

**\* HIGH COURT OF ANDHRA PRADESH: AMARAVATI**

**HON'BLE MR. JUSTICE D.V.S.S. SOMAYAJULU**

**+ E.P. No.1 of 2017**

% 14.07.2023

# Vemireddy Pattabhirami Reddy,  
S/o Rajarami Reddy, Age 49 Yrs.,  
R/o H.No.16-7-45, Flat No.504,  
P.V.R.Enclave, Nellore SPSR,  
Nellore District, Andhra Pradesh

... Petitioner

Vs.

\$ Yendapalli Srinivasulu Reddy,  
R/o H.No.3-54 H, Park Street,  
Chinnagottigallu, Chittoor District and 13 others.

... Respondents

! Counsel for the petitioner: Sri E.V.V.S.Ravi Kumar

! Counsel for the Respondent No.1 : Sri P.Veera Reddy, senior counsel

! Counsel for the Respondent No.11: Sri Srinivas Basava

< Gist:

> Head Note:

? Cases referred:

- <sup>1</sup> (1980) 3 SCC 286
- <sup>2</sup>(2015) 3 SCC 467
- <sup>3</sup> (2014) 14 SCC 189
- <sup>4</sup>(2014) 14 SCC 162
- <sup>5</sup>(2017) 2 SCC 487,
- <sup>6</sup> (2011) 11 SCC 786
- <sup>7</sup> (2014) 14 SCC 162
- <sup>8</sup> (1973) 2 SCC 45
- <sup>9</sup> (2018) 14 SCC 1
- <sup>10</sup> 1987 Supp SCC 93
- <sup>11</sup>(1969) 1 SCC 408
- <sup>12</sup> 2019) 3 SCC 224

**HOB'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU**

**Election Petition No.1 of 2017**

**ORDER:**

**PRELUDE:**

*'At the bottom of all the tributes paid to democracy is the little man walking into a little booth making a little cross on a little piece of paper...'*

2) This famous quote of a British leader was referred to by his Lordship Justice Krishna Iyer in para 8 of ***Ramakrishna Hegde v. Election Commission of India***<sup>1</sup> case.

3) This little Indian's desire to know; to be fully aware of the antecedents of his elected representatives so as to make an informed choice is the crux of the matter. This desire of the "little Indian" to know; to be fully aware is supported and encouraged by a large number of proactive judgments of the Hon'ble Supreme Court of India.

4) **Facts/Backdrop**

This Election Petition is filed for the following prayer:

- (a) Declare the election of the 1st respondent as elected from Prakasam -Nellore- Chittoor Graduates Constituency in the

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<sup>1</sup> (1980) 3 SCC 286

biennial elections held to Andhra Pradesh Legislative Council, on 09.03.2017 as illegal, null and void.

- (b) Declare the acceptance of the nomination paper filed by the 1st Respondent/the Returned candidate with substantial defects in the affidavit as illegal improper and consequently set aside/reject the same.
- (c) Direct recount and scrutiny of all the ballot papers.
- (d) Declare the petitioner as duly elected from Prakasam-Nellore-Chittoor Graduates Constituency in the biennial elections held to Andhra Pradesh Legislative Council on 09.03.2017. (e) Award costs of the election petition.

5) The respondent has entered appearance and the main contesting respondents have filed counters. Issues were framed on 28.07.2022; 01.08.2022 (amended) and finally on 31.11.2022 after the amendment of the petition was allowed. The following issues were framed:

**Issues framed on 28.07.2022:**

- i. Whether the nomination of the 1<sup>st</sup> respondent was improperly accepted by the Returning Officer and the same has materially affected the election?
- ii. Whether the Returning Officer improperly accepted the nomination with blanks in the verification?
- iii. Whether the blank in the verification of nomination form is a defect of substantial nature?
- iv. Whether the usage of stamp papers by the 1st respondent, which were purchased by the 3rd party is a “fraud” as alleged?
- v. Whether there were irregularities during the process of counting of the ballots which have affected the result?
- vi. Whether about 11,000 votes polled were improperly rejected / refused? **(Amended on 01.08.2022)**
- vii. To what relief?

6) **Issues framed on 30.11.2022:**

- (i) Whether the failure of the returned candidate (R.1) to disclose the fact that he was accused of offences has vitiated the affidavit filed?
- (ii) Whether as a result of the failure to disclose the criminal cases, election result of the returned candidate is required to be declared as void?

7) The trial commenced and continued at its own pace. However, the period or the term of the Council members elected in 2017 including respondent No.1 expired in February, 2023. Therefore, it was urged that by virtue of the expiry of the six year term of the 1<sup>st</sup> respondent by February, 2023, no reliefs can be granted in the election petition and that it has become infructuous. Arguments were also advanced on this aspect. Case law is also submitted on merits. This Court agrees that in view of the expiry of the term, the other prayers cannot be granted/need not be granted, but in view of the amendment of the pleadings and the evidence on the issue of suppression of criminal antecedents however, this Court, notices that the issue mentioned hereafter still survives for passing orders:- 'The failure of the 1<sup>st</sup> respondent to disclose the fact that he was accused of an offence in his nomination form and its consequence is the core issue that still remains for consideration'.

