

REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO..... OF 2022
(ARISING OUT OF S.L.P. (C) NO. 7414 OF 2021)**

S. RUKMINI MADEGOWDA

....Appellant (s)

versus

THE STATE ELECTION COMMISSION & ORS.

....Respondent (s)

J U D G M E N T**Indira Banerjee, J.**

Leave granted.

2. This Special Leave Petition under Article 136 of the Constitution of India is against a judgment and order dated 26th May 2021 passed by the Hon'ble High Court of Karnataka at Bengaluru, upholding the judgment and order dated 14th December 2020 of the Principal District and Sessions Judge, Mysuru, allowing Election Petition No.4 of 2018 and setting aside the election of the Appellant to the Mysore Municipal Corporation as Councillor from Ward No.36-Yeraganahalli, Karnataka.

3. Sometime in 2018, the Appellant filed her nomination for election to the Mysore Municipal Corporation, as Councillor from Ward No.36-Yeraganahalli in Karnataka, which was reserved for Backward Class-B (Women), along with a declaration by way of an affidavit, furnishing details of the movable and immovable properties held by the Appellant as well as her spouse and dependents, which is hereinafter referred to as the "Affidavit of Assets".

4. In August 2018, elections to the Mysore Municipal Corporation were held. On 3rd September 2018, the results of said elections were declared. The Appellant was declared as successfully elected Councillor from the said Ward No.36, that is Yeraganahalli.

5. The Respondent No.4, an unsuccessful candidate, filed Election Petition No.4 of 2018 in the Court of Principal District and Sessions Judge, Mysuru under Sections 33 and 34 of the Karnataka Municipal Corporations Act, 1976, hereinafter referred to as the "KMC Act".

6. In the said Election Petition, the Respondent No.4 alleged that the Appellant had, in her Affidavit of Assets, falsely declared that her husband did not possess any immovable property, and that by giving such false declaration, the Appellant had indulged in corrupt practices to get the benefit of reservation under the Category of Backward Class-B (Women).

7. By a judgment and order dated 16th April 2019, the Principal District and Sessions Judge, Mysuru (Trial Court) rejected the said Election Petition No.4 of 2018 filed by the Respondent No.4.

8. The Respondent No.4 filed an appeal being Miscellaneous First Appeal No.4023 of 2019 in the High Court of Karnataka, challenging the said judgment and order dated 16th April 2019 passed by the Trial Court.

9. By an order dated 28th April 2020, the High Court remanded Election Petition No.4 of 2018 back to the Trial Court, for reconsideration, in the light of the judgments of this Court in ***Union of India v. Association for Democratic Reforms***¹ and in ***Lok Prahari v. Union of India***². The High Court observed:

“...This Court is of the considered opinion that for complete adjudication of the lis the trial court should have considered such question with reference to the relevant provisions of the KMC Act and the decisions of the Hon’ble Supreme Court in Union of India v. Association for Democratic Reforms People’s Union for Civil Liberties (PUCL) and another vs Union of India and in Lok Prahari Vs. Union of India and Others.”

10. Thereafter, by a judgment and order dated 14th December 2020, the Trial Court allowed the Election Petition No.4 of 2018 and set aside the election of the Appellant.

11. On or about 23rd December 2020, the Appellant filed an appeal in the High Court of Karnataka at Bengaluru, under Section 38 of the KMC

1 (2002) 5 SCC 294

2 (2018) 4 SCC 699

Act, which was admitted and registered as MFA No.49 of 2021. The High Court has dismissed the Appeal, being MFA No.49 of 2021 by the judgment and order dated 26th May 2021, impugned in this appeal.

12. Mr. Shyam Diwan, appearing on behalf of the Appellant, submitted that the Appellant was successful in the Municipal election for Ward No.36, Yeraganahalli in the Mysore City Corporation, and was accordingly chosen as the Mayor of the Mysore City Corporation and she continues to be the sitting Mayor.

13. Mr. Diwan argued that while the Respondent No.4 secured 2902 votes, the Appellant secured 3295 votes. Mr. Diwan emphasized on the fact that the Election Petition had initially been dismissed, but the High Court had, by an order dated 28th April 2020 in appeal, remanded the matter back for reconsideration of the learned Trial Court.

14. Mr. Diwan submitted that the High Court had erred in law, in passing the impugned order dated 26th May 2021, upholding the order dated 14th December 2020 of the Trial Court in Election Petition No.4 of 2018, setting aside the election of the Appellant as Councillor for Ward No.36-Yeraganahalli, Karnataka.

