

(2009) 11 KAR CK 0032

In the Karnataka High Court

Case No : Misc Civil No. 15572 of 2009 in Election Petition No. 7 of 2008

Mrs. Kavitha Mahesh

APPELLANT

Vs

Chief Election Commissioner, Election Commissioners,
Election Commission of India and Others

RESPONDENT

Date of Decision : 12-11-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Representation of the Peoples Act, 1951 — Section 81, 83, 86

Citation : (2009) 11 KAR CK 0032

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Party in Person, for the Appellant; Ashok Harnahalli, General for Shashidhara, for R-5, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Application under Sections 81, 83 and 86 of the Representation of People Act, 1951 [for short, the Act] read with Order VII Rule 11 of Code of Civil Procedure, 1908 [for short the CPC] in an election petition presented u/s 81 of the Act, wherein the main prayer of the election petitioner is for a declaration that the election to the K.R. Pura Assembly Constituency is null and void and order fresh elections in the interest of justice and equity, as the petitioner is entitled for relief u/s 100(1)(c) of the Act, since rejection of petitioner's nomination paper at the threshold by the returning officer is illegal and improper

2. The application itself is filed by the present lone respondent, who is the candidate declared to have been elected from this assembly constituency in the general elections held for electing representatives of the people to the Karnataka assembly during 2008. The lone respondent, because this respondent though figuring as fifth respondent in the array of respondents as per the original presentation of the election petition remains as the sole surviving respondent in

terms of the order passed by this Court on 31-7-2008, whereby the election petitioner was permitted to delete the erstwhile respondents 1 to 4 viz., the chief election commissioner, election commissioners and election commission of India, the chief electoral officer, state of Karnataka, the district electoral officer, Bangalore urban district and the returning officer, K.R. Puram assembly constituency, from the array of respondents.

3. The elected candidate has sought for dismissal of the election petition by tiling the present application under the statutory provisions referred to above, which, if has to be achieved, can only be in terms of Sub-section (1) of Section 86 of the Act, as this is the only statutory provision which can achieve this result, even at the present stage, which is one wherein the issues are yet to be framed, as while a combination effect: of the provisions of Sections 81, 82 and 86 of the Act inevitably achieves the result of dismissal of an election petition if the petition does not comply with the provisions of Section 81 or 82 or 117 of the Act and in the present application, amongst the three statutory provisions referred to above and Sub-section (1) of Section 86 of the Act, only Section 81 having been relied upon, the desired result u/s 86 can be achieved by the applicant, if it is demonstrated that the petition is one not complying with the requirements of Section 81.

4. This is the legal position, as a non-adherence to the requirement of Section 83 of the Act while by itself does not attract Section 86 of the Act, but the provisions of Section 83 being subject matter of judicial pronouncements, such judgments being called in aid to achieve the result, even for non-adherence with the provisions of Section 83 and in the like manner, the non-adherence to the requirement of the provisions of Order VII Rule 11 CPC, also can achieve the result of rejection of an election petition and it is in the background of such possibilities in law, the present application is filed by the declared candidate, praying for dismissal of the election petition even before the petition could go for trial.

5. Obviously, the result is sought to be achieved with reference to the contents of the petition by urging that the averments in the petition by themselves will not achieve the fulfillment of the mandatory requirement in terms of Sections 81 and 83 of the Act and further that the averments in the entire petition read as a whole also falls short of disclosing a live cause of action, which may not necessitate the court to permit the parties to lead evidence on the disputed versions of the parties and further examination of the question of granting relief, if the petitioner had made out a case for grant of such relief on the basis of the evidence adduced in support of the petition.

6. The affidavit filed in support of the application, sworn to by the respondent, seeks to point out that the trial of an election petition presented under the provisions of Section 81 of the Act is an exercise peculiar by itself and is regulated by the special enactment -Representation of People Act - and the terms and phrases used in the Act, particularly the terms "candidate" and

"returned candidate" which are denned in Clauses (b) and (1) respectively of Section 79 of the Act, the term "nomination paper", are all expressions which have specific and defined meaning under the Act; that the fulfillment of the statutory requirements in the context of these statutory expressions can be said to be fulfilled only if they are strictly and in total compliance and in adherence to the statutory provisions; that the petition pleadings do not demonstrate an adequate compliance with the requirements of the statutory provisions of Sections 82 and 83 of the Act and Order VII Rule 11 CPC and therefore the election petition is to be dismissed/rejected at the threshold, is the sum and substance of the contents of the affidavit supporting the application.

7. It is pointed out in the affidavit that the election petition presented u/s 81 of the Act, seeking for relief on the ground as indicated in Section 100(1) of the Act can be either by a candidate or an elector in the constituency and admittedly, the present election petition being by a person claiming to be a candidate, the petition will be tenable only if the petitioner is in fact and in terms of the statutory provisions, a candidate and the word "candidate" having been defined in Clause b of Section 79 of the Act, the petitioner can be described as one for the purpose of Section 81, if and only if the petition has a plea to the effect that the election petitioner is a person duly nominated as a candidate at the elections and such position will emerge only when a valid nomination paper is presented before the returning officer in terms of the provisions of Section 33 of the Act and even here the requirement in so far as a candidate, who is not set up by a recognized political party is concerned, being that, the nomination paper should be subscribed by at least ten persons as proposers, who are electors of the very constituency and such an express plea not forthcoming in the election petition and on the other hand, the petition averments virtually making an attempt to the effect that, either the proposers were not at all electors in the newly constituted K.R. Pura assembly constituency or even taking at the best the petitioner herself was not sure of the factual position of the ten proposers being electors in the constituency, the petition averments clearly lacks a material factual assertion to make out a case of valid election petition within the meaning of Section 81 of the Act, having been presented before the high court seeking relief.

8. While such is the plea and contentions raised in the context of Section 81 read with Section 86 of the Act, the provisions of Section 34 of the Act read with the provisions of Order VII Rule 11 CPC indicating the requirement of pleadings disclosing a cause of action, are pressed into service to contend that the petition averment does not disclose a material fact to assert that the petitioner has complied with the requirement of Section 34 of the Act and therefore, when there is only partial compliance of these legal requirement the election petition has to be rejected.

9. What is pointed out is that the petition averments lacks a plea to the effect that the petitioner had deposited a sum of Rs. 5,000/- which is a prerequisite for a person to be termed as a duly nominated candidate, as stipulated under the

provisions of Section 34 of the Act and such a plea being conspicuously absent, while the petitioner had never become a candidate, the petition averments also lack even an assertion by the petitioner to claim that the petitioner was a duly nominated candidate. The contention on this aspect is that such an averment constitutes material fact in a petition of the present nature and in the absence of the same, it amounts to lack of essential or material fact, leading to lack of a cause of action and therefore inevitably attracts the provisions of Order VII Rule 11 CPC leading to rejection of the election petition.

10. In so far as the applicability of the provisions of Section 83 is concerned, what is pointed out is that while it is the requirement of law that an election petition should contain a concise statement of material facts on which the petitioner relies, petition should also be signed by the petitioner and verified in the manner indicated in CPC and further requirement being an annexure to the election petition also being required to be signed by the petitioner and verified in the same manner, as required to be done in respect of the election petition; but in the present case, such a compliance is woefully lacking; that copies of the election petition furnished to the applicant-respondent are not the same as the papers presented to the court and received as petition by the registry of the high court; that the petition when presented initially was not accompanied by a certified copy of the declaration of result of the election, as required under the Act.

11. The factual discrepancies in the petitioner not signing the documents and memorandum of petition i.e. not subscribing full signature and that what is furnished is not the same copy as has been filed before the registry, are pointed out in the contents of para-3.1 of the affidavit and the discrepancies regarding non-compliance with the requirement of Section 83(1)(c) of the Act, warranting dismissal of the election petition are detailed in para-3 and sub-paras of this para.

12. It is also pointed out that the nomination paper while is required to be tilled up part by part, as contained in form No. 2B [copy at Annexure-A to the election petition] and the nomination paper or paper sought to be presented was not actually presented claiming to be nomination papers; that in fact what is now placed before the court does not constitute even a valid nomination paper on the touchstone of the provisions of Section 83 read with Section 81 of the Act. also and therefore in the absence of relevant material facts being pleaded in the election petition, while it cannot, be claimed that a valid nomination paper had ever been presented, resulting in rejection of a nomination paper, petition pleading does not amount to a material tact, disclosing a cause of action, within the meaning of Section 100(1)(c) of the Act, and therefore warrants rejection of the election petition at the present: stage itself.

13. It is further averred in the affidavit that the verification is also not precise; that it is vague and general and at any rate is not one conforming to the requirement of Clause 2 of Rule 15 of Order VI CPC and if so, again the situation warrants rejection of the election petition.

14. It is also averred that while the petition has 27 documents as annexures, none of them are verified in the prescribed form under Order VI Rule 15 CPC, and all verifications which are in a stereotyped manner and with the same defect as indicated above, which are enumerated as under:

- (a) Annexure A ending at Ink page 34 is not verified at all.
- (b) Annexure B ending at Ink page 43 is not verified at all.
- (c) Annexure C ending at Ink page 50 is not verified at all.
- (d) Document ending at Ink page No, 57 is not verified.
- (e) Annexure - D at ink page 62 is not verified.
- (f) Annexure - J ending at Ink page No. 71 is not verified.
- (g) Annexure - P at ink page 79 is not verified.
- (h) Document at Ink page 80 though is fully within the knowledge of the petitioner is verified as "true to my information and belief. The same is not verified as "true to the knowledge of the petitioner".
- (i) Annexure - Q though verified, the contents of which is fully within the knowledge of the Petitioner, and is verified as "true to my information and belief". The contents of the said annexure is fully within the knowledge of the Petitioner and the same is not property verified.
- (f) The contents of Annexure R though within the knowledge of the petitioner is verified only as "true to my information and belief".
- (k) Annexure V is not verified at all.
- (l) Annexure Y ending at Ink page No. 105 is not verified.
- (m) Document at Ink page No. 106 though within the knowledge of the petitioner is verified only as "true to my information and belief".
- (n) Document Annexure - Z though within the knowledge of the petitioner is verified only as "true to my information and belief".

and the election petition beckons to be dismissed at the threshold.