8) The draft issues filed by the petitioner include the following:

(I) Whether the election of respondent No.1 was materially affected on account of;

(a) Improper acceptance of nomination filed by respondent No.1 without there being a signature appended to the verification?

(b) Non-disclosure of criminal case pending against respondent No.1 in Cr.No.188 of 2011 of P.S.Gudur (C.C.No.370 of 2012 on the file of the Hon'ble Additional Judicial Magistrate of I Class, Gudur).

9) The draft issues filed by the 1<sup>st</sup> respondent also contained the following issue:

(i) Whether any non-disclosure of a criminal case by respondent No.1 would materially affect the election of respondent No.1?

10) Thus, it is clear that both parties were clearly aware of the issue/point involved. The amended pleadings make this clear. There is an assertion about the suppression of the criminal case and a denial. The parties went to trial on this particular point namely, the failure to disclose the criminal cases in the nomination; its effect on the election and whether the election of respondent No.1 is required to be declared as void.

11) It is urged that the failure to disclose the existence of a criminal case in the nomination is also a corrupt practice and that if this Court

declares that respondent No.1 is guilty of a corrupt practice, the matter has to be referred to the Hon'ble President of India for determination of the question as to whether such a person shall be disqualified or not as per section 8-A of the Representation of the Peoples Act, 1951 (for short 'the 1951 Act'). It is submitted that the cause does survive and in particular as it is urged that respondent No.1 has committed a corrupt practice.

12) This Court has heard Sri E.V.V.S.Ravi Kumar, learned counsel for the election petitioner, Sri P.Veera Reddy, learned senior counsel for respondent No.1 instructed by Sri Arif Basha and Sri Srinivasa Basava for respondent No.11.

13) On behalf of the petitioners P.W.1 was examined and Exs.A.1 to A.7 documents were marked. For the respondents R.Ws.1 to 4 were examined and Exs.R.1 to R.10 documents were marked.

14) During examination, certain objections were raised. On 17.08.2022, an objection was raised on the ground that the issue of votes being rejected was already covered in the earlier cross-examination. An issue was also raised about the election manual. This objection was by the learned counsel for the petitioner. The said objections are overruled as there is no rule prohibiting further cross-examination in order to prove the case of the respondent or even to discredit the witness.

15) The election manual is not marked in evidence and further questions were also not there on the manual. Plus, in view of the final decision being taken, the said objection is considered as not relevant and overruled.

16) In the cross-examination of D.W.1, on 21.09.2022, learned senior counsel objected to the witness being confronted with a document and that a scrap of paper is filed. A witness can always be confronted with a document during cross-examination. The witness has however not admitted the contents of the document. He merely stated that the document shown to him says in inverted commas that it is sold to 'Pokala Hari S/o Venkataiah'. This objection need not be considered. However, since the term of the elected member has expired, this Court has not gone into the issues of invalid votes etc., for the purpose of setting aside the election.

17) Learned counsel also raised an objection about the pendency of C.C.No.370 of 2012 on 21.09.2012 and 23.09.2012. This issue is clearly pleaded after the amendment of the pleading was allowed and the D.W.1 himself filed a copy of appeal filed against the order in C.C. He also admitted that he was convicted in the crime and filed an appeal. So this objection is also overruled.

**Legal Backdrop:**

18) The critical and also the surviving question involved in this matter is; whether the failure to disclose the fact that a criminal case is registered against respondent No.1 in the nomination is a corrupt practice or not and its effect on the election.

19) If it is held to be a corrupt practice, this Court has to pass the necessary orders under sections 98 and 99 of the 1951 Act read with section 100.

20) In order to appreciate the issues better, this Court is of the opinion that the relevant sections of law from the 1951 Act and case law should be discussed at the outset.

21) Sections 98 and 99 are as follows:

**98. Decision of the High Court.**—At the conclusion of the trial of an election petition: the High Court shall make an order— (a) dismissing the election petition; or (b) declaring the election of [all or any of the returned candidates] to be void; or (c) declaring the election of [all or any of the returned candidates] to be void and the petitioner or any other candidate to have been duly elected.

**99. Other orders to be made by the High Court.**—(1) At the time of making an order under section 98 the High Court shall also make an order: [(a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording— (i) finding whether any corrupt practice has or has not been proved to have been committed at election, and the nature of that corrupt practice; and (ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and] (b)



fixing the total amount of cost payable and specifying the persons by and to whom costs shall be paid:.....

22) In addition, section 33-A which is important is as follows:

**33A. Right to information.**—(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of section 33, also furnish the information as to whether— (i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction; (ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more. (2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1). (3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.]

