(k)	THE TRUE PHOTOSTAT COPY OF THE INFORMATION FROM THE ELIKKULAM GRAMA PANCHAYAT ABOUT THE NUMBER OF WARDS AND NUMBER OF RESIDENTIAL BUILDINGS IN EACH WARD DATED 20.09.2021 OBTAINED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT.
ANNEXURE A10(l)	THE TRUE PHOTOSTAT COPY OF THE INFORMATION FROM THE MEENACHIL GRAMA PANCHAYAT ABOUT THE NUMBER OF WARDS AND NUMBER OF RESIDENTIAL BUILDINGS IN EACH WARD DATED 24.08.2021 OBTAINED BY THE PETITIONER UNDER RIGHT TO INFORMATION ACT.
ADDITIONAL LIST	ADDITIONAL LIST OF WITNESSES AND ADDITIONAL LIST OF DOCUMENTS
TRANSLATION OF EXHIBIT X4	ENGLISH TRANSLATION OF EXHIBIT X4 AS DIRECTED BY THIS HONOURABLE COURT BY ORDER DATED 23.09.2024



Election Petition No.9/2021



2024:KER:81633

53

RESPONDENTS' ANNEXURES:

- ANNEXURE 1 THE TRUE COPY OF THE REQUEST LETTER DATED 19.08.2023 SUBMITTED TO THE ADVOCATE COMMISSIONER BY SRI.M.H HANIL KUMAR, SPECIAL GOVERNMENT PLEADER (REVENUE), HIGH COURT OF KERALA.
- ANNEXURE 2 THE TRUE COPY OF THE RECEIPT DATED 19.08.2023 ISSUED BY THE ADVOCATE COMMISSIONER TO SMT. GEETHA KUMARI.K, DEPUTY COLLECTOR(RR), KOTTAYAM.
- ANNEXURE 3 THE TRUE COPY OF THE RECEIPT DATED 19.08.2023 ISSUED BY SRI. ROBIN M SCARIA, HIGH COURT ASSISTANT, ELECTION PETITION/LAA SECTION TO THE ADVOCATE COMMISSIONER.
- ANNEXURE 4 THE TRUE COPY OF THE PROCEEDINGS OF THE ADVOCATE COMMISSIONER DATED 19.08.2023 IN THE ABOVE ELECTION PETITION.
- ANNEXURE 5 DEPOSITION OF PW1.
- ANNEXURE 6 DEPOSITION OF PW2.
- ANNEXURE 6 (A) ENGLISH TRANSLATION OF DEPOSITION OF PW2.
- ANNEXURE 7 PROCEEDINGS OF ADVOCATE COMMISSIONER DATED 23-09-2023.
- ANNEXURE 8 DEPOSITION OF PW3.



Election Petition No.9/2021



2024:KER:81633

54

- ANNEXURE 9 PROCEEDINGS OF ADVOCATE COMMISSIONER DATED 07-10-2023.
- ANNEXURE 10 DEPOSITION OF PW4.
- ANNEXURE 11 THE TRUE COPY OF THE PROCEEDINGS OF THE ADVOCATE COMMISSIONER DATED 29.04.2024 IN THE ABOVE ELECTION PETITION.
- ANNEXURE 12 DEPOSITION OF PW5.
- ANNEXURE 13 THE TRUE COPY OF THE PROCEEDINGS OF THE ADVOCATE COMMISSIONER DATED 24.08.2024 IN THE ABOVE ELECTION PETITION.
- ANNEXURE 14 TRUE COPY OF THE PROCEEDINGS OF THE ADVOCATE COMMISSIONER DATED 02.09.2024 IN ELECTION PETITION NO.9 OF 2021.
- ANNEXURE 15 COPY OF THE PROOF AFFIDAVIT AND DEPOSITION OF PW6.
- ANNEXURE 15 (a) THE ENGLISH TRANSLATION OF DEPOSITION OF PW6 IN ANNEXURE 15.
- ANNEXURE 16 TRUE COPY OF THE PROCEEDINGS OF THE ADVOCATE COMMISSIONER DATED 06.09.2024 IN ELECTION PETITION NO.9 OF 2021.
- ANNEXURE 17 DEPOSITION OF DW1.
- ANNEXURE 17 (A) THE ENGLISH TRANSLATION OF THE DEPOSITION OF DW1.
- ANNEXURE 18 TRUE COPY OF THE PROCEEDINGS OF THE ADVOCATE COMMISSIONER DATED 20.09.2024.