15. It is also averred that the allegations made against the respondent-turned candidate are virtually on par with the allegations of corrupt practice, within the meaning of Section 83(1)(b) of the Act and therefore should, as a corollary, be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and also the particulars thereof.

16. It is claimed that illegal and improper rejection of the nomination paper by the returning officer in violation of the guidelines issued by the Election Commission, the petitioner presumes existence of a pre-determined and prejudiced mind with an ulterior motive on the part of the returning officer that

amounts to an allegation of corrupt practice within the meaning of the statutory provision and in the absence of fulfilling further statutory requirements, as indicated in the proviso to Sub-section (1) of Section 83 and also as required u/s (2) of Section 83 of the Act, the election petition is inevitably to be dismissed.

17. The averments in para-13 of the rejoinder dated 6-4-2009 suggesting that one of the causes for illegal and improper rejection of petitioner's nomination paper by the returning officer is due to existence of some undue influence on the returning officer, suggestive of an allegation that the returned candidate was responsible for such an eventuality, is nothing short of an allegation of corrupt practice and that the non-compliance with the requirement, under the proviso to Sub-sections (1) and (2) of Section 83, the election petition is liable to be dismissed at the threshold.

18. Based on such averments in the affidavit and the application, submission of Sri Ashok Haranahalli, learned Advocate General for the State, but appearing for the respondent-turned candidate, is that notwithstanding the objections filed by the petitioner to the application, the petition warrants dismissal on the following grounds:

? There is no averment in the election petition that nomination paper is subscribed by ten electors, whose names were found in the current electoral rolls.

? There is no averment in the election petition regarding deposit of the amount as required u/s 34 of the Act.

? Presentation of the election petition has to be by a candidate duly nominated, in the absence of averments in this regard, the election petition is not maintainable.

? As per the petition averments, there is no presentation of nomination paper at all. As such, the election petition is not maintainable u/s 100(1)(c) of the Act.

19. Petitioner, appearing in person, has filed objections to the application, inter alia, urging that the application is not tenable either in law or on facts and that the application is liable to be rejected.

20. It is also urged that the application in the present form is not one which can be invoked for relief in terms of the requirement of Sections 81, 83 and 86 of the Act read with Order VII Rule 11 CPC and therefore also the application deserves to be dismissed.

21. It is contended that the election petition is presented u/s 81 of the Act only on the ground of improper rejection of the petitioner's nomination paper, which had been presented by the petitioner, claiming that she was a duly nominated candidate of K.R. Pura assembly constituency and the nomination paper was presented before the returning officer on 23-4-2008 between 2 and 3 pm and was illegally and improperly rejected at the threshold by non-acceptance and by pointing out that the nomination paper did not contain information as was

required in form 23, particularly for not mentioning the new part number and serial number of 10 proposers; that it was not the function of the returning officer to proceed to reject the nomination paper even at the initial stage of presentation; that even without satisfying himself about the inevitability of the rejection of the nomination paper, the returning officer having refused to accept the same, resulting in wrongful rejection of the nomination papers and the averments to this effect have been made in the petition concisely and aptly constitute material facts, pleaded by the petitioner in the election petition and in conformity with the requirement of Section 82(1)(a) of the Act and therefore the application merits no further consideration and it is to be rejected.

22. It is further contended that the prayer on the ground of Section 100(1)(c) of the Act is fully supported by the plea that the petitioner's nomination paper has been illegally and improperly rejected by the returning officer and that is sufficient compliance with the requirement of statutory provisions.

23. It is also claimed in the objection statement that furnishing adequate number of copies as contemplated under Sub-section (3) of Section 81 of the Act, has been complied and there is no lack of compliance in this regard.

24. It is also contended that nomination paper has been duly supported by requisite number of electors in the constituency as proposers indicating that the petitioner was a duly nominated candidate of the constituency and that is sufficient plea for the purpose of seeking relief in terms of grounds u/s 100(1)(c) of the Act.

25. In so far as non-deposit is concerned, it is contended in the objection that the petitioner had time and opportunity to deposit amount in cash even before the returning officer on the acceptance of the nomination paper and as the returning officer did not even receive the nomination paper, the question of depositing did not arise and that cannot be construed as a case of non-deposit and non-fulfillment of the requirement of the provisions of Section 34 of the Act and the allegations are contrary to the provisions and contained in paragraphs 2.1 and 2.2 of the affidavit accompanied the applications, are baseless and to be rejected.

26. It is also claimed that by conjoint and proper reading of the petition averments in para-1.13 to 1.19, 11(a) to II(c) and III(a) to III(c) one can definitely infer that it reveals a concise plea of the material facts, even within the scope of Section 83(1)(a) of the Act; that the petitioner had not presented the petition on the ground of the election being required to be voided in terms of Clause b of Sub-section (1) of Section 100 of the Act, but has sought for a relief only on the ground of Section 100(1)(c) of the Act and therefore also, the contention to the contrary urged in the affidavit accompanying the application are all baseless and are also frivolous in nature and being all sort of falsehood and therefore the application deserves to be rejected.

27. It is asserted that the nomination paper had been duly filled up; that there

was compliance with the requirement of Section 81, 83(1)(a) of the Act and the petition being on the ground available u/s 100(1)(c) of the Act and the averments being adequate to make out a case for relief u/s 100(1)(c), they necessarily constitute material facts for the petition and therefore the question of rejecting the election petition either in terms of Sections 81, 82, 86 or 83 of the Act and even in terms of the provisions of Order VII Rule 11 CPC does not arise at all; that, assuming that there are certain minor discrepancies in such compliance, they are not discrepancies of such nature as to warrant dismissal of the election petition at the threshold applying the provisions of Section 86 of the Act and under Order VII Rule 11 CPC.

28. It is also claimed that there is adequate compliance in filling up different parts of Annexure-A; that the rejection of the earlier application, which had been filed by the very applicant-respondent under Order VI Rule 16 CPC in terms of the order dated 8-10-2009, virtually disentitles the applicant to claim relief yet again under the provisions of Order VII Rule 11 CPC; that the provisions of Order VII Rule 11 CPC unless worked in combination with the provisions of Order VI Rule 16 CPC, cannot by itself achieve the object of rejection of the election petition and further the petitioner seeking relief u/s 86, even by including the provisions of Section 83 of the Act read with Order VII Rule 11 CPC as though they are within the ambit of non-compliance with these statutory provisions are also situations attracting the fatal effect of Section 86 of the Act and that by itself warrants dismissal of the application and has urged for dismissal of the application. It is further averred that the application is filed only with an oblique motive to derail the election petition from going to trial and with an intention to avoid trial at any cost.

29. It is asserted that the petition and the annexures have been verified and signed in conformity with the requirement of the provisions of the Act and the CPC.

30. It is positively asserted that the petitioner has not levelled any allegation of corrupt practice against the respondent-turned candidate and therefore the petition is not one falling within the scope of Order VII Rule 11 CPC or Section 86 of the Act warranting dismissal of the petition even at the threshold.

31. Raising of such preliminary objection at a belated stage of nearly one year after the presentation of the election petition is also pointed out to be a ground for rejection of the application.

32. it is to support these respective contentions of the application and the objection statement, that the learned Counsel for the respondent and the petitioner parties have addressed arguments.

33. An election petition is a serious matter and having regard to very adverse consequence that can befall on the returned candidate, as it constitutes a potential threat to any returned candidate and, of course, is a matter for bitter and serious contest, by the returned candidate. Stakes and outcome of the

election petition for the returned candidate is really high and the contest is serious, no stone is left unturned in the effort on the part of the returned candidate to ensure the dismissal of the election petition and the safest bet is to ensure dismissal of the election petition even before it can go for trial. Nothing better for the returned candidate figuring as respondent to an election petition to contend that the election petition is to be dismissed, even without warranting trial and therefore the applications of the present nature are quite an inevitable feature in any election petition. Election petitions being serious matters involving bitter and serious fight, having high stakes for the returned candidate, having considerable potential for returned candidate, with the possible losing of the most sought after exalted position of being a representative of people either in the assembly or in the parliament, the battle in an election petition is invariably long drawn, though the statute mandates the most expeditious disposal of the election petition and at any rate within six months from the date on which the election petition is presented for trial and the trial to go on day to day basis when once the trial is commenced is rarely achieved and an election petition is inevitably a high voltage stuff and the effort on the part of the returned candidate to sustain the result and to get the petition dismissed is total.