23) Lastly, section 8-A is as follows:

**8-A. Disqualification on ground of corrupt practices.**—

(1) The case of every person found guilty of a corrupt practice by an order under section 99 shall be submitted, as soon as may be within a period of three months from the date such order takes effect, by such authority as the Central

Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period:

24) In the case on hand, the petitioner has filed Ex.A.7 which is a certified copy of the order dated 12.01.2018 passed in C.C.No.370 of 2012 by Additional Judicial Magistrate of I Class, Gudur. The 1<sup>st</sup> respondent in the election O.P. is the third accused therein. In this case, respondent No.1 along with others was prosecuted for the offences under sections 143, 147, 148, 447, 290, 342, 332 r/w 149 IPC. Respondent No.1 (A.3) was also convicted in this case by the order dated 12.01.2018. This issue about the failure of the 1<sup>st</sup> respondent disclosing the fact that he was accused of an offence was brought out by an amendment to the pleadings. Paras 8(a) to 8(d) were added to the election petition. The amendment was allowed by this Court. The matter was taken up in appeal to the Hon'ble Supreme Court which also held in favour of the petitioner in Civil Appeal No.7951 of 2022. Consequently, the petition was amended. The plea of failure to disclose the criminal case was allowed to be raised. In the amended para 8 (c) it is clearly submitted that the election of the 1<sup>st</sup> respondent is to be declared as void due to this suppression of criminal antecedents under section 100 (1) (d) (i). In reply, in para 19 of the amended counter, respondent No.1 has clearly disclosed that Crime No.188 of 2011 was registered against him on 03.10.2011; that

he is A.3 etc. However, he states that the failure to disclose the information is not wanton but due to ill-advise. In para 20, he refers to the Criminal Appeal.No.32 of 2019 and his acquittal in the appeal on 09.09.2022. He himself has filed the certified copy of the order of acquittal which is marked as Ex.R.10 later. It is thus clear that both the parties went to trial with this issue in mind. The issues as framed refer to the same.

25) The 11<sup>th</sup> respondent also refers to these facts; to section 33-A of the 1951 Act also and leaves it to this Court to decide. It is thus clear that adequate and clear pleading is there about the suppression of the criminal case.

26) As far as the case law on the subject is concerned, the following judgment assumes critical importance. ***Krishnamoorthy v. Sivakumar***<sup>2</sup>. The following paras of this judgment are relevant:

29. The aforesaid decisions pronounce beyond any trace of doubt that a voter has a fundamental right to know about the candidates contesting the elections as that is essential and a necessary concomitant for a free and fair election. In a way, it is the first step. The voter is entitled to make a choice after coming to know the antecedents of a candidate a requisite for making informed choice. It has been held by Shah, J. in People's Union for Civil Liberties [People's Union for Civil Liberties v. Union of India, (2003) 4 SCC 399] (SCC p. 453, para 78) that the voter's fundamental right to know the antecedents of a candidate is independent of statutory

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<sup>2</sup>(2015) 3 SCC 467

requirement under the election law, for a voter is first a citizen of this country and apart from statutory rights, he has the fundamental right to know and be informed. Such a right to know is conferred by the Constitution.

32. Having stated about the choice of a voter, as is requisite in the case at hand, we are required to dwell upon the failure to disclose the criminal cases pending against a candidate and its eventual impact; whether it would come within the concept of undue influence and thereby corrupt practice as per Section 123(2) of the 1951 Act. ....

38. In this backdrop, we have looked and posed the question that whether a candidate who does not disclose the criminal cases in respect of heinous or serious offences or moral turpitude or corruption pending against him would tantamount to undue influence and as a fallout to corrupt practice. The issue is important, for misinformation nullifies and countermands the very basis and foundation of voter's exercise of choice and that eventually promotes criminalisation of politics by default and due to lack of information and awareness. The denial of information, a deliberate one, has to be appreciated in the context of corrupt practice. ....

In para 86 and in para 91, the following was held:

**86.** From the aforesaid, it is luculent that free exercise of any electoral right is paramount. If there is any direct or indirect interference or attempt to interfere on the part of the candidate, it amounts to undue influence. Free exercise of the electoral right after the recent pronouncements of this Court and the amendment of the provisions are to be perceived regard being had to the purity of election and probity in public life which have their hallowedness. A voter is entitled

to have an informed choice. A voter who is not satisfied with any of the candidates, as has been held in *People's Union for Civil Liberties* [*People's Union for Civil Liberties v. Union of India*, (2013) 10 SCC 1 : (2013) 4 SCC (Civ) 587 : (2013) 3 SCC (Cri) 769 : (2014) 2 SCC (L&S) 648] , can opt not to vote for any candidate. The requirement of a disclosure, especially the criminal antecedents, enables a voter to have an informed and instructed choice. If a voter is denied of the acquaintance to the information and deprived of the condition to be apprised of the entire gamut of criminal antecedents relating to heinous or serious offences or offence of corruption or moral turpitude, the exercise of electoral right would not be an advised one. He will be exercising his franchisee with the misinformed mind. That apart, his fundamental right to know also gets nullified. The attempt has to be perceived as creating an impediment in the mind of a voter, who is expected to vote to make a free, informed and advised choice. The same is sought to be scuttled at the very commencement. It is well settled in law that election covers the entire process from the issuance of the notification till the declaration of the result. This position has been clearly settled in *Hari Vishnu Kamath v. Ahmad Ishaque* [AIR 1955 SC 233] , *Election Commission of India v. Shivaji* [(1988) 1 SCC 277] and *V.S. Achuthanandan v. P.J. Francis* [(1999) 3 SCC 737] . We have also culled out the principle that corrupt practice can take place prior to voting. The factum of non-disclosure of the requisite information as regards the criminal antecedents, as has been stated hereinabove is a stage prior to voting.