15. Mr. Diwan raised the following questions of law for consideration of this Court:-

- (i) Whether a duly elected candidate, serving as the Mayor, Mysore City Corporation after election, could be unseated, in

the absence of any statutory provision requiring disclosure of assets in the affidavit filed with the nomination form?

- (ii) Whether non-disclosure of assets would constitute corrupt practice, in the absence of any statutory provision requiring disclosure of assets?

16. The election of the Appellant is governed by the Karnataka Municipal Corporation Act, 1976, hereinafter referred to as the “KMC Act”, and the Karnataka Municipal Corporation (Election) Rules, 1979 framed thereunder, which is hereinafter referred to as the “KMC Election Rules”.

17. Mr. Diwan emphatically argued that there was no requirement of any disclosure under the KMC Act or under the KMC Election Rules. Having recognized and proceeded on the basis that elections were being held in terms of the KMC Act read with the KMC Election Rules, the High Court should not have dismissed the Appeal of the Appellant.

18. Mr. Diwan submitted that the Election Law which governs the election, is a self-contained statutory law which has to be strictly adhered to. In the absence of any specific provision in the law, which requires a candidate to disclose, by way of affidavit, the assets of his/her spouse, a candidate intending to contest an election cannot be compelled to make such disclosure by adoption of a policy decision or through action at common law.

19. In support of his submission, Mr. Diwan cited ***Shrikant v. Vasantrao and Others***³, where this Court quoted with approval its earlier decision in ***Jyoti Basu v. Debi Ghosal***⁴ and held:-

"...Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, court is put in a straitjacket."

20. In ***Srikant v. Vasant Rao & Others*** (supra) this Court held :-

"11. A person cannot, therefore, be disqualified unless he suffers a disqualification laid down in [Article 191](#) of the Constitution or under [Sections 8, 8-A, 9, 9-A, 10](#) or [10-A of the Act](#). It is not possible to add to or subtract from the disqualifications, either on the ground of convenience, or on the grounds of equity or logic or perceived legislative intention. A combined reading of [Article 191](#) of the Constitution of India and Chapter III of the Representation of the People Act, 1951 makes it clear that a person can be held to be disqualified for being chosen as, and for being, a Member of the Legislative Assembly or Legislative Council of a State only on the following, and no other, grounds :

Disqualifications under the Constitution of India :

.....
.....

(viii) if he is a person having a subsisting contract with the State Government for the supply of goods to or for the execution of any works undertaken by that Government, vide [section 9-A](#) of the Act; ..."

3 (2006) 2 SCC 682

4 (1982) 1 SCC 691

21. The judgment of this Court in ***Srikant v. Vasant Rao and Others***, was rendered in the context of Chapter III of the Representation of the People Act 1951, in terms whereof a person could be held to be disqualified from being a Member of the Legislative Assembly only on the grounds stipulated, and no other, which included a person having a subsisting contract with the State Government for supply of goods.

22. This Court found on facts that the concerned candidate did not have any subsisting contracts with the State Government, but with entities under the control of the State Government. This Court, thus observed and held that the State Government was different from legal or other authorities under its control.

23. The proposition of law noted by this Court in ***Jyoti Basu v. Debi Ghosal*** (supra) that except in accordance with Statute, there is no right to elect, be elected or to dispute an election, as approved and reiterated in ***Srikant v. Vasant Rao & Others*** (supra) is well settled. An Election Petition is indisputably a statutory proceeding governed by the statute under which the Election Petition is filed, or the Statutory Rules framed under that statute.

24. The observations of this Court in ***Jyoti Basu v. Debi Ghosal*** (supra), referred to above have been made in the context of the issue of whether the appellant could be impleaded in an election petition and held guilty of corrupt practice, when he was not a candidate contesting

the election, which had been challenged. The judgments in ***Srikant v. Vasant Rao & Others*** (supra) and ***Jyoti Basu v. Debi Ghosal*** (supra) are distinguishable on facts.

25. In ***Shailesh Manubhai Parmar v. Election Commission of India***⁵, also cited by Mr. Diwan, this Court held, in effect, that even though Article 324 of the Constitution confers wide powers on the Election Commission to take action with a view to ensure a free and fair election, even by assuming the role of an adviser, the power to make law vests in the Parliament under Article 327 of the Constitution. The Parliament is supreme and, therefore, not bound by any advice of the Election Commission.