34. It is no different in the instant case and while the election petitioner, who claim to have been a candidate in the K.R. Pura assembly constituency and who has presented the petition on the ground of illegal and improper rejection of her nomination paper by the returning officer, has chosen to present her case by herself without going in for any professional/expert service, the appraisals of the learned Advocate General to the court is that, the petitioner is no normal or common party appearing in person; that, the petitioner is by herself an advocate and is very much part of the legal profession; that it is a misnomer to think she is a mere lay person opting to appear herself and conduct the case, and such is the response even by the learned Advocate General, who has chosen to appear on behalf of the returned candidate, notwithstanding his constitutional duties and responsibilities to the State government and in spite of a preliminary objection raised by the petitioner for the appearance of the learned Advocate General for the lone respondent - a private person; that the appearance of the learned Advocate General for the respondent-turned candidate is not for rendering service and doing duties for the state government, but for a private person, and that may involve a conflict of interest and can also prejudice the petitioner, in the sense, that the petitioner may not be able to get fair justice, particularly when the learned Advocate General appears on behalf of the returned candidate, his appearance for the respondent while holding his constitutional office can virtually dissuade witnesses from appearing and deposing in favour of the petitioner and therefore the learned Advocate General should withdraw from his appearance for the respondent etc.

35. Of course, the learned Advocate General has sought to get over this preliminary objection by submitting that, in his opinion, the present election petition may not even reach the stage of trial, warranting parties to lead

evidence; that if the petition is dismissed even at the present stage, the apprehended prejudice to the petitioner due to the appearance of the Advocate General for the respondent is only an illusory one and therefore the preliminary objection can be overlooked.

36. Be that as it may, this controversy has, fortunately for the respondent and even for the Counsel appearing for the respondent, got resolved to the advantage of the Advocate General, as the petitioner very graciously submitted that while she may not have much objection presently for the appearance of the learned Advocate General for the respondent, she may definitely press the objection for orders at the stage when the petition goes for trial and such concession on the part of the petitioner has avoided a possible unpleasant situation for this Court to pass orders on such preliminary objection, as passing of an order in a controversy of this nature, to some extent, necessarily reflects on the Counsel appearing for the respondent and even on the office of the Advocate General for the State.

37. Be that as it may, that unpleasant situation having been avoided by the graceful attitude on the part of the election petitioner, I have heard the arguments addressed by Sri Ashok Haranahalli, learned Advocate General appearing for the respondent-turned candidate and the petitioner appearing in person.

38. Contention urged on behalf of the applicant-respondent by the learned Advocate General is only an illustration of the contentions and grounds as noticed above and as forming part of the plea in the application, but such contentions being further sought to be supported on the basis of the decided case laws, all of which are judgments of the Supreme Court, except one judgment passed by the Allahabad High Court, and therefore having a binding effect on the high court and inevitably the ratio of the said judgments of the Supreme Court constitutes a binding precedent on this Court and even if not the judgment contains any declaration of law within the meaning of Article 141 of the Constitution of India and then also law so declared being required to be followed and applied by high courts also, contentions urged by Sri Ashok Haranahalli are examined in *seriatim*.

39. Sri Ashok Haranahalli, learned Advocate General, appearing for the respondent-turned candidate, in support of his contentions, has relied on the following decisions:

? Prahladdas Khandelwal Vs. Narendra Kumar Salave,

? M. Karunanidhi Vs. Dr. H.V. Hande and Others,

? Rajendra Singh Vs. Smt. Usha Rani and Others,

? Lila Krishan Vs. Mani Ram Godara and Others,

? Hindustan Steelworks Construction Ltd. Vs. C. Rajasekhar Rao,

? Dr. (Smt.) Shipra, etc. etc. Vs. Shanti Lal Khoiwal, etc. etc.,
 ? Mahendra Pal Vs. Ram Dass Malanger and Others,
 ? Ravinder Singh Vs. Janmeja Singh and Others,
 ? Charan Lal Sahu Vs. Dr. A.P.J. Abdul Kalam and Others,
 ? Ajay Kumar Poeia Vs. Shyam and Others,
 ? Jaipal Singh Vs. Smt. Sumitra Mahajan and Another,
 ? Baldev Singh Vs. Shinder Pal Singh and Another,
 ? Potula Rama Rao v. Pendyala Venkata Krishna Rao and Ors. 2007 AIR SCW 5320
 ? Sudarsha Avasthi Vs. Shiv Pal Singh,
 ? Hari Krishna Lal Vs. Atal Bihari Bajpai,
 ? Charan Lal Sahu Vs. Fakruddin Ali Ahmed and Others,
 ? Charan Lal Sahu and Others Vs. Giani Zail Singh and Another,
 ? Charan Lal Sahu and Another Vs. K.R. Narayanan and Another,

40. It is an the strength of such position in law, the learned Advocate General vehemently urges for rejection of the election petition itself at this stage and by passing orders on the application.

41. On the contrary, die petitioner, appealing in person, has urged on the same lines as indicated in the objection statement to the application and particularly by drawing attention to different paragraphs of the election petition, to submit that the election petition is presented to the high court, in conformity with the requirement of the statutory provisions; that the petitioner had even earlier complained to the election commissioner against the illegal actions and conduct on the part of the returning officer, even as on 28-4-2008 by forwarding a detailed letter/complaint about the illegal and improper rejection of her nomination paper, urging upon the election commissioner to postpone the election, pending enquiry and a decision on the complaint, in exercise of the superintending power of the commission under Article 324 of the Constitution of India; that the inaction on the part of the election commissioner had warranted the petitioner to come up with a writ petition to this Court in WP No. 7225 of 2008, but that writ petition having been rejected on the ground of non-maintainability, for the reason that wrongful rejection of nomination paper cannot be examined in writ jurisdiction, but the petitioner has the remedy of tiling an election petition under the provisions of the Act and accordingly rejected the writ petition, reserving liberty to present an election petition and therefore the petitioner has come up with the present election petition; that the court having granted leave to present an election petition in terms of the said order, the respondent-turned candidate cannot press into service the provisions of Order

VII Rule 11 CPC seeking for rejection of the election petition under this provision of law and placing reliance on the decision of the Supreme Court in the decision of Sudhir G. Angur and Others Vs. M. Sanjeev and Others, indicating that the statutory provision does not apply to the present situation, where the court has already granted leave for the presentation of the petition and when this Court has in fact permitted the petitioner to amend or add to the pleadings through a rejoinder, which had been opposed to by the respondent-applicant, on the strength of the ruling of the Supreme Court in this case, the possibility of examining the applicability of the provisions of Order VII Rule 11 CPC for rejecting the election petition, on the ground of not disclosing a cause of action is preempted and therefore there is no scope for the learned Counsel for the respondent to press into service this statutory provision for seeking rejection of the election petition.

42. Objection filed to the earlier application under Order VI Rule 16 CPC seeking for deletion of some of the pleadings in the election petition and which application has already been rejected in terms of the order dated 8-10-2009 and the averments contained therein are sought to be urged for the present purpose also, on the premise that they are to an extent overlapped with one another and by drawing attention to the order passed on 8-9-2009, it is submitted that there being a finding in that order about there being substantial compliance with the requirement of Section 83(1)(a) of the Act, not disclosing a cause of action warranting rejection under the provisions of Order VII Rule 11 CPC read with Section 83 of the Act and it is, therefore, urged that for rejection of the present application also.

43. It is also submitted by the petitioner that while Section 81 of the Act alone is relevant for the purpose of the present application not raising an issue relating to the provisions of Sections 82 and 117 of Act; while the nomination paper sought to be presented before the returning officer was one duly filled in and in compliance with the statutory requirement, and which was not duly accepted by the returning officer for scrutiny, the present election petition also contains commensurate plea to indicate that in spite of the presentation of a duly filled up nomination paper before the returning officer of the K.R. Puram assembly constituency at 14.00 hours on 23-4-2008 and in spite of the delivery of such nomination papers, the returning officer did not receive the same and that itself amounts to rejection of the nomination paper and there being sufficient plea to this effect, the non-receipt of the papers by the returning officer amounts to implied rejection of the nomination and definitely attracts the provisions of Section 100(1)(c) of the Act and the response of the returning officer to the presentation of the nomination paper by the petitioner to the effect that if the returning officer is compelled to receive, he will reject the same next day itself, as the returning officer virtually rejected the nomination paper by non-acceptance itself and not proceeding to scrutiny, as contemplated in law and particularly, as in this regard, drawn my attention to the handbook for returning officers circulated for the guidance of the returning officer by the election

commission of India, which clearly indicated that the returning officer could not have rejected the nomination paper as indicated in para-9.1, 9.2 and 9.4 of the handbook occurring at page 46 and it is therefore urged that the situation was not only one of an act of rejection of the nomination papers by the returning officer, but also that the petition contained commensurate pleadings to indicate this position, which, in fact, constitutes material facts and therefore the petition merits further examination and not liable to be rejected at this stage.

44. Reliance is also placed on the following decisions of the Supreme Court and the High Courts by the petitioner in support of her contentions:

- ? Shri Somnath Rath Vs. Shri Bikram Keshari Aruk and Others,
- ? Sangappa Andanappa Vs. Shivamurthiswamy Siddappalyaswamy,
- ? Tekchand Vs. Banwarilal and Others,
- ? S. Khader Sheriff Vs. Munnuswami Gounder and Others,
- ? Dr. P. Nalla Thampy Terah Vs. Union of India (UOI) and Others,
- ? Ram Bhual v. Ambika Singh AIR 2005 SCW 5024
- ? Somnath Rath Vs. Bikram K. Aruk and Others,

45. Examination for orders on the present application is in the background of such pleadings in the application, objection statement, on the examination of the petition pleadings itself and the submissions made by the petitioner and the learned Advocate General with the backing of the respective authorities relied upon by the Counsel for the applicant and the party.