**91.** The purpose of referring to the instructions of the Election Commission is that the affidavit sworn by the candidate has to be put in public domain so that the electorate can know. If they know the half truth, as submits Mr Salve, it is more

dangerous, for the electorate is denied of the information which is within the special knowledge of the candidate. When something within special knowledge is not disclosed, it tantamounts to fraud, as has been held in S.P. Chengalvaraya Naidu v. Jagannath [(1994) 1 SCC 1] . While filing the nomination form, if the requisite information, as has been highlighted by us, relating to criminal antecedents, is not given, indubitably, there is an attempt to suppress, effort to misguide and keep the people in dark. This attempt undeniably and undisputedly is undue influence and, therefore, amounts to corrupt practice. It is necessary to clarify here that if a candidate gives all the particulars and despite that he secures the votes that will be an informed, advised and free exercise of right by the electorate. That is why there is a distinction between a disqualification and the corrupt practice. In an election petition, the election petitioner is required to assert about the cases in which the successful candidate is involved as per the rules and how there has been non-disclosure in the affidavit. Once that is established, it would amount to corrupt practice. We repeat at the cost of repetition, it has to be determined in an election petition by the Election Tribunal. (Emphasis supplied)

27) In para 93 also the following conclusion was reached and the Hon'ble Supreme Court upheld the decision of the high Court in declaring the election as void.

**93.** We have also reproduced the information that is required to be given. Sections 259 and 260 of the 1994 Act makes the provisions contained under Section 123 of the 1951 Act applicable. Submission of Ms V. Mohana, learned counsel for the appellant is that there was no challenge on the ground of corrupt practice. As we find the election was sought to be

assailed on many a ground. The factum of suppression of the cases relating to embezzlement has been established. Under these circumstances, there is no need to advert to the authorities which are cited by the learned counsel for the appellant that it has no material particulars and there was no ground for corrupt practice. In fact, in a way, it is there. The submission of the learned counsel for the appellant that he has passed up to Class X and, therefore, was not aware whether he had to give all the details as he was under the impression that all the cases were one case or off-shoots of the main case. The aforesaid submission is noted to be rejected. Therefore, we are of the view that the High Court is justified in declaring that the election as null and void on the ground of corrupt practice.

28) The sanctity of the affidavit which is required to be filed along with the nomination has also been highlighted in the case of **Resurgence India v. Election Commission of India**<sup>3</sup>. Paras 29 (1) (2) of this judgment are reproduced hereunder:

*29. What emerges from the above discussion can be summarised in the form of the following directions:*

**29.1.** The voter has the elementary right to know full particulars of a candidate who is to represent him in Parliament/Assemblies and such right to get information is universally recognised. Thus, it is held that right to know about the candidate is a natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution.

**29.2.** The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the

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<sup>3</sup> (2014) 14 SCC 189

citizens under Article 19(1)(a) of the Constitution of India. The citizens are supposed to have the necessary information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information.

29) **Failure to disclose spouse's assets etc.:**

In *Kisan Shankar Kathore v. Arun Dattatray Sawant*<sup>4</sup>, the Hon'ble Supreme Court held as follows in para 40:

40. We have already reproduced above the relevant portions of judgments in Assn. for Democratic Reforms [Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294] and People's Union for Civil Liberties [People's Union for Civil Liberties v. Union of India, (2003) 4 SCC 399] and the guidelines issued by the Election Commission pursuant thereto. A conjoint and combined reading thereof clearly establishes that the main reason for issuing directions by this Court and guidelines by the Election Commission pursuant thereto is that the citizens have fundamental right under Article 19(1)(a) of the Constitution of India to know about the candidates contesting the elections and this is the primary reason that casts a solemn obligation on these candidates to furnish information regarding the criminal antecedents, educational qualifications and assets held by the candidate, his spouse and dependent children. It is on that basis that not only the Election Commission has issued guidelines, but also prepared formats in which the affidavits are to be filed. As a fortiori, it follows that if the required information as per the said format in respect of the assets of the candidate, his wife and dependent children is not given, it would amount to suppression/non-disclosure.

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<sup>4</sup>(2014) 14 SCC 162



30) The failure to disclose the existence of assets in the name of the candidate's wife and dependent children was held to be suppression. It was held by the High Court that the nomination filed was defective; that it should not have been accepted. The election was set aside by allowing the election petition.

31) **Failure to disclose True Educational Qualification:**

In the case of *Mairembam Prithviraj v. Pukhrem Sharatchandra Singh*<sup>5</sup>, the Hon'ble Supreme Court was dealing with a case where the candidate furnished false information about his educational qualification. The election was declared void by the High court. Question No.2 before the High Court was with regard to the said disclosure. In para No.8, the question framed by the Hon'ble Supreme Court was whether a false declaration relating to educational qualification is a defect of substantial character warranting rejection of the nomination? The argument of the appellant was clerical error which was negated and the following was held in para 19:

**19.** ..... At least at that point of time he should have informed the Returning Officer that an error crept into the declaration. He did not do so. The false declaration relating to his educational qualification cannot be stated to be not of a substantial character. It is no more res integra that every candidate has to disclose his educational qualification to subserve the right to information of the voter. Having made a false declaration relating to his educational qualification, the

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<sup>5</sup>(2017) 2 SCC 487,

appellant cannot be permitted to contend that the declaration is not of a substantial character. For the reasons stated supra, we uphold the findings recorded by the High Court that the false declaration relating to the educational qualification made by the appellant is substantial in nature.