26. This Court held:-

“26. Interpreting the said Article, the Constitution Bench in *Kuldip Nayar* [*Kuldip Nayar v. Union of India*, (2006) 7 SCC 1] held : (SCC p. 139, para 427)

“427. In this context, we would say that where the law on the subject is silent, Article 324 is a reservoir of power for the Election Commission to act for the avowed purpose of pursuing the goal of a free and fair election, and in this view it also assumes the role of an adviser. But the power to make law under Article 327 vests in Parliament, which is supreme and so, not bound by such advice. We would reject the argument by referring to what this Court has already said in Mohinder Singh Gill [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405] and what bears reiteration here is that the limitations on the exercise of “plenary character” of the Election Commission include one to the effect that ‘when Parliament or any State Legislature has made valid law relating to or in connection with elections, the Commission, shall act in conformity with, not in violation of, such provisions’ [SCC p. 452, para 92(2)(b)].”

5 (2018) 9 SCC 100

27. Relying on **Shailesh Manubhai Parmar** (supra), Mr. Diwan argued that the Election Commission has to act within the four corners of law made by Parliament. That apart, if any direction is issued by this Court, interpreting a provision for furtherance of purity of election, it will be obligatory on the part of the Commission to act in accordance with the same. The Commission cannot introduce concepts or ideas or dimensions which would not fit into the legal framework. There can be no dispute with the aforesaid proposition.

28. Mr. Diwan questioned the authority of the Election Commission to issue the notification dated 14th July 2003 requiring candidates contesting elections to disclose their assets and the assets of their spouses and dependents by filing an affidavit. He argued that there was no vacuum in the KMC Act, which was required to be filled up by issuance of a notification.

29. The notification dated 14th July 2003, was issued pursuant to the judgment of this Court in **Union of India v. Association for Democratic Reforms** (supra). The relevant part of the judgment is extracted hereinbelow:-

“48. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:

(1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past — if any, whether he is punished with imprisonment or fine.

(2) *Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.*

(3) *The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependants.*

(4) *Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.*

(5) *The educational qualifications of the candidate.”*

30. In **Lok Prahari** (supra), this Court held:-

“68. In the light of the law declared by this Court in ADR case [Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294 : AIR 2002 SC 2112] and PUCL case [PUCL v. Union of India, (2003) 4 SCC 399 : AIR 2003 SC 2363], we do not see any legal or normative impediment nor has any tenable legal objection been raised before us by any one of the respondents, for issuance of the direction relating to the changes in Form 26 (declaration by the candidates). On the other hand, the 2nd respondent in his counter stated:

“7. It is submitted that so far as the first prayer in the captioned writ petition is concerned, the information about source(s) of income of candidates, their spouses and dependants will be a step in the direction of enhancing transparency and should form part of the declaration in Col. (9) of Form 26. The Answering Respondent Commission vide its Letter No. 3/4/ECI/LET/FUNC/JUD/SDR/Vol.I/2016 dated 7-9-2016 has already requested the Ministry of Law and Justice to consider the proposed amendments made in Column (3) and Column (9) of Form 26 and in total affirmation with the prayer made by the petitioner.”

Therefore, we are of the opinion that Prayer 1(1) should be granted and is accordingly granted. We direct that Rule 4-A of the Rules and Form 26 appended to the Rules shall be suitably amended, requiring candidates and their associates to declare their sources of income.”

31. Mr. Diwan argued that in **Lok Prahari** (supra), this Court directed that Rule 4A and Form 26 appended to the Conduct of Elections Rules, 1961, hereinafter referred to as the “1961 Rules”

framed under the Representation of People Act shall be suitably amended requiring candidates and their associates to declare their sources of income. This Court further observed:

“81. For the very same logic as adopted by this Court in Krishnamoorthy [Krishnamoorthy v. Sivakumar, (2015) 3 SCC 467 : (2015) 2 SCC (Cri) 359 : AIR 2015 SC 1921] , we are also of the opinion that the non-disclosure of assets and sources of income of the candidates and their associates would constitute a corrupt practice falling under heading “undue influence” as defined under Section 123(2) of the 1951 RP Act. We, therefore, allow Prayer 2.”

32. Mr. Diwan argued that, in this case, the elections were being held under the KMC Act read with the KMC Rules. Neither the KMC Act, nor any Rules framed thereunder require disclosure of the assets of a candidate intending to contest elections or his/her spouse. The High Court has in its impugned order recorded that the statutory Form No. 2 under the KMC Rules does not require a candidate to file any affidavit of assets and liabilities of the candidate or the candidate’s spouse.