46. Statutory provisions governing the situation and the questions raised in the application and further relief sought for in the application viz., for rejection of the election petition itself, are a general provision like Order VII Rule 11(a) CPC, which mandates a civil court to reject the plaint, even at the threshold, if the averments in the plaint do not disclose a cause of action for the relief sought for and, of course, the specific mandatory provision of Sections 81 and 83 of the Act, as a non-compliance with the requirement of Section 81 and in this case, the applicant, having contended that the election petitioner has not complied with the mandatory requirement of Section 81(3), which is one of every election petition has to be accompanied as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition, which, in turn, would attract the penal consequential provision of Section 86, which categorically mandates that the high court shall dismiss an election petition which does not comply with the provisions of Section 81 of the Act and further noncompliance with the requirement of Clause c of Sub-section (1) of Section 83, which reads as under:

83. Contents of petition. (1) An election petition-

(a) & (b) xxx

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

and in the context of such non-adherence to the requirement of the provisions of Section 83, submission is that even such non-compliance will result in the dismissal of the election petition itself i.e. the result that is achieved in terms of the provisions of CPC, but difference here being such a result is achieved not by any other statutory provision of the Act, but because of the binding authority of judicial pronouncements of the Supreme Court, on this aspect of the matter.

47. A petition not disclosing a cause of action, obviously, does not take off at all and, of course, while has to be rejected under the provisions of Order VII Rule 11(a) CPC, even otherwise it is of no consequence, as no court can grant relief to a person approaching the court even when there is no cause of action to examine a complaint, which, in the present case is an election petition.

48. In so far as the aspect of disclosure of a cause of action in the petition or plaint is concerned, while it is generally understood that it is a bundle of facts, which, if read together and accepted, will definitely entail the litigant approaching court to grant relief sought for in the prayer column and in the present context, the election petitioner having chosen to seek relief for declaration of the result of the election in favour of the respondent-applicant to be void, on the ground that the election petitioner's nomination has been improperly rejected, the question will be as to whether the petition contents, sufficient averments in the petition and with sufficient clarity when the entire petition is read together to secure relief to the petitioner, on the ground that her nomination paper has been improperly rejected, which is a relief, which an election petitioner can seek in terms of Clause c of Sub-section (1) of Section 100 of the Act.

49. Submission of Sri Ashok Haranahalli, learned Advocate General, appearing for the private respondent-turned candidate is that the petition averments do not contain sufficient plea to indicate that the petitioner had, in the first instance, presented before the returning officer, a nomination paper which can be so termed as a nomination paper in accordance with law; that, the petition averments stopped short of this specific and essential plea; that when once there is not even a valid presentation of nomination paper, the further question of rejection of the non-received nomination paper does not arise at all and as there is no plea in the election petition to positively assert or indicate that a duly filled nomination paper had been properly presented before the returning officer by or on behalf of the election petitioner, the election petition does not disclose a cause of action at all and therefore no further proceeding should warrant and the

petition should be rejected at the threshold.

50. it is in this background, Sri Ashok Haranahalli has drawn the attention of the court to the averments in paras 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the election petition and submits that even when these paragraphs read together does not contain a positive categorical plea that a valid nomination paper filled in all respects and forming the requirements of the statutory provisions had been duly presented before the returning officer and even when the petitioner itself present, it should contain a plea to the effect that a valid nomination paper had been presented, no further question arises for examination in the petition, as, an examination will be necessary only if there is a positive assertion to the effect that the nomination paper, conforming to law in all respects, had been presented, but nevertheless, it has been refused or rejected by the returning officer.

51. It is in this context my attention is yet again drawn to the other statutory provisions linked to the words expressly used in Clause c of Sub-section (1) of Section 100 of the Act viz., that a nomination paper means, papers presented in conformity with the provisions of Section 33 of the Act and then alone it becomes a valid nomination, a positive assertion or plea to the effect that, the petitioner was a candidate for the K.R. Puram assembly constituency, as is required in terms of Section 81 of the Act and further essential plea as to whether the nomination paper was complete and presented in the prescribed form and signed by the candidate and the electors who are actual residents in the constituency, are all essential pleas, which are conspicuously lacking in the election petition and drawing my special attention to the provisions of Section 33(4) and 34 of the Act read with Section 2(e) contained in the definition, and submits that all such requirements are not asserted to have specific terms of the pleadings and petition plea in the petition does not reach the level of an assertion to the effect that a duly nominated valid nomination paper has been wrongly rejected by the returning officer. It is, therefore, submitted that if the entire plea is not available, in the absence of plea in such a manner, no relief at all can be sought for, when necessary cause of action for the relief is not forthcoming and therefore the petition is to be rejected. It is in support of such contentions, the authorities as referred to above have been relied upon by the respondent-applicant.

52. While it cannot be gainsaid that a plaint presented for the purpose of getting relief and a petition in the nature of an election petition presented before the high court seeking for relief in terms of 100 of the Act, both should necessarily contain adequate or commensurate pleas, which, when accepted at their face value, can enable the plaintiff or petitioner to seek relief and is not a proposition which does not amount to a dispute, nevertheless, as to what can constitute such commensurate or adequate or sufficient pleadings to get the relief in a given case is always dependent on the relief which the plaintiff or the petitioner seeks and the context in which the relief is sought for.

53. Though learned Counsel for the respondent-applicant has, to some extent, drawn support from the provisions of Clause a of Sub-section (1) of Section 83 of

the Act, for the purpose, viz., that the election petition should contain a concise statement of the material facts on which the petitioner relies, there is a slight difference between the two statutory provisions viz., between the provisions of Order VII Rule 11(a) CPC and Clause a of Sub-section (1) of Section 83. Though there is an overlapping to some extent in these provisions which can exchange in place of the other, what constitutes a relevant pleading in the context of the provisions of Order VII Rule 11(a) CPC is the averment in the petition, which, by itself, is sufficient to fetch the relief prayed for by the petitioner, which can constitute a petition not disclosing a cause of action for the relief i.e. if the facts of the petition, cannot by itself get the relief sought for by the petitioner, without anything further, than from the plea as is contained in the petition itself. But if the plea, when accepted at its face value is good enough to grant the relief sought for then the averment in the petition is one that the plea shows a cause of action for the relief and therefore avoids the penal consequence under Order VII Rule 11(a) CPC.

54. The relief in the present election petition being for declaring the result in favour of the respondent-turned candidate as void on the ground of improper rejection of the nomination paper of the election petitioner, a cause of action for such a relief is disclosed in the petition, if the petition averments are accepted at their face value and without any dispute is capable of eliciting the relief as sought for in the petition. The following plea in para-7 of the election petition:

7. It is most respectfully submitted that under the circumstances the petitioner with the duly filled in nomination papers along with required Annexure approached the 4th Respondent The Returning Officer, K.R. Pura Constituency at 1400 hours on 23rd April 2008 and delivered her nomination papers together with all Annexures and requested him for the latest Electoral Rolls of K.R. Pura constituency in order to extract the new part number and serial number of the proposers who have signed the petitioners nomination paper for incorporating the same under the column and against their respective names. The 4th Respondent has expressed that he is not in possession of the Electoral Rolls of K.R. Pura constituency. As such he asked the petitioner to approach the Revenue Office located in the ground floor of the same building for verifying and extracting the Part number and serial number of the proposers from the Electoral Rolls of the K.R. Pura Constituency.

in my opinion is a commensurate plea to understand that the petitioner has delivered a duly filled nomination paper along with the required annexures to the returning officer, K.R. Puram Constituency at 1400 hours on 23-4-2008. Even on examining the definition of "candidate" as contained in Clause b of Section 79 and the provisions of Section 33 of the Act, I am of the definite view that the plea, as extracted above, constitutes a sufficient plea to secure relief, if the said plea is not disputed or objected to by the respondent, as if a valid nomination paper should be delivered to the returning officer and completed in the prescribed form signed by the candidate and the electors, even on such logic

also, the averments in para-7 to the effect that the petitioner with the duly filled nomination paper along with required annexures delivered to the returning officer is a total and complete answer to the same and as there cannot be a presumption that what is presented is neither a duly nominated paper nor the petitioner cannot be inferred to be a candidate for the K.R. Puram constituency.

55. Whether the nomination as was delivered to the returning officer by the petitioner as a candidate at 1400 hours on 23-4-2008 in fact, did amount to a valid nomination within the scope of the provisions of Section 33 or not, is not a question that surfaces itself for examination at this stage, but later and for the purpose of applying the drastic penal provision of Order VII Rule 11(a) CPC , we have to necessarily accept the plea at its face value and not by seeking for further elaboration or for the proof for the same.

56. I am of the opinion that various authorities referred and relied upon by the learned Advocate General appearing for the respondent-turned candidate, are distinguishable on the facts of the present case, as in my considered opinion, the petition averments contain sufficient plea to disclose a cause of action and for granting relief in terms of the prayer. It is, therefore, in my opinion, that the election petition cannot be dismissed on the application (filed by the respondent-turned candidate] applying the test of the provisions of Order VII Rule 11(a) CPC.

57. That leaves us with the question of examination of the petition being in conformity or otherwise with the provisions of Sections 81 and 83 of the Act?

58. Any non-compliance with the provisions of Section 81, per se, attracts Section 86 and mandates the dismissal of the election petition. It is here Sri Ashok Haranahalli, learned Advocate General appearing for the respondent-turned candidate, submits that the respondent-applicant has not been furnished with the copies of the very election petition and its annexures as is presented to the court and further that the copies are not duly attested as per the statutory provisions. Complaint in this regard as per the contents of para-5 of the affidavit accompanied the application, is as under:

5. As per Section 81(1)(c) of R.P Act 1951, an Election Petition shall be signed by the petitioner and verified in the manner laid down in the CPC 1908 for verification of pleadings. As per Order 6 Rule 15(2) of CPC the person verifying the pleadings shall specify by reference to the numbered paragraphs of the pleadings what he verifies on his own knowledge and what he verifies upon information received and believed to be true. The verification of the Election Petition does not comply with the said requirement. On this ground alone, the Election Petition requires to be rejected.