32) It is important to note all these developments are a result of the proactive approach taken by the Hon'ble Supreme Court of India to cleanse and purify the electoral system in our country. The painstaking efforts of the Hon'ble Supreme Court of India have led to the current status of the law, as a result of which, the 1951 Act was also amended bring it into line with the law laid down. The affidavits; disclosures etc., are all a result of a sustained and concerted effort to clean the system by the highest Courts of the land.

33) **Failure to disclose a criminal case:** The issues to be determined are:

(a)(i) Whether the nomination of the 1<sup>st</sup> respondent was improperly accepted by the Returning Officer and the same has materially affected the election?

(ii) Whether the failure of the returned candidate (R.1) to disclose the fact that he was accused of offences has vitiated the affidavit filed?

(2) Whether as a result of the failure to disclose the criminal cases, election result of the returned candidate is required to be declared as void?

34) For better appreciation of the issue (2) above is recast as follows:

Whether as a result of the failure to disclose the criminal case, the election result of the returned candidate is required to be declared as void as it is a corrupt practice? This recasting is done by virtue of power under Order 14 Rule 5 CPC and as per section 87 of the 1951 Act.

35) Even otherwise as per following para 27 of **Kalyan Singh Chouhan v. C.P.Joshi**<sup>6</sup>, the issue of corrupt practice can be examined in the light of the pleadings/evidence in this case. The said para is as follows:

27. There may be an exceptional case wherein the parties proceed to trial fully knowing the rival case and lead all the evidence not only in support of their contentions but in refutation thereof by the other side. In such an eventuality, absence of an issue would not be fatal and it would not be permissible for a party to submit that there has been a mistrial and the proceedings stood vitiated. ..

36) As far as the facts of the present case are concerned, respondent No.1 was examined as D.W.1. During the course of his cross-examination on 21.09.2022, he deposed as follows:

“I have a Master’s degree in Sciences and a Master’s degree in M.Ed., The graduates constituency consists of voters in Chittoor, Nellore and Prakasam Districts. Approximately, 2 lakh voters got enrolled for this election as voters. Approximately 1,47,000 voters have exercised their franchise.

The election notification was issued on 06.02.2017. The last date for filing nominations was 20.02.2017. Prior to this election I was

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<sup>6</sup> (2011) 11 SCC 786

elected as an MLC from the graduates' constituency in the year 2011, for the same constituency. I have contested this election as an independent candidate. Even in 2011 I contested as an independent candidate only.

I am fully aware of the procedures involved in the elections including the nomination procedure. By the date of this election I was sitting MLC.

One day after the publication of the election notification I decided to contest the election.

.....  
The details mentioned with regard to deponent being convicted etc., in Form No.26 of my nomination are fully correct.

It is true that in CC No.370 of 2012 which was on the file of AJFMC, Gudur, I am shown as the 3<sup>rd</sup> accused. It is true that I was convicted in the said case by the AJFCM, Gudur. Witness adds that the sentenced imposed was suspended later the conviction was also reversed. It is true that CC 370 of 2012 was pending by the time of election. It is not true to suggest that I furnished wrong or false information in my nomination form.

37) During the course of further cross-examination, he also agreed that in Ex.R.2 the details that are to be mentioned in para 2 were not filled up.

38) D.W.1 (Respondent No.1) was recalled for further chief-examination. He filed an affidavit dated 08.02.2023 in lieu of chief-examination; the same was received in evidence along with Ex.R.10 (order in Criminal Appeal No.32 of 2019). When the witness was examined on 09.02.2023, he deposed as follows:

“FURTHER CROSS-EXAMINATION By LEARNED COUNSEL FOR THE PETITIONER:

It is true that by the date of nomination, crime was registered against me in Crime No.188 of 2011. I am not fully aware of the information that is to be disclosed in the nomination form although this is the second election that I am contesting. Witness adds, as per me, only details of conviction should be mentioned in the nomination form.

It is true that I have mentioned in para No.3 of my affidavit in lieu of chief-examination that I have to disclose about the registration of crime against me. I am not aware if the details furnished in the nomination form and in particular about the registration of crime would be displayed in the display board for the public to see. The statements in paragraph No.3 of the affidavit are true.

It is not true to suggest that I have suppressed the information about the criminal case pending in the nomination form fearing I could loose the election if the public are aware of my criminal antecedents. Witness adds that I would have got more votes if the same was disclosed. I did not contest the criminal case by engaging advocate in the trial Court. Therefore, I cannot say when the trial in that case was completed. It is however true that the trial in the said case was not completed by the date the election results were declared. I came to know of the imposition of the punishment by the trial Court approximately around January, 2018. I am not sure when I have filed the appeal against the conviction but, I remember it as January, 2018. Witness adds appeal was filed after the Sankranti festival.