33. Mr. Diwan emphasized on the difference between elections conducted by the Election Commission of India and an election governed by the KMC Act and/or the KMC Rules. He argued that the elections conducted by the Election Commission of India are governed by the Representation of People Act, 1951 and the 1961 Rules. Mr. Diwan submitted that there is a statutory form and express statutory requirement in terms of Rule 4A of the 1961 Rules mandating disclosures. The form of affidavit which is required to be filed in respect of elections conducted by the Election Commission of India,

must contain details of spouse's income, property etc. However, the requirement to make disclosures cannot be imported into the KMC Rules, without an appropriate amendment of the said rules as also the statutory form thereunder.

34. Mr. Diwan submitted that the High Court erred in placing reliance on the order of the State Election Commission dated 14th July 2003. Mr. Diwan argued that the absence of statutory requirement could not be overcome by an order of the State Commission. The operative order of the Notification dated 14th July 2003 cannot amount to amending provisions of the KMC Act or any rules framed thereunder.

35. Mr. Diwan argued that it is the duty of the Election Commission to conduct fair elections in accordance with the statutory provisions. It is not for the Election Commission to legislate. Furthermore, if an administrative direction as the one issued by the State Election Commission by the Notification dated 14th July 2003 were adequate, there would be no need to amend the Central Rules for the conduct of elections.

36. Mr. Diwan submitted that the High Court erred in arriving at the finding that the Appellant had indulged in corrupt practices. The consequences of such finding is that the Appellant stands disqualified from being a Councillor for a period of six years in terms of Section 27 of the KMC Act. At the highest, the action impugned would amount to improper acceptance of nomination under Section 35(1)(d)(i).

37. Mr. Diwan submitted that the election could, at best, have been set aside under Section 35(1)(d)(i) and not on the ground of corrupt practices. The High Court has not arrived at any specific finding with regard to material impact of improper acceptance of the Appellant's nomination or election, to constitute corrupt practice.

38. In our considered view, a false declaration with regard to the assets of a candidate, his/her spouse or dependents, constitutes corrupt practice irrespective of the impact of such a false declaration on the election of the candidate. It may be presumed that a false declaration impacts the election.

39. Mr. Diwan finally argued that penal measures can only be imposed in accordance with statutory provisions and/or rules. In the context of his submission, Mr. Diwan cited ***State of M. P. v. Centre for Environment Protection Research & Development***⁶, authored by one of us (Indira Banerjee, J.), where this Court held:-

“54. It is well settled that when a statute or statutory rules prescribed a penalty for any act or omission, no other penalty not contemplated in the statute or statutory rules can be imposed. It is well settled that when statute requires a thing to be done in a particular manner, it is to be done only in that manner.

55. There can be no doubt that strong measures must be taken to protect the environment and improve the air quality whenever there is contravention of statutory rules causing environmental pollution. Stringent action has to be taken, but in accordance with law.

56. Stoppage of supply of fuel to vehicles not complying with the requirement to have and/or display a valid PUC certificate is not contemplated either in the 1989 Rules or in the NGT Act. Motor vehicles not complying with the requirement of possessing and/or

6 (2020) 9 SCC 781

displaying a valid PUC certificate cannot be debarred from being supplied fuel.

...

58. This Court is, therefore, constrained to hold that the learned Tribunal had no power and/or authority and/or jurisdiction to pass orders directing the appellant State Government to issue orders, instructions or directions on dealers, outlets and petrol pumps not to supply fuel to vehicles without PUC certificate. The first two questions are answered accordingly."

40. As submitted by Mr. Diwan candidly, the aforesaid order of this Court was passed in the context of an order of the National Green Tribunal, directing that supply of fuel to vehicles be stopped for non-compliance with the requirement to display a valid PUC (Pollution Under Control) Certificate, even though there were specific provisions in the statute for dealing with the contravention. The observations of this Court extracted above were made in an altogether different context, where penalty not contemplated by statute had been imposed.

41. It is well settled that, a judgment is a precedent for the issue of law that is raised and decided. The judgment has to be construed in the backdrop of the facts and circumstances in which the judgment has been rendered. Words, phrases and sentences in a judgment, cannot be read out of context. Nor is a judgment to be read and interpreted in the manner of a statute. It is only the law as interpreted by Court in an earlier judgment, which constitutes a binding precedent, and not everything that the Judges say.