59. While this paragraph does not make out much case for the rejection of the election petition on the premise indicated in this paragraph, as, there is neither a statutory provision of Section 81(1)(c) in the Act nor the provision of Order VI Rule 15(2) CPC anything to do to Sub-section (2) of Section 81, the complaint at

the time of the submission is one of non-furnishing of the attested copies of the documents listed at (a) to (n) as is referred to in para-5.1 of the affidavit accompanying the application and occurred at page-9 of the affidavit and the application papers, particularly as was pointed out by Sri Shashikanth, learned Counsel on record for the respondent and that it amounts either no verification or a defective verification, further submission is that the result is that the election petitioner has not furnished true copies of all the papers presented to the court as part of the election petition to the respondent.

60. It is in response to such contention, the petitioner has sought to reply that the respondent has been provided with duly attested copies of all the papers which comprised the election petition when the election petition was presented or filed before the registry i.e. pages 1 to 108 with page 108 containing a copy of form No. 21-C, marking it as Annexure-ZA. Here, the petitioner has contended that while certain documents which were required to be filed along with the election petition as were not available with the petitioner, as the election petitioner had earlier filed a writ petition before this Court in WP No. 7225 of 2008 before this Court with which the original had been tiled and the writ petition having been rejected with the observation that it is open to the petitioner to avail of the statutory remedy under the Act, and the petitioner having presented the election petition and the original documents filed in the writ petition having not been returned till then, and pending receipt of the same, the petitioner had presented the election petition with copies of the originals and copies of which having already been furnished to the respondent along with the election petition and what was presented later being only the original along with a memo, the respondent-applicant has not been denied or deprived of any copy of any paper presented as part of the election petition and all such copies of the election petition and its annexures duly attested by the petitioner have been furnished and there is no violation of the requirement of the statutory provision in this regard and therefore there is no question of the petition being rejected at the threshold, on the ground of non-furnishing of copies or the same being either duly not signed or not verified.

61. Though Sri Shashikanth, learned Counsel for the respondent has joined issue by pointing out that a copy of the index which virtually constitutes a list of documents as furnished to the respondent and as has been placed before this Court, which is immediately after the memo, which itself is after page 108 of the election petition and numbering nine, and copy of this index is not given to the respondent, as what has been given is only an index for two documents viz., in respect of Annexure-R at Sl No. 7 and a copy of form No. 21-E figuring at Sl No. 9 of the index and therefore obviously a copy of the very index is not furnished to the respondent, I am of the view that the authorities relied upon by learned Counsel for the respondent do not necessarily advance the case of the respondent for this argument, as in the first instance, these additional papers are not claimed to be part of the election petition. What had been filed as election petition and annexures with the registry at the time of initial presentation have

all been, without, dispute, furnished to the respondent. Even a discrepancy with regard to the so-called index, which has to be construed as a list of documents, in my considered opinion, does not make any difference for the understanding of the contents of the petition and the manner in which the election petitioner has sought for relief in the election petition and the grounds and materials relied upon by the petitioner, as copies of all original documents are provided to the respondent and even on a comparative perusal of the papers in the court, with the copies as received by the respondent-returned candidate made available by the learned Counsel for the respondent, I do not find any additional papers having been tiled by the petitioner copies of which are not made available to the respondent in the sense, which can make a material difference to the respondent to understand the precise case of the petitioner, which is not. Given by the election petitioner and therefore I am of the view that this is not a situation warranting dismissal of the election petition u/s 86 of the Act, on the premise of non-compliance with the requirement of the provisions of Section 81 of the Act. The authorities relied upon by the learned Counsel for the respondent, are clearly distinguishable on the present facts. In fact, I do not find a parallel of the present nature in any of the authorities. Therefore, the application cannot be ordered on this ground.

62. That takes us to the examination of the petition being required to be rejected on the ground of non-adherence with the requirement of Section 83 of the Act.

63. As has been noticed earlier, provisions of Section 83 and the provisions Order VII Rule 11(a) CPC, to a considerable extent, overlap one another. While it is the mandate in terms of Clause a of Sub-section (1) of Section 83 that the election petition should contain a concise statement of material facts on which the election petitioner relies, the material facts are such as to constitute a plea to disclose a cause of action for the relief sought for in an election petition and the principles on which this statutory provision is designed, is the very principle as is contained in the provisions of CPC viz., the principles of natural justice which is that the plaintiff or the petitioner disclosing his case and the version for seeking relief to the adversary against whom relief is sought for, so that the adversary has an opportunity to meet the case of the petitioner or the plaintiff. That is the principle. The authorities, referred to above and relied upon by the learned Advocate General, appearing for the respondent-returned candidate, are all authorities rendered in this context and on such premise, on the basis of this principle, which has been enunciated and elaborated.

64. Though several arguments are advanced to contend that the petition is lacking in concise statement of material facts and this contention having already answered, on examination of the contentions urged in the context of Order VII Rule 11(a) CPC that the petition averments by themselves reveal sufficient cause of action for granting of the relief, there is still some distinction between these two provisions and as indicated earlier. In the case of the application with reference to Order VII Rule 11(a) CPC, a plea and an assertion which if accepted

at its face value, by itself can get the relief sought for, is the one which discloses a cause of action to comply with the requirement of Clause a of Sub-section (1) of Section 83, an election petition should necessarily contain all such statements, which constitute material facts on which the election petitioner relies. Again as to what constitute material facts is further linked to the relief sought and therefore the only question will be as to whether the petition averments contain all the material facts. That in my opinion, is the limited scope of examination of the application tiled by the respondent-turned candidate for rejection of the petition on the touchstone of the provisions of Section 83.

65. Of course, requirement of Clause c of Sub-section (1) of Section 83 and to some extent Sub-clause (2) are also pressed into service for seeking dismissal of the election petition.

66. The argument of non-compliance with the statutory requirement, of Section 83 of the Act is put on two grounds. Firstly, that the election petition does not contain a concise statement of material facts attracting Clause a of Sub-section (1) of Section 83 and secondly that the petitioner has not signed and verified in the manner contemplated under the provisions of Order VI Rule 15 CPC, which is a mandatory requirement in terms of Clause c of Sub-section (1) of Section 83 and a further argument of such deficiency is that as there is a requirement of law equally to any schedule to the petition or any annexure to the petition, as is indicated in Sub-section (2) of Section 83 of the Act and the petition should necessarily be rejected on the strength the weighty judicial pronouncements of the Supreme Court, which constitute the law of the land and which has to be applied for testing the tenability or otherwise of the election petition and that such non-compliance even in terms of the provisions of Section 83 of the Act itself is sufficient to dismiss the election petition before going for trial.

67. In support of the first proposition, strong reliance is placed on the judgment of the Supreme Court in the case of Potula Rama Rao [supra], which has followed like judgments of the Supreme Court in the case of Charan Lal Sahu. In the case of Charan Lal Sahu and Another Vs. K.R. Narayanan and Another, considerable reliance is placed on para-6 of the judgment of the Supreme Court in the case of Potula Rama Rao [supra]. Specific contention based on such judgment is to the effect that unless the petition contains commensurate averments to indicate not only that the petitioner was a candidate in the election to the particular assembly constituency but also further that the nomination paper presented by such a person constituted a valid nomination and therefore, the candidate was a duly nominated candidate, which, in turn, would depend on the petition containing a plea to the effect and a positive assertion that Annexure-A nomination paper had been subscribed by not less than 10 electors in the constituency signing as proposers with their serial numbers and part number in the electoral rolls, having not. been specifically indicated in form No. 2B in the column provided for such purpose and the petition conspicuously lacking either a plea or a positive assertion to arrive at the inference that the petitioner is raising grounds of

improper rejection of her nomination papers and therefore it should be necessarily inferred that the election petition inevitably falls short of containing a concise statement of the material facts, once the petitioner prayed for relief under Clause c of Sub-section (1) of Section 100 of the Act and therefore on the authority of the decisions referred to above and relied upon by the learned Advocate General, appearing for the respondent-turned candidate, the election petition should be inevitably dismissed at this stage itself. Considerable sustenance is drawn from the judgment of the Supreme Court in the case of Dharti Pakar Madan Lal Agarwal [supra] for such contention.

68. Irrespective of the authorities relied upon and the law as it emerges, which is sought to be applied to the facts of any given case, the ultimate question in any given election petition is as to whether in the context of the relief prayed or sought for in that election petition and the grounds on which such relief is sought for, as to whether the petition contains such facts in the form of concise statement, which could be construed as material facts for the petition and in the context of the relief sought for in that petition, having regard to the grounds urged in the petition. That result, of course, is to be arrived at by applying the law as is developed and as declared by the Supreme Court.

69. There cannot be any generalization of what constitutes "material facts" in all cases and it is an exercise which has to be undertaken in each and every election petition.

70. I have already examined the application filed by the present applicant under the provisions of Order VI Rule 16 CPC seeking for striking off of the pleadings and I have opined that there is no need to strike off any of the plea set out in the election petition on the touchstone of the provisions of Order VI Rule 16 CPC. The further finding during the course of examination of this application and as indicated above is that the present petition contains sufficient averments and material facts indicating a cause of action in favour of the petitioner to seek relief in terms of Clause (c) of Sub-section (1) of Section 100 of the Act.