39) Thus, it is crystal clear in this case that by the date of the nomination, i.e 16.02.2017, the 1<sup>st</sup> respondent (R.W.1) was an

accused in a case. R.W.1 also did not speak the truth when he said, he did not engage an advocate. Ex.A.7 (certified copy) shows he was represented by a learned counsel. He secured bail initially and later he appeared for questioning too.

40) Ex.A.2 is the copy of the affidavit filed along with the nomination by the 1<sup>st</sup> respondent. In page 2 of the affidavit filed, the petitioner was under an obligation in column (5) to fill the details with regard to the pending cases. All the boxes are marked 'NIL'. Column (6) pertains to offences for which the deponent had been convicted, but this will not arise in this case because the conviction was after the nomination. Respondent No.1 also filed copies of his own nomination papers which are marked as Ex.R.2 and Ex.R.3. The column with reference to criminal cases are marked 'NIL' in the affidavits in these exhibits also. The offence for which he was charged took place on 03.10.2011 and he was ultimately sentenced to imprisonment with others by the judgment dated 12.01.2018. The affidavit and the nomination were filed in February, 2017. Therefore, it is clear that the 1<sup>st</sup> respondent was an accused on the date of which he filed his nomination. It is also important to note that the election was being held in the Graduates' constituency. In his cross-examination on 21.09.2022, the witness R.W.1 clearly deposed that he has a Master's degree in science and a Masters degree in Education. In the previous election in 2011, he was elected as an MLC from the Graduates'

constituency. He clearly stated that he is fully aware of the procedures involved in the election including the nomination. It is therefore clear that the 1<sup>st</sup> respondent is a qualified, experienced and educated contestant. He cannot plead ignorance. His evidence is to the effect that he is aware of the procedures involved in the election including the nomination procedures.

41) Absolutely, no rational or categorical explanation is offered for the failure to disclose the criminal case. The contents of the affidavit in Form 4-A are crystal clear and are not capable of being misunderstood even by a layman. Yet with his education, experience, knowledge of the procedures, R.W.1-1<sup>st</sup> respondent merely typed the word "NIL" in all the columns. As mentioned earlier, he has filed two sets of nominations. Ex.R.2 dated 16.02.2017 and Ex.R.3 on 20.02.2017. In both these nominations and the affidavits, he did not fill up the details with regard to the criminal case. He, however, filled up the details of his assets, assets in the name of his wife and family members.

42) In the light of the judgments of the Hon'ble Supreme Court, which are referred to earlier, a failure to disclose the assets itself is a material irregularity. Failure to disclose the proper educational qualification was also commented upon. In both these cases, elections were set aside. In this case, a highly literate, experienced candidate in an election of a graduates' constituency has chosen not to disclose

the details of the criminal case pending against him. The only explanation given is that he was under the impression that only details of convictions alone should be given. In the opinion of this Court, the columns specified in form 24 are very clear: details of the criminal cases pending are to be disclosed in column No.5 and details pertaining to convictions are to be described in column No.6.

43) In the light of the facts and circumstances of this case, this Court has no hesitation to hold that the 1<sup>st</sup> respondent has deliberately suppressed the information relating to the pendency of the criminal cases, while filing his nomination. Para 43 of ***Kisan Shankar Kathore v. Arun Dattatray Sawant and others***<sup>7</sup> is as follows:

**43.** When the information is given by a candidate in the affidavit filed along with the nomination paper and objections are raised thereto questioning the correctness of the information or alleging that there is non-disclosure of certain important information, it may not be possible for the Returning Officer at that time to conduct a detailed examination. Summary enquiry may not suffice. The present case is itself an example which loudly demonstrates this. At the same time, it would not be possible for the Returning Officer to reject the nomination for want of verification about the allegations made by the objector. In such a case, when ultimately it is proved that it was a case of non-disclosure and either the affidavit was false or it did not contain complete information leading to suppression, it can be held at that

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<sup>7</sup> (2014) 14 SCC 162



stage that the nomination was improperly accepted. Ms Meenakshi Arora, learned Senior Counsel appearing for the Election Commission, rightly argued that such an enquiry can be only at a later stage and the appropriate stage would be in an election petition as in the instant case, when the election is challenged. The grounds stated in Section 36(2) are those which can be examined there and then and on that basis the Returning Officer would be in a position to reject the nomination. Likewise, where the blanks are left in an affidavit, nomination can be rejected there and then. In other cases where detailed enquiry is needed, it would depend upon the outcome thereof, in an election petition, as to whether the nomination was properly accepted or it was a case of improper acceptance. Once it is found that it was a case of improper acceptance, as there was misinformation or suppression of material information, one can state that question of rejection in such a case was only deferred to a later date. When the Court gives such a finding, which would have resulted in rejection, the effect would be same, namely, such a candidate was not entitled to contest and the election is void. Otherwise, it would be an anomalous situation that even when criminal proceedings under Section 125-A of the Act can be initiated and the selected candidate is criminally prosecuted and convicted, but the result of his election cannot be questioned. This cannot be countenanced.