42. Emphasizing on the well settled principle of strict construction of penal statutes, Mr. Diwan submitted that the impugned judgment and order was incorrect. In the context of his submission, Mr. Diwan cited a five-Judge Bench decision of this Court in ***Tolaram Relumal and Another v. State of Bombay***⁷, where this Court dealing with the penal provision in the Bombay Rent Restriction Act, 1947, held:-

“ ... It may be here observed that the provisions of Section 18(1) are penal in nature and it is a well-settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the court to stretch the meaning of an expression used by the legislature in order to carry out the intention of the legislature. As pointed out by Lord Macmillan in London and North Eastern Railway Co. v. Berriman [1946 AC 278, 295] “where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however, beneficent its intention, beyond the fair and ordinary meaning of its language”.

43. In ***Bipinchandra Parshottamdas Patel v. State of Gujarat***⁸, cited by Mr. Diwan, this Court held:-

“31. It is trite that a law leading to disqualification to hold an office should be clear and unambiguous like a penal law. In the event a statute is not clear, recourse to strict interpretation must be made for construction thereof. In his classic work The Interpretation and Application of Statutes Read Dickerson states:

“(1) The court will not extend the law beyond its meaning to take care of a broader legislative purpose. Here ‘strict’ means merely that the court will refrain from exercising its creative function to apply the rule announced in the statute to situations not covered by it, even though such an extension would help to advance the manifest ulterior purpose of the statute. Here, strictness relates not to the meaning of the statute but to using the statute as a basis for judicial law-making by analogy with it.

7 (1955) 1 SCR 158

8 (2003) 4 SCC 642

(2) *The court will resolve an evenly balanced uncertainty of meaning in favour of a criminal defendant, the common law, the 'common right', a taxpayer, or sovereignty.*

(3) *The court will so resolve a significant uncertainty of meaning even against the weight of probability.*

(4) *The court will adhere closely to the literal meaning of the statute and infer nothing that would extend its reach.*

(5) *Where the manifest purpose of the statute, as collaterally revealed, is narrower than its express meaning, the court will restrict application of the statute to its narrower purpose. This differs from the Riggs situation in that the narrow purpose is revealed by sources outside the statute and its proper context."*

44. The relevant provisions of the Karnataka Municipal Corporations Act, 1976, governing the election of the Appellant are set out herein below for convenience.

27. Corrupt practices entailing disqualification.—*The Corrupt practices specified in section 39 shall entail disqualification for being a councillor for a period of six years counting from the date on which the finding of the court as to such practice takes effect under this Act.*

...

33. Election petition.—(1) *No election of a councillor shall be called in question except by an election petition presented for adjudication to the District Court having jurisdiction, within thirty days from the date of the publication of the result of election under section 32.*

(2) *An election petition may be presented on one or more of the grounds specified in Section 35,—*

(a) *by any candidate at such election; or*

(b) *by any voter of the ward concerned.*

(3) *A petitioner shall join as respondents to his petition all the candidates at the election.....*

34. Relief that may be claimed by the petitioner.—*A petitioner may, in addition to claiming a declaration that the election of all or any of the 368 Municipal Corporations 1977: KAR. ACT 14] returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.*

35. Grounds for declaring elections to be void.—(1) *Subject to the provisions of sub-section (2), if the court is of opinion,—*

(a) that on the date of his election a returned candidate was not qualified or was disqualified, to be chosen as a councillor under this Act, or

(b) that any corrupt practice has been 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, or

(c) that any nomination has been improperly rejected, or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected,—

(i) by the improper acceptance of any nomination; or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent; or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or

(iv) by any non-compliance with the provisions of this Act or of any rules or orders made thereunder, the court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the court, a returned candidate has been guilty, by a person other than his election agent, of any corrupt practice, but the court is satisfied,—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent and every such corrupt practice was committed contrary to the orders and without the consent of the candidate or his election agent;

(b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(c) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the court may decide that the election of the returned candidate is not void

37. Decision of the court.—(1) *At the conclusion of the trial of an election petition, the 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.

...

38. Appeal.—*An appeal shall lie to the High Court from an order of the District Court under section 37 within a period of thirty*

days from the date of the order of the court excluding the time required for obtaining a copy of the order:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

39. Corrupt practices.—*The following shall be deemed to be corrupt practices for the purposes of this Act, namely:—*

(1) 'bribery' as defined in clause (1) of section 123 of the Representation of the People Act, 1951 (Central Act 43 of 1951) for the time being in force;

(2) 'undue influence' as defined in clause (2) of the said section for the time being in force;

..."