71. In my opinion, material facts in a given case is that set of facts which are sufficient to get relief to the petitioner. If the pleadings in the election petition contains sufficient facts to indicate that there has been an improper rejection of the nomination paper of the petitioner, then, the requirement of Clause (a) of Sub-section (1) of Section 83 is met. Following averments as contained in para-1 read with para-7 and most importantly averments in para-9, 10 and 11 and the grounds urged in sub-para (b) of Part-11 of the election petition comprising of the grounds read with sub-para (1) to Part-II and Clause in part-III prayer column of the election petition as extracted below meets this requirement.

Para-1

It is most humbly submitted that the petitioner was intended and decided to file nomination paper as an Independent Candidate for Karnataka State Legislative Assembly from K.R. Pura Constituency, Serial Number 151 under Bangalore

Urban District. The General Election was notified by the Election Commission of 16th April 2008. As per the notifications elections were to be held in three phases, First Phase for 89 constituencies including Bangalore Urban was scheduled as follows:

Last date for filing - 23rd April 2008 Nominations Scrutiny of Nomination - 24th April 2008 papers Last date for withdrawal of - 25th April 2008 Nominations Date of Poll - 10th May 2008 Counting of votes - 25th May 2008 Publication of Result - 27th May 2008

Para-7

It is most respectfully submitted that under the circumstances the petitioner with the duly filled in nomination papers along with required Annexure approached the 4th Respondent, The Returning Officer, K.R. Pura Constituency at 1400 hours on 23rd April 2008 and delivered her nomination papers together with all Annexures and requested him for the latest Electoral Rolls of K.R. Pura constituency in order to extract the new part number and serial number of the proposers who have signed the petitioners nomination paper for incorporating the same under the column and against their respective names. The 4th Respondent has expressed that he is not in possession of the Electoral Rolls of K.R. Pura constituency. As such he asked the petitioner to approach the Revenue Office located in the ground floor of the same building for verifying and extracting the Part number and serial number of the proposers from the Electoral Rolls of the K.R. Pura Constituency.

Para-9

It is most respectfully submitted that the petitioner on realizing the time factor to submit the nomination before the 4th respondent by 1500 hours and since the day being the last day for filing nomination papers, has presented her nomination papers together with all necessary enclosures before the 4th respondent with sole intention to comply the requirements of new part number and serial number in respect of the proposers at the time of scrutiny of nomination paper, which is scheduled for next day the 24th April 2008, wherein a clear 24 hours time would be available before the petitioner to make good the requirements in her nomination paper. The petitioner also explained the reason and the actual position prevailing in the revenue office and also requested, the 4th respondent to receive her nomination paper and allow time till scrutiny to comply the requirement whatsoever.

Para-10

It is most respectfully submitted that to the petitioners surprise the 4th respondent spontaneously reached and commented "I do not want to listen to all your stories and I will not receive your nomination paper without complying with the requirement of new part number and serial number against the proposers in Part-II of Annexure "A", and if you compel me to receive now and tomorrow I

will reject it". At that point of time the petitioner on realizing the language of the 4th respondent, his uncalled for, unwarranted comments, which clearly indicated predetermined ulterior motive, has decided to submit the nomination paper together with a written representation addressed to Respondent No. 4, requesting him to receive the petitioners nomination papers, since true copies of Elector Photo Identity Cards issued prior to delimitation duly self attested by the respective proposers and true copy of enumeration details are being enclosed to prove the identity, address and authenticity of the proposers beyond any doubt. The Representation handwritten by the petitioner and typed copy is marked as Annexure - "P", and requested him for time till scrutiny for complying with the requirements whatsoever as per law.

Para-11

It is most respectfully submitted that the Respondent No. 4 once again reacted in the same manner and bluntly refused to receive petitioner's nomination papers and further adding insult to injury, he has commented "I will not receive your nomination paper or your representation or acknowledge any receipt and continued to say "for your negligence you cannot blame other people". The petitioner on observing 4th respondents illegal and improper rejection in violation of statutory law and election commission's guidelines, was left with no option but to presume the existence of prejudice and predetermined ulterior motive behind the fourth respondents illegal attitude and misuse of power. As such the petitioner left the premises humiliated, insulted by the illegal and improper rejection of her nomination paper by none other than a responsible neutral official like Returning Officer.

II Grounds (b)

When it is incumbent on the part of 4th respondent to receive the petitioner's nomination paper when delivered to him by the petitioner in person on 23rd day of April 2008. Though it is an admitted fact that the 4th respondent is empowered to observe any technical deficiencies in the nomination paper of the petitioner while receiving the nomination paper, the 4th respondent is not empowered to scrutiny the nomination paper of the petitioner on the spot as per Notification Schedule for scrutiny issued by 1st Respondent's, (wherein the date of scrutiny is scheduled for next day 24th day of April 2008), Section 35, Section 36(4), Section 36(5) of Representation of People Act 1951 and Hand Book for Returning Officer, issued by Election Commission of India as a guide line. As such rejection of nomination paper of the petitioner on the day of delivery on 23rd April 2008 by the 4th respondent is illegal and improper and also against the principles of natural justice.

II Grounds (f)

The petitioner is entitled for relief u/s 100(1)(c) Representation of People Act 1951, as the petitioner's nomination paper has been rejected by the 4th respondent amounts to illegal and improper rejection of petitioner's nomination

paper.

III Prayer - (a)

Pleased to declare the election to K.R. Pura Assembly Constituency as null and void and order fresh elections in the interest of justice and equity, as the petitioner is entitled for relief u/s 100(1)(c) Representation of People Act 1951, since rejection of petitioner's nomination paper at the threshold by the 4th respondent is illegal and improper.

I am of the clear opinion that, these facts, grounds and prayer when read in combination constitute a petition comprising of concise statement of material facts indicating grounds on which the relief is sought for.

72. On the other hand, the petitioner has placed reliance on the decision of the Supreme Court in the case of D. Ramachandran Vs. R.V. Janakiraman and Others, , particularly, para-8 of this judgment, which reads as under:

8. We do not consider it necessary to refer in detail to any part of the reasoning in the Judgment; instead, we proceed to consider the arguments advanced before us on the basis of the pleadings contained in the election petition. It is well settled that in all cases of preliminary objection, the test is to see whether any of the reliefs prayed for could be granted to the appellant if the averments made in the petition are proved to be true. For the purpose of considering a preliminary objection, the averments in the petition should be assumed to be true and the Court has to find out whether those averments disclose a cause of action or triable issue as such The Court cannot probe into the facts on the basis of the controversy raised in the counter.

and in the case of S. Khader Sheriff Vs. Munnuswami Gounder and Others, , drawing my attention to para-4 of this judgment, which reads as under:

4. The question when a person becomes a candidate must be decided on the language of Section 79(b). Under that section, the candidature commences when the person begins to hold himself out as a prospective candidate. The determining factor therefore is the decision of the candidate himself, not the act of other persons or bodies adopting him as their candidate.

to submit that the election petition cannot be rejected on slightest pretext of non-adherence to some formalities or technicalities; that the substance of the matter should be looked into; that an election petition should be examined comprehensively and not to read in bits and pieces and therefore would submit that the petition pleadings comprised sufficient material facts to fetch relief to the petitioner, particularly in the background of the complaint that the returning officer has improperly rejected the nomination paper of the petitioner by his act of non-acceptance of the nomination papers itself.

73. These contentions urged on behalf of the petitioner, in fact, are further supported by the following two judgments of the Supreme Court in the cases of

Muniappan Vs. State of Madras, .

74. In the light of such pleadings in the election petition and the law as it emerges in the context of Sub-section (1) of Section 83, on the basis of the Judgments referred to above, I am of the clear opinion that the election petition contains and if one may use the expression "extravagant" statement of material facts, if not concise statement of material facts, based on which the election petitioner is seeking the relief under Clause c of Sub-section (1) of Section 100 of the Act i.e. the election [of the returned candidate] to be declared void on the ground that the nomination [of the election petitioner] has been improperly rejected

75. Clauses of Sub-section (1) of Section 83 of the Act has a direct link with the provisions of Order VII Rule 11(a) CPC, under which provision, a plaint can be rejected, if it does not disclose a cause of action for claiming relief in the suit and likewise, for rejection of an election petition, if the petition averments do not disclose a cause of action for claiming relief in the election petition.

76. in fact, it is the effectuation of the provisions of Clause (a) of Sub-section (1) of Section 83 of the Act, which can be achieved in an application under Order VII Rule 11(a) CPC, if it can be demonstrated that the election petition is lacking in requirement of Clause a of Sub-section (1) of Section 83 of the Act.

77. In the present petition, the petitioner claiming to be a candidate, though the learned Counsel for the respondent-applicant has joined issue on this aspect to contend that the petition averments had not sufficiently made out a case to indicate that the election petitioner would have identified as a candidate in the elections, but nevertheless, if the petitioner is a candidate in the election, then the further averments being to the effect that the nomination had not been accepted by the returning officer and therefore such non-acceptance itself amounts to rejection of the nomination within the scope of Clause c of Sub-section (1) of Section 100 of the Act and if the statement made in the election petition is one found to contain sufficient facts to seek relief in terms of Clause c of Sub-section (1) of Section 100 of the Act, then it follows that the election petition does disclose a cause of action for the relief that is sought for in the petition and therefore goes out of the purview of Order VII Rule 11(a) CPC also.

78. It is for this reason, I am inclined to hold that the election petition cannot be rejected at this stage on the application filed under Clause a of Sub-section (1) of Section 83 of the Act read with Order VII Rule 11(a) CPC.