44) The Hon'ble Supreme Court in the orders referred to earlier including the case of **Krishnamoorthy** (1 supra) traced the history and a growth of this branch of law. The judgments of the Hon'ble Supreme Court of India time and again emphasized the need for a clear disclosure and the need for a voter to know the antecedents of a

candidate in order to make an informed choice for exercising their valuable vote. The conclusion of the Hon'ble Supreme Court in the case of **Krishnamoorthy** (1 supra) in para 91 is clear and to the effect that when something within the knowledge is not disclosed, it tantamounts to fraud. It is also held in this para that in an election petition, the petitioner is under a duty to plead about the cases in which the successful candidate is involved and how there has been non-disclosure in the affidavit. In para 91, Hon'ble Supreme Court however held once that is established, it would amount to a corrupt practice. Once it is concluded that it is a corrupt practice, the consequences, will have to follow. In para 93, the submission that there was no plea of corrupt practice was also negated and the decision of the High Court declaring the election as null and void was upheld.

45) It is also important to note that if the nomination of a returned candidate is found to be improperly accepted, the election has to be declared as void. In such a case, pleading and proof of the election being materially affected is not necessary as per the settled law. (See **Mairembam Prithviraj (5 supra), Durai Muthuswami v. N. Nachiappan<sup>8</sup>, and Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy<sup>9</sup>**). Similarly, if any corrupt practice has been committed by the returned candidate or his election

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<sup>8</sup> (1973) 2 SCC 45

<sup>9</sup> (2018) 14 SCC 1

agent etc., the high Court has to declare election of the returned candidate to be void. (Section 100 (1) (b) of 1951 Act).

46) In view of the uncontroverted evidence that is available in this case, this Court has no hesitation to hold that the 1<sup>st</sup> respondent-R.W.1 is guilty of a corrupt practice by not disclosing the pending criminal case against him. The acceptance of his nomination is improper/bad in law. The election has to be declared as void in terms of section 100(1)(b); 100 (1)(d) and section 98(b) of the 1951 Act. Arguments were advanced that in view of the fresh declaration of election in 2023; no relief should be granted in this election petition. However, the fact remains that when an allegation of corrupt practice is made, this Court had to look into the same/decide the same. In the opinion of this Court, in view of the overarching need for transparency and purity, (even though the time has expired), a declaration has to be given. This Court derives support from para 5 of ***Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi***<sup>10</sup>, which is as follows:

5. The main controversy raised in the present appeal regarding setting aside of the respondent's election has become stale and academic, but precious time of the Apex Court was consumed in hearing the appeal at length on account of the present state of law. Section 98 read with Section 99 indicates that once the machinery of the Act is moved by means of an election petition, charges of corrupt

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<sup>10</sup> 1987 Supp SCC 93

practice, if any, raised against the returned candidate must be investigated. On conclusion of the trial if the Court finds that a returned candidate or any of his election agents is guilty of commission of corrupt practice he or his election agent, as the case may be, would be guilty of electoral offence incurring disqualification from contesting any subsequent election for a period of six years. In this state of legal position we had to devote considerable time to the present proceedings as the appellant insisted that even though six years period has elapsed and subsequent election has been held nonetheless if the allegations made by him make out a case of corrupt practice the proceedings should be remanded to the High Court for trial and it after the trial the Court finds him guilty of corrupt practice the respondent should be disqualified. If we were to remand the proceedings to the High Court for trial for holding inquiry into the allegations of corrupt practice, the trial itself may take couple of years, (sic but) we doubt if any genuine and bona fide evidence could be produced by the parties before the Court. In fact, during the course of hearing the appellant himself stated before us more than once, that it would now be very difficult for him to produce evidence to substantiate the allegations of corrupt practice but nonetheless he insisted for the appeal being heard on merit. Though the matter is stale and academic yet having regard to the present state of law, we had to hear the appeal at length.

47) In ***Sheo Sadan Singh v. Mohan Lal Gautam***<sup>11</sup>, the following was held at para 5:

5. We are unable to accept the contention of Mr Veda Vyasa, learned Counsel for the respondent, that the petition must be

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<sup>11</sup> (1969) 1 SCC 408

held to have become infructuous in view of the dissolution of the Assembly. In this proceeding we are considering the validity of the election of the respondent and not whether he is continuing as a member. If the contention of the appellant that the respondent was guilty of corrupt practices during the election is found to be true then not only his election will be declared void, he is also liable to incur certain electoral disqualifications. The purity of elections is of utmost importance in a democratic set up. No one can be allowed to corrupt the course of an election and get away with it either by resigning his membership or because of the fortuitous circumstance of the Assembly having been dissolved. The public are interested in seeing that those who had corrupted the course of an election are dealt with in accordance with law. That purpose will stand defeated if we accept the contention of Mr Veda Vyasa.