45. Under Section 39 of the KMC Act, corrupt practices include undue influence. The definition of undue influence in Clause 2 of Section 123 of the Representation of the People Act 1951, (hereinafter referred to as "the 1951 RP Act") has been incorporated in Section 39(2) of the KMC Act.

46. Section 123 (2) of the 1951 RP Act provides :-

123. Corrupt practices - *The following shall be deemed to be corrupt practices for the purposes of this Act:—*

(1) ...

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:

Provided that—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and excommunication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will

become or will be rendered an object of divine displeasure or spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause."

47. Under Section 27 of the KMC Act corrupt practices defined in Section 39(2) which includes "undue influence' entails disqualification from being a Councillor, for six years.

48. Mr. Basava Prabhu S. Patil, learned Senior Counsel appearing on behalf of the Respondent No.4, submitted that the election in question was conducted within the legal framework of the KMC Act, the Notification dated 14th July 2003 issued by the Karnataka State Election Commission in exercise of its powers under Articles 243K & 243ZA of the Constitution of India, as also the addendum dated 19th June 2018 to the Notification dated 14th July 2003, which required candidates participating in elections to submit an affidavit disclosing assets owned by the candidates, their spouses and dependents.

49. In compliance with the requirements of the said Notifications dated 14th July 2003 and 19th June 2018, the Appellant filed an affidavit. It is admitted by the Appellant that she has made incorrect statements in the said affidavit in that (i) she falsely stated that her husband's name was 'Nanjegowda' instead of stating his real name 'Madegowda', (ii) she has stated that her husband did not own any movable or

immovable properties although he owned large number of movable properties.

50. After the results of the election were declared on 3rd September 2018 and thereafter the false statements made in her affidavit were discovered, the Respondent No.4 filed the Election Petition No.4/2018.

51. In the reply given by the Appellant to the Election Petition she stated:-

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

5. Regarding the averments made in the paragraph 5 of the petition, the 4th respondent humbly submits that she had no knowledge about her husband having the properties mentioned in the said paragraph at the time of swearing to that affidavit and hence she has not mentioned the same in her said affidavits. The non-mentioning of the said properties in the said affidavit is unintentional and for the said bona fide reason".

52. Mr. Patil submitted that the Trial Court had initially erred in dismissing the Election Petition notwithstanding the admission of the Appellant that she had not given the correct name of her husband and had suppressed the fact that her husband had owned properties.

53. Mr. Patil submitted that on remand the Election Petition was rightly allowed. The non-disclosure by the Appellant of her husband's assets would amount to corrupt practices and is therefore, violative of the KMC Act as well as Section 123 of the 1951 RP Act. The Trial Court

therefore, set aside the election of the Appellant and declared the Respondent No.4 as elected.

54. Mr. Patil argued that the High Court had rightly come to the conclusion that the election of the Appellant was vitiated by corrupt practice adopted by her in view of the fact that she had filed a false affidavit filed and had not disclosed her husband's assets. Mr. Patil submitted that Section 35(1)(d) of the KMC Act provides that if the Court is of the opinion that a party has committed a 'corrupt practice' that would result in the election being declared void.

55. Corrupt Practices have been defined in Section 39(2) of the KMC Act to include 'undue influence' as defined in Section 123(2) of the 1951 RP Act. Section 123(2) of the 1951 RP Act came up for interpretation by this Court in **Lok Prahari** (*supra*), where this Court held that the non-disclosure would amount to 'undue influence' as defined under the Representation of People Act. The definition of 'undue influence' as used in Section 123(2) of 1951 RP Act is also adopted by Section 39(2) of the KMC Act. Therefore, the non-disclosure of assets in the municipal elections would also amount to 'undue influence' and consequently to 'corrupt practice'.

56. Rebutting the argument on behalf of the Appellant that the State Election Commission did not have the power to issue the Notifications dated 14th July 2003 and 19th June 2018, making it mandatory for candidates to file affidavits disclosing the assets of their spouses, since there was no such requirement in the KMC Act, Mr. Patil argued, and in

our view, rightly, that the issue is squarely covered by the decision of this Court in the ***Association for Democratic Reforms and Ors.*** (supra).