79. Submission of Sri Ashok Haranahalli, learned Advocate General, appearing for the respondent-applicant, is two fold. In the first instance, there was no proper presentation of the nomination paper before the returning officer, in the sense what was sought to be presented before the returning officer was not a valid or proper nomination paper and therefore no nomination paper in the eye of law and there again when the petitioner realized that the nomination paper did not contain the information, particularly such as the name of the constituency

and also the particulars of the proposers, in the present case, admittedly that of a minimum 10 persons as proposers, though the names of proposers have been indicated, further particulars of the part number and serial numbers of such persons figuring in the electoral roll of the constituency, having not been admittedly indicated in the nomination paper, for the reason that the petitioner was unable to gather the precise information for want of a copy of the electoral roll of the constituency after delimitation etc., and such being the admitted position, it can never be said to be a proper and valid nomination and when there is no valid nomination at all, the petitioner cannot call in aid the provisions of Clause c of Sub-section (1) of Section 100 of the Act, which is a ground available only to a person or to a candidate on whose behalf a proper nomination paper had been presented and therefore the petition is not tenable and secondly that apart from such glaring defect even at the presentation of the nomination, the election petition itself not containing commensurate averments for retaining it as a valid election petition capable of producing any relief to the election petitioner, it is inevitable that the election petition is to be rejected at the threshold and in limine, in terms of the provisions of Sections 81, 83 read with Section 86 of the Act and the provisions of Order VII Rule 11 CPC and if such is the argument, it is found that it is comprised of two parts viz., whether the nomination was a valid nomination and secondly the petition pleading commensurate and answering the requirement of Sections 81 and 83 and therefore attracting Section 86 of the Act.

80. In so far as the argument related to absence of a plea in the petition about a valid nomination is concerned, it is found that the sum and substance of the petition plea is to the effect that the petitioner's efforts to present the nomination papers were thwarted by the returning officer for whatever reasons may be, but even at the threshold and further that not accepting the nomination paper also deprived the election petitioner of an opportunity to rectify the defects including the correction with regard to the so-called mentioning of the constituency, part number and serial numbers of the proposers in the electoral roll, and therefore amounted to a rejection of the nomination paper.

81. I am of the considered view that in so far as the presentation of the nomination paper is concerned, it is the bounden duty of the returning officer, in the first instance to receive the nomination, peruse it, point out defects, if any, allow the candidate to rectify if such defects are not of substantial nature or even of substantial nature, to enable the candidate if anything can be done about it and if nothing is done about it, till the time of scrutiny, then alone the question of rejection arises to reject the nomination, if it is so warranted in the facts and circumstances.

82. When the Act provides to a candidate not successful the right to present an election petition and to seek invalidation of the declaration of the rival candidate as elected candidate, on the ground of improper rejection of the nomination paper, a non-receipt of the nomination and even without taking it to the scrutiny stage, definitely amounts to an improper rejection of the nomination paper.

83. It is to be borne in mind that while the Act is a special Code governing the conduct of general elections, both to the assembly and to the parliament, and therefore the procedure and requirement adumbrated in the legislation are required to be strictly adhered to and applied while examining the matters arising for consideration before the court functioning as an election tribunal, particularly, on the presentation of the election petition u/s 81 of the Act, in the name of maintaining a strict vigil or scrutiny and to weed out frivolous election petitions coming before the court seeking for relief, may be even by not so serious candidate at the election, persons who take part in the process to be candidates, persons who are not serious at all to contest the election or persons who may have a desire of becoming a candidate only to present an election petition and to harass the declared candidate, are all factors which, perhaps, go into the judicial consideration of the examination of an election petition and the judicial consensus that has evolved is that the election petition which does not conform to the requirement of the statute, which does not necessarily reveal a cause of action, which in turn amounts to lack of seriousness on the part of the petitioner or even as a candidate, are all to be nipped in the bud not only to avoid possible harassment to the returned candidate, but also to avoid waste of public time and unnecessary drain of court's time and loss to the public exchequer. While this is the preponderance of judicial opinion, at the same time, it can never be lost sight of that the Act itself is made for remedial measures and the remedial measures also have a definite purpose and equally intended to be a purpose to be achieved. In the scheme of the Act as envisaged in our Constitution, which provides for a democratic socialistic republic to be the form of governance, elections have a great importance, in fact, the hallmark of any democratic nation is free and fair elections and equal opportunity to all persons is the sine qua non of proper conduct of the elections.

84. Litigation under the Act in a petition u/s 81 of the Act before the high court, which is the election tribunal, though not exactly as in the nature of an adversary litigation between two suits before a civil court, however much the rivalry may be amongst the candidates and the contest being between the returned candidate and the other person questioning the legality of such election and the Act providing for certain remedial measure in a situation where the elections are not conducted in a proper and befitting manner this object of the Act can never be lost sight of.

85. There cannot be any easier method of winning an election than ensuring that the nomination papers of the rival candidates are rejected and it can be further improved upon if the nomination paper is not even accepted by the returning officer. Such is the complaint by the present petitioner. In a complaint of such nature, which, in my opinion, definitely amounts to a cause within the scope of Clause c of Sub-section (1) of Section 100 of the Act, is a cause which requires to be examined by court irrespective of possible outcome on the same and which again may depend upon the manner in which the election petitioner will be able to make good her case and to be able to seek relief in terms of the prayer.

86. In so far as the invalidity of the nomination as sought, to be urged by Sri Ashok Haranahalli, learned Counsel appearing for the respondent, is concerned, I am of the view that this cannot be a matter for examination at the threshold even before the trial and even as to the question assuming for argument's sake, defects as sought to be pointed out by the learned Counsel for the respondent-applicant, did exist in the presentation of the nomination paper, it could have been a defect not of substantial nature, which otherwise should have been overlooked by the returning officer as contemplated and even without reaching the stage of scrutiny of the nomination for the purpose of rejection of the nomination.

87. Fair and free elections are the guarantee of a democratic system of governance and there cannot be any compromise on this and more so when the matters involving the questions about such possibilities are brought before the electoral tribunal, in the context of the result of the declared candidate being challenged by the rival in the election.

88. I find that such is the view taken by the Supreme Court also in an earlier case involving improper rejection of the nomination by the returning officer, which was opined to be definitely a ground for allowing an election petition setting aside the declaration in favour of the elected candidate, as such ratio emerges on the perusal of the judgment of the Supreme Court, in the case of Rangilal Choudhury Vs. Dahu Sao and Others, , wherein the Supreme Court had occasion to examine as to what are the defects of substantial character and what are not and there was a mandate on the part of the returning officer to overlook such of those defects which were not substantial in nature and in this particular case, the Supreme Court also having concurred with the high court to opine that wrong mentioning of the constituency or non-mentioning of the name of the constituency and not mentioning of the part and or serial number of the candidate or proposers in the electoral roll, cannot be said to be defects of substantial nature warranting rejection, but on the other hand, it was a duty enjoined on the returning officer to accord opportunity to the candidate to get over such defects, if had been noticed by the returning officer and it is only even then and in fact the Supreme Court and the High Court having opined that they were not defects of substantial nature, for the reason that these are all information which could otherwise can be gathered by comparison to the electoral rolls of the constituency and if such is the judicial opinion and the law declared by the Supreme Court, non-mentioning of the "state" in the top portion of form 2-B nomination and assuming that the "proposers" places in the part and serial numbers in the electoral roll having not been mentioned, could not constitute a defect of substantial nature as to warrant rejection of the nomination paper and if so, it is a fortiori the case where the returning officer had not even received the nomination paper in the first instance, amounts to an improper rejection and therefore, I am of the view that the election petition at this stage cannot be thrown out on an application filed on the basis of the provisions of Sub-section (1) of Section 83 of the Act or Order VII Rule 11(a) CPC.

89. In fact this view is further supported by another judgment of the Supreme Court in the case of Viveka Nanda Giri [supra].

90. The other aspect is the petition averments are not sufficient etc., and therefore it could be rejected. In so far as this argument is concerned and for such purpose, Sri Ashok Haranahalli, learned Advocate General, appearing for the respondent-applicant, has drawn the attention of the court to the provisions of Section 83(1) of the Act, contending that this requirement of furnishing sufficient copies of petition and annexure in the same manner as the petition presented to the court and the answer to this point by the petitioner is that the copies of the election petition as contained in the petition presented in the registry had been furnished and it is sought to be made good by pointing out that the subsequent tiling before the registry is not necessarily part of the election petition etc., and there was compliance with the requirement of Section 81(3) of the Act.

91. Here again, it is noticed that the copies of the election petition as originally presented and tiled before the registry have been furnished. Further explanation of the petitioner is that what was tiled subsequently is only the original of the copies of documents which had been presented along with the main petition, for the reason that the originals were before this Court in the earlier round of writ petition and the return of original documents was awaited and nothing further is placed before the court and it was within the knowledge of the respondent.

92. Though my attention is drawn to yet another document, which is virtually an index to the so-called documents, and it is pointed out that in the copy furnished to the respondent, only two items are mentioned and even the pagination in the copy of annexure furnished to the respondent is not the same as is placed before the court, on a perusal and comparison of this, I notice this is of no consequence, in the sense, it does not cause any prejudice or affectation to the respondent for proper and effective defence of the petition, particularly as nothing which is material is not revealed to the respondent and a variation of the nature pointed out, particularly in the index attached to the memo dated 8-7-2008 and the process copy being not furnished, and not even indicating the pagination in identical manner, but what is provided is only a copy of the index containing two items, whereas the index annexed with the memo and the presented to the court containing nine items, makes material difference, is not an argument which is acceptable, for the simple reason that, on a perusal of the said documents, it is seen that they are only the originals of the copies of documents which had been earlier furnished, and it in no way makes any deviation from what had been furnished to the respondents. At any rate, in my considered view, this is not a non-compliance, which merits acceptance as a case falling with the requirement of Section 81(3) of the Act and therefore, in turn, attracting the penal consequences contemplated in the beginning of Section 86 relating to trial of an election petition.