48) Since this Court is of the conclusion that a corrupt practice has been committed by the returned candidate, steps have to be taken to make a reference to the authority i.e. the Secretary of the Legislative Council of the State, (as per section 8-A of the 1951 Act) for placing the issue before the Hon'ble President of India to decide on the disqualification that is to be awarded to the 1<sup>st</sup> respondent in terms of section 8-A of the 1951 Act. He is also liable for prosecution under section 125 A of the 1951 Act. The argument of the learned senior counsel for the respondent that the petition has become totally infructuous or the issue has become totally academic is not accepted in view of the facts/law mentioned above.

49) The continuing anguish expressed by the 5 Judge Bench of the Hon'ble Supreme Court in ***Public Interest Foundation v. Union of India***<sup>12</sup>, is again referred to as follows:

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

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

116.2. It shall state, **IN BOLD LETTERS**, with regard to the criminal cases pending against the candidate.

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

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

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

117. These directions ought to be implemented in true spirit and right earnestness in a bid to strengthen the democratic set-up. There may be certain gaps or lacunae in a law or legislative enactment which can definitely be addressed by the legislature if it is backed by the proper intent, strong resolve and determined will of right-thinking minds to ameliorate the situation. It must also be borne in mind that the law cannot

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<sup>12</sup> (2019) 3 SCC 224

always be found fault with for the lack of its stringent implementation by the authorities concerned. Therefore, it is the solemn responsibility of all concerned to enforce the law as well as the directions laid down by this Court from time to time in order to infuse the culture of purity in politics and in democracy and foster and nurture an informed citizenry, for ultimately it is the citizenry which decides the fate and course of politics in a nation and thereby ensures that “we shall be governed no better than we deserve”, and thus, complete information about the criminal antecedents of the candidates forms the bedrock of wise decision-making and informed choice by the citizenry. Be it clearly stated that informed choice is the cornerstone to have a pure and strong democracy.

50) It is thus seen that at present the candidate has to fill in the particulars in ‘Bold Letters’; he has to publish his antecedents in papers and in the electronic media also at least thrice.

51) The little man walking into the little booth needs to know. Purity of the election process will only be ensured if the “little man” knows his candidate fully. Purity of the system can only be ensured by a full and frank disclosure. It cannot wait. It must not wait. ‘Satyameva Jayathe’ should not remain an empty slogan. A ‘free and fair’ election is a basic feature of our democracy which in turn is a basic structure of our constitution. It cannot be allowed to be polluted in any way. A fully educated literate candidate like respondent No.1 cannot be allowed to flout the law with impunity. If such actions are pardoned,

the painstaking effort put in by the Hon'ble Supreme Court of India to bring purity/probity into elections will be set at naught.

52) In view of the finding that the failure to disclose the details of the pending criminal case is a corrupt practice, a direction is issued in terms of section 8-A of the 1951 Act to the Secretary of the Legislative Council of Andhra Pradesh who is the 'Authority' as per the Notification No.SO 367(E) dated 25.05.1976 to make a reference/place all the papers before Her Excellency, the President of India for taking further action in terms of Section 8-A of the 1951 Act. Respondent No.1 is also liable to be prosecuted under Section 125-A.

53) With the above directions, the Election Petition is disposed of. No order as to costs. As a sequel, the miscellaneous petitions if any shall stand dismissed.

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**D.V.S.S. SOMAYAJULU, J**

Date: 14.07.2023

Note: L.R. copy be marked.

B/o  
KLP



**Appendix of Evidence**

**Witness for petitioner:**

P.W.1 Sri Vemireddy Pattabhiram Reddy

**Witness for respondents:**

R.W.1 Sri Yendapalli Srinivasulu Reddy

R.W.2 Sri G.Amarnath Reddy

R.W.3 Sri B. Giri Kumar

R.W.4 Sri Boddu Nageswara Rao

**Documents Marked**

**On behalf of the petitioner:**

**Ex.A1 :** Is the schedule announced by the Election Commission of India dated 13.02.2017.

**Ex.A2 :** Is an affidavit filed by the respondent No.1 along with all the enclosures.

**Ex.A3 :** Is the Voters turnout report.

**Ex.A4 :** Is the status of the votes counted after the end of each round.

**Ex.A5 :** Is the final result sheet.

**Ex.A6 :** Is the entry at Sl.No.546 to 550

**Ex.A7:** Certified copy of Calendar and Judgment in C.C.No.370 of 2012

**On behalf of respondents:**

**Ex.R1 :** Is the letter given by the District Election Officer cum Collector, dated 27.08.2022

**Ex.R2 :** Is the nomination paper submitted by R.W.1 on 16.02.2017.

**Ex.A3 :** is the nomination paper submitted by R.W.1 on 20.02.2017.

**Ex.R4 :** is the Nomination paper of the petitioner (P.W.1) submitted on 17.02.2017.

**Ex.R5 :** Is the Nomination paper of the petitioner (P.W1) submitted on 17.02.2017.

**Ex.R6:** Is the sample ballot paper for the council constituency

**Ex.R7:** Is the election result (round wise).

**Ex.R8:** Is the form No.23 or declaration of the election result.

**Ex.R9:** Is the cycle wise election results.

**Ex.R10:** Is certified copy of the judgment in Criminal Appeal No.32 of 2018 dated 09.09.2022 passed by VIII Additional Sessions Judge, Gudur

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**D.V.S.S. SOMAYAJULU, J**