57. In ***Krishnamoorthy v. Sivakumar & Ors.***⁹, cited by Mr. Patil, this Court upheld a notification of the Tamil Nadu State Election Commission requiring that every candidate contesting elections to a local body, should disclose whether there was any criminal case pending against him. In the aforesaid case, the election of the appellant as the President of the Panchayat had been declared null and void for not disclosing the information required in terms of the notification issued by the Tamil Nadu State Election Commission.

58. As argued by Mr. Patil, the notifications dated 14th July 2003 and 19th June 2018 issued by the State Election Commission, have never been questioned by the Appellant. Rather, the Petitioner accepted the notifications as binding on her, and accordingly filed an affidavit. The Appellant is, therefore, estopped from questioning the validity of the notifications or the power of the State Election Commission to issue the same. That non-disclosure of assets would amount to 'corrupt practices', entailing disqualification, is evident from Sections 35 and 39(ii) of the KMC Act, read with Section 123(2) of the Representation of People Act 1951, as interpreted by this Court in ***Lok Prahari*** (supra).

59. It is not in dispute that the Appellant had suppressed information with regard to the assets of her husband. Section 35(1)(b) of the KMC

9 (2015) 3 SCC 467

Act provides that if the Court is of the opinion that a party has committed a 'corrupt practice', that would result in the election being declared void.

60. Section 35 of the KMC Act enumerates the grounds on which Courts could declare the election of the returned candidate to be void. Section 35(1)(b) mentions corrupt practice by a returned candidate or his election agent or by any other person, either with the consent of a returned candidate or his election agent, as one of the grounds for declaring the election to be void. Section 39 of the KMC Act enumerates the acts/practices, which are to be deemed to be corrupt practices. Corrupt practices include 'undue influence'. This is specified in Section 39(2) of the KMC Act.

61. The definition of undue influence in Section 123(2) of the 1951 RP Act has expressly been incorporated in the definition of undue influence in Section 39(2) of the KMC Act. Further, having regard to the tenor of Section 39(3) of the KMC Act, any false statement relating to a candidate would be corrupt practice. At the cost of repetition, it is emphasized that KMC Act incorporates the definition of undue influence in Section 123(2) of the 1951 RP Act. The judgments of this Court interpreting 'undue influence' in Section 123(2) of the 1951, RP Act, would squarely apply to the interpretation of undue influence under Section 39(2) of the KMC Act.

62. Mr. Patil rightly argued that Section 123(2) of the Representation of People Act, 1951 had been interpreted by this Court in ***Lok Prahari*** (supra) where this Court held that non-disclosure would amount to 'undue influence' as defined in the Representation of People Act, 1951. The non-disclosure of assets would therefore, also amount to 'undue influence' and consequently to 'corrupt practices' under the KMC Act. Mr. Patil argued that the Notifications dated 14th July 2003 and in particular 19th June 2018 issued by the State Election Commission made it mandatory for the candidates to file affidavits, disclosing the assets of their spouses.

63. The question of whether the Election Commission had power to issue directions to the candidates to file affidavits disclosing the assets of their spouses, in the absence of any specific provision under the KMC Act or the Rules framed thereunder is no longer *res integra*. The question is squarely covered by the law laid down by this Court in ***Union of India v. Association for Democratic Reforms and Ors.*** (supra), where this Court had directed the Election Commission to secure to voters, *inter alia*, information pertaining to assets not only of the candidates but also of their spouse and dependents.

64. The Election Commission has to act within the four corners of law made by the Parliament and/or the concerned State legislature, as the case may be, as argued by Mr. Diwan.

65. The notification dated 14th July 2003 was issued pursuant to the judgment of this Court in ***Association for Democratic Reforms*** (supra), where this Court held that “*the Constitution has made comprehensive provision under Article 324 to take care of surprise situations and it operates in areas left unoccupied by legislation.*” The interpretation given by this Court of Article 324 of the Constitution of India is binding on all courts.

66. It would be pertinent to note that the language and tenor of Article 243-ZA(1) is in *pari materia* with Article 324(1) of the Constitution. The language and tenor of Section 243-ZA(1) is identical to that of Article 324(1). Articles 243-ZA(1) and Article 324(1) are set out hereinbelow for convenience :-

“243-ZA. Elections to the Municipalities.—(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in Article 243-K.

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324. Superintendence, direction and control of elections to be vested in an Election Commission.—(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).”