93. As already indicated above, trial should be avoided only if petition averments

does not disclose sufficient facts and material is not sufficiently revealing to the respondent to take it to the stage of trial, particularly if the petitioner's case is made known to the respondent. The present election petition being one to seek relief in the background of non-acceptance of a nomination paper, I am of the considered view that; this is not a case attracting either Sub-section (3) of Section 81 and consequentially Sub-section (1) of Section 86 of the Act.

94. That still leaves an argument of Sri Ashok Haranahalli for rejection of the petition even on the touchstone of the petition not conforming to the requirement of Clause c of Sub-section (1) of Section 83 of the Act and further Sub-section (2) of Section 83, to be examined.

95. In so far as the Clause c of Sub-section (1) of Section 83 of the Act is concerned, for which purpose even reliance is placed on the judicial pronouncements, it is noticed that this is a requirement; as is provided in the CPC and is again required to make it known to the respondent, who has to defend the petition, so as to understand as to the case of the election petitioner, as to what matters in the pleading are within the knowledge of the petitioner, what matters are based on the information and further what matters are based on the advice or guidance received by the election petitioner for presenting the election petition and for seeking relief. The relevant statutory provision in terms of Order VI Rule 15(2) CPC reads as under:

15. Verification of pleadings

(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.

96. The precise complaint is that the verification does not indicate precisely as to the contents of which all paragraphs are within the personal knowledge of the petitioner, contents of which other paragraphs are based on the information and further as to which of the paragraphs are with reference to the guidance or advice received by the petitioner etc.

97. A perusal of the statutory provision also indicates that the verification with reference to each paragraph, distinction to be maintained, which is an important aspect in the statutory provisions, is for the precise purpose of the petitioner's

case being made known to the respondent.

98. Here again, if one can draw a general inference, the narration of facts constitute first part and within the personal knowledge of the petitioner, the grounds on which the petition is presented may be both on information received and also on the advice received and the prayer sought for or relief sought for is normally from the guidance received, if the petitioner herself is not conversant with the statutory provision and can alone seek for the relief etc.

99. Be that as it may, with the petition pleadings having been trifurcated into part-I, comprising facts, part-II, comprising grounds and part-III consisting prayer, and the verification, which reads as under:

18. The petitioner further states that the averments made in Para I, Sub-Para 1 to 19 of the Election Petition are true and correct to the best of petitioner's knowledge, information and belief and further the averments made in Para II, Sub-Para a to g are true to petitioner's knowledge and Para in, Sub-Para "a" to "c" of the petition are true and correct to the best of petitioner's knowledge and belief.

can also be understood as that part-I is within the knowledge of the petitioner, part-II based on the information and belief and part-AIII on the information that the petitioner believes to be true etc. In my considered view, the verification even as it stands as of now, and with reference to the manner of presentation of the petition and having trifurcated or separated the petition to parts, sufficiently and in substantial manner complies with the requirement of verification, in terms of Clause c of Sub-section (1) of Section 83 of the Act and therefore this argument cannot be one to reject the election petition at the threshold, on the premise that certain requirements in law are not fulfilled.

100. Here again, one may notice that Section 83 noncompliance is not one taking the case to disqualification or rejection of the election petition at the threshold in terms of Sub-section (1) of Section 86, but if it is a noncompliance with the requirement of the provisions of Sections 81, 82 and 117 of the Act, it should be a case of applying the distinction which cannot be lost sight of.

101. Yet another argument is with regard to noncompliance with the requirement of Sub-section (2) of Section 83 regarding the non-verification of the annexures to the election petition. Further argument is that a good number of annexures are not even verified as is required and as required by law and as averred in para-9 of the supportive affidavit, wherein it is pointed out by the learned Counsel that the details of such non-compliance are also furnished.

102. The response of the petitioner to this alignment is that the petitioner in tact had verified all the copies of documents when was furnished initially when the respondent had received it and in fact the respondent had kept it with him for neatly 34 days and it is only later the respondent has come up with the version that the copies have not been so verified etc., and that an objection of this

nature taken at a belated stage i.e. after a lapse of 34 days of receiving the copies, cannot be entertained and this submission is supported by judicial pronouncements relied upon by the petitioner on the following decisions:

? Karam Thamarjit Singh v. Md Allauddin Khan AIR 2008 (Gau) 457 ;

? Saheb Singh Patel v. Smt Shashi Prabha AIR 2009 (NOC) 753 (MP)

? Umesh Challiyil Vs. K.P. Rajendran, ; and

? Sushil Singh Vs. Prabhu Narain Yadav and Others, .

103. Apart from the factual assertion and denial and it is being not per se resolvable at this stage itself and more over the matter could assume significance only if it is of such nature as to cause prejudice to the respondent in the effective defence of the election petition, I am of the view that a ground of this nature as urged in the application cannot constitute sufficient grounds to reject the election petition itself at this stage, more so, in the wake of the assertion and denials, the controversy having arisen in the factual aspect of this dispute, which perhaps warrants an enquiry to this aspect also, if need be.

104. One another contention urged by Sri Ashok Haranahalli, on behalf of the respondent is that there being no plea in the petition to the effect that the election petitioner had complied with the requirement of Section 34 of the Act i.e. the petition neither having contained a plea that proof of deposit contemplated in terms of Section 34 of the Act was enclosed to the nomination paper nor the petitioner, in fact, having made such deposit, the deeming provision contained in Section 34 of the Act comes into play; that a nomination paper assuming that it was sought to be presented, if had not been accompanied by proof of the deposit of a sum of Rs 5,000/-, it is deemed in law; that there is no valid nomination and therefore if there is no valid nomination at all in the eye of law and particularly with the petition not containing a plea specifically with regard to the deposit of the amount and on the other hand being conspicuously absent, the election petition is one without a very essential plea and if so, there is no need to take the matter to dial and the election petition should necessarily be dismissed.

105. Responding to this contention, petitioner has submitted that while the deposit is a requirement in law, a deposit can be made till the last moment; that there was still time for presenting the nomination paper, that when the petitioner attempted to present the nomination paper, time for presentation had not yet come to an end; that even assuming that there was no deposit, it was the bounden duty of the returning officer to point out the requirement of deposit fee and enable the candidate to arrange for deposit and it is only thereafter if the deposit is not made before the expiry of time for filing of nomination, then alone, the provisions of Section 34 of the Act can be said to come into play; that the provisions of Sub-section (4) of Section 36 of the Act takes care of the situation and such a situation will arise only when the returning officer has scrutinized the

nomination paper and that the returning officer having consciously and deliberate avoided even scrutinizing the nomination papers, by not even receiving the nomination paper, the argument is only hypothetical and is of no consequence in determining the validity of the election petition nor the validity of the nomination paper.

106. I have bestowed my attention to the submission made at the bar and I find that the argument is really hypothetical, particularly as the returning officer had not even cared to look into the nomination paper, as was presented by the petitioner-candidate or on her behalf by her supporters.

107. Accepting of an argument of this nature virtually preempts the provisions of Section 36 of the Act and in particular Sub-section (4) of Section 36.

108. The judgments of the Supreme Court in the cases of Vivekanand Giri Vs. Nawal Kishore Sahi, and Madan Lal Vs. Hira Singh Pal, , following the judgment of the Supreme Court in the case of Rangilal v. Dahu Sao AIR 1961 SC 124, relied on by the petitioner on this aspect of the matter conclude the issue in favour of the election petitioner to reject the argument [of the respondent], as the returning officer had not even cared to look into the nomination paper, but had, for the reason best known to him, avoided even to look at the nomination paper and had warded off the attempt on the part of the petitioner to hand over the nomination paper. This is nothing short of rejection of the nomination.

109. But, more importantly, accepting an alignment of this nature on behalf of the respondent-declared candidate, will only result in the safeguard that is provided under the Act for ensuring a free and fair election and to discourage malpractice, illegality and violations being virtually defeated. Purity of election is a most important aspect in a democratic process and providing for the remedy of an election petition, to a defeated candidate and that too by conferring the jurisdiction on a high judicial body, a constitutional court such as the high court by constituting the high court as the tribunal to look into such a petition, is the scheme of the Act, as legislated by the Parliament, and one can never lose sight of this important aspect. As observed in this older, it a scheming candidate can ensure the non-receipt of a nomination by a colluding returning officer, such incidents being not an impossibility in the present political system and that too when a candidate from the ruling party may wield considerable clout or influence over the government officials, including the returning officers, until and unless the high court, which is the election tribunal, scrutinizes such petitions diligently and minutely, such tendency in derailing an election process can definitely get encouraged and may grow in the days to come.

110. I am of the considered and definite view that it is the duty of the high court as an election tribunal to emphatically discourage such possibilities and rejecting an election petition at the threshold on some technicalities can only be an encouragement and not otherwise and the argument of Sri Ashok Haranahalli is only to be rejected.

111. Even an elaborate examination of the contents of the application and in the light of the good number of judicial authorities relied upon by the learned Counsel for the respondent-applicant, and also the petitioner, I do not find any justification to reject the election petition at this stage, on the basis of the application tiled under Sections 81, 83 and 86 of the Act read with Order VII Rule 11 of CPC and it is for this reason this application is dismissed.