67. This Court has interpreted Article 324(1) to confer wide powers on the Election Commission relating to superintendence, direction and control of preparation of electoral roles and/or the conduct of elections

to Parliament and to the legislature of every State provided, of course, that the directions are not contrary to law. The interpretation of Article 324(1) to confer wide powers on the Election Commission to issue directions in respect of elections to Parliament and State legislatures would apply to Article 243-ZA(1). Article 243-ZA(1) has to be construed to confer powers on the State Election Commission to issue directions related to superintendence, direction and control of the preparation of electoral roles or for conduct of elections to municipalities.

68. The Election Commission has wide powers under Article 324(1) of the Constitution of India to issue directions necessary for conducting free and fair elections, subject to the contours of law. The power of the Election Commission includes the power to issue directions where the law is silent. The State Election Commission has the same powers under Article 243-K and 243-ZA(1) as the Election Commission of India has under Article 324(1) of the Constitution of India.

69. In ***Association for Democratic Reforms*** (supra) and in ***Lok Prahari*** (supra), this Court held that for effective exercise of his fundamental right under Article 19(1)(a), the voter is entitled to have all relevant information about candidates at an election which would include criminal antecedents, if any, of the candidate, his/her assets and liabilities, educational qualifications, etc. It may be true that amendment of the 1951 RP Act is within the exclusive domain of the

Union Parliament as observed in ***Lok Prahari*** (supra) and amendment of the KMC Act is exclusively within the domain of the Karnataka State Legislature.

70. However, in light of the law declared by this Court in ***Association for Democratic Reforms*** (supra), we do not see any legal or normative impediment for the State Election Commission to issue directions requiring disclosure of assets of the candidate, his/her spouse and dependent associates by way of affidavit. In issuing the notification dated 14th July 2003, the Election Commission has not encroached into the legislative domain of the Karnataka State Legislature. The direction, as contained in the notification dated 14th July 2003 had been accepted by the Appellant. Having affirmed a false affidavit, it does not lie in the mouth of the Appellant to contend that her election should not be set aside on the ground of corrupt practice under Section 35(1) of the KMC Act.

71. India is a quasi-federal State. Article 1 of the Constitution describes India as a “Union of States”. Every State is an integral and inseverable part of India. The Indian polity combines the features of a federal Government with certain features of a unitary Constitution. While the division of powers between the Union Government and the State Governments is an essential feature of federalism, in matters of national importance, a uniform policy is essential in the interest of all the states, without disturbing the clear division of powers, so that the

Union and the States legislate within their respective spheres. The Constitution is the supreme law for the Union and for the States supported by an independent judiciary which acts as the guardian of the Constitution.

72. There can be no doubt that the Parliament and the respective State legislatures are supreme and not bound by any advice of the Election Commission. It is equally true that the Election Commission has to act within the four corners of law made by the Parliament and/or the concerned State Legislature, as the case may be. However, in our considered opinion, the Election Commission has issued the notification dated 14th July 2003 within the contours of law.

73. In ***State Bank of India v. Santosh Gupta***¹⁰, Rohinton Fali Nariman, J. speaking for the Bench relied upon decision of this Court in ***State of West Bengal v. Union of India***¹¹ and, *inter-alia*, reiterated the following characteristic of Indian Federalism –

“ ...
 (c) *Distribution of powers between the Union and the regional units each in its sphere coordinate and independent of the other. The basis of such distribution of power is that in matters of national importance in which a uniform policy is desirable in the interest of the units, authority is entrusted to the Union, and matters of local concern remain with the State.*
 ...”

74. Purity of election at all levels, be it election to the Union Parliament or a State Legislature or a Municipal Corporation or a

10 (2017) 2 SCC 538 (para 10)

11 AIR 1963 SC 1963

Panchayat is a matter of national importance in which a uniform policy is desirable in the interest of all the States. A hypertechnical view of the omission to incorporate any specific provision in the KMC Election Rules, similar to the 1961 Rules, expressly requiring disclosure of assets, to condone dishonesty and corrupt practice would be against the spirit of the Constitution and public interest.

75. This Court is of the view that there are no grounds to interfere with or set aside the impugned judgment and order of the High Court, affirming the judgment and order of the Principal District and Sessions Judge, Mysuru, allowing Election Petition No. 4 of 2018 and setting aside the election of the Appellant.

76. The appeal is, therefore, dismissed. All pending applications are, accordingly, disposed of.

.....,CJI.
[UDAY UMESH LALIT]

.....,J.
[INDIRA BANERJEE]

.....,J.
[AJAY RASTOGI]

**NEW DELHI;
SEPTEMBER 14, 2022**