RAVI NAMBOOTHIRI

v.

K.A. BAIJU & ORS.

(Civil Appeal Nos. 8261-8262 of 2022)

NOVEMBER 09, 2022

[S. ABDUL NAZEER AND V. RAMASUBRAMANIAN, JJ.]

Kerala Panchayat Raj Act, 1994 – ss.52(1A), 102(1)(ca), 120(2) – Kerala Panchayat Raj (Conduct of Election) Rules, 1995 – r.6 – Kerala Police Act, 1960 – ss.38, 52 – Election of the appellant as Councilor of Ward No.5 of Annamanada Gram Panchayath was set aside – Correctness of – Held: Appellant admittedly failed to furnish details of his past conviction in Form No.2A – Therefore, the ground on which his election was sought to be declared void, falls squarely within s.102(1)(ca) of the 1994 Act – However, the offences for which the appellant was convicted were u/s.38 r/w s.52 of the Kerala Police Act – Thus, conviction of the appellant was actually for the disobedience of the directions issued by a police officer in connection with holding a dharna in front of the Panchayat office – Kerala Police Act is actually the successor legislation of certain police enactments of the colonial era, whose object was to scuttle the democratic aspirations of the indigenous population – Once the object behind the provisions of the Kerala Police Act are understood, it would be clear that neither s.52(1A) r/w r.6 and Form 2A nor s.102(1)(ca) of the Act nor the decisions in Association for Democratic Reforms, People's Union for Civil Liberties (PUCL) or Krishnamoorthy *case can be stretched to such an extent that the failure of the appellant to disclose his conviction for an offence under the Kerala Police Act for holding a dharna in front of the Panchayat office, is taken as a ground for declaring an election void – District Court and the High Court were wrong in declaring the election of the appellant to be void on the ground that the failure of the appellant to disclose in Form 2A, his conviction under the Kerala Police Act amounted to 'undue influence on the free exercise of the electoral right' and also a violation of ss.52(1A) r/w s.102(1)(ca) of the 1994 Act – Representation of the People Act, 1951 – ss.33A, 33B.*

A *Words and Phrases – "fake", "forgery" – Discussed.*

Allowing the appeals, the Court

HELD: 1.1 As seen from sub--section (1) of Section 102, the election of a candidate can be declared void, under five different contingencies. They are: (i) that the returned candidate B **was not qualified or was disqualified on the date of his election; (ii) that any corrupt practice has been committed by the returned candidate or his election agent or by any other person with the consent of the returned candidate or his agent; (iii) that any nomination had been improperly rejected; (iv) that the details** C **furnished by the elected candidate under sub-section (1A) of Section 52 were fake; and (v) that the result of the election, insofar it concerns the returned candidate, has been materially affected either by the improper acceptance of any nomination or by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent or** D **by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with the provisions of this Act or of any Rules or orders made thereunder. Interestingly, sub--section (1) of Section 102 places the first four contingencies listed in the preceding paragraph,** E **{which are relatable to clauses (a), (b), (c) and (ca) of sub--section (1)} on a different footing than the fifth contingency {relatable to clause (d)}. The difference between clauses (a), (b), (c) and (ca) on the one hand and clause (d) of sub--section (1) of Section 102 on the other hand is this. For setting aside an election under any one or more of the contingencies mentioned in clauses (a), (b),** F **(c) and (ca), it is not necessary for the Court to find if the result of the election, insofar as it concerns the returned candidate, has been materially affected or not. In contrast, for holding an election to be void on the ground of improper acceptance of any nomination or the commission of a corrupt practice by any other** G **agent, but in the interest of the returned candidate or the improper reception, refusal or rejection of any vote or the reception of any vote which is void or non- compliance with the provisions of the Act, the Rules or orders, the Court must be satisfied that the result of the election has been materially affected. [Paras 15-17][288-G-H; 289-A-E]**

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1.2 In other words sub-section (1) of Section 102 places, (i) non- qualification/disqualification of the returned candidate; (ii) commission of any corrupt practice by the returned candidate or his election agent or any other person with the consent of the returned candidate or his election agent; (iii) the improper rejection of any nomination; and (iv) the furnishing of details under Section 52(1A) which are fake, on a much higher pedestal. If a challenge is made to the election of a candidate on any one of these four grounds, it is not necessary to show that the result of the election has been materially affected. Sub--section (1) of Section 102 places, (i) improper acceptance of any nomination; (ii) commission of any corrupt practice in the interest of the returned candidate, but by any agent other than his own election agent; (iii) the improper reception, refusal or rejection of any vote or the reception of any vote which is void; and (iv) the non-compliance with the provisions of the Act or any Rules or orders made thereunder, in one group or class, where the Court is obliged to look into an additional factor namely whether the result of the election was materially affected due to any of these factors. The expression "corrupt practice" is defined in Section 120 of the Act. [Paras 18-20][289-F-H; 290-A-B]

1.3 The argument of respondent No.1 is that the case would fall squarely under Section 102(1)(ca), which deals with the furnishing of details under Section 52(1A), but which are fake. Alternatively, it is suggested that the case would fall under Section 102(1)(b) which deals with the commission of any corrupt practice by the returned candidate. Since the expression "corrupt practice" is defined in Section 120(2) to include 'undue influence with the free exercise of any electoral right', it is argued by the respondent No.1 that the case may fall under Section 102(1)(b) also, in view of the law laid down in *Krishnamoorthy*. This Court has its own doubts about the second limb of the argument of the senior counsel for respondent No.1. The second limb of his argument is that the failure to disclose correct information in Form 2A would tantamount to 'undue influence on the free exercise of the electoral right', which comes within the definition of the expression "corrupt practice" under section 120 of the

Act. Inspiration for this argument arises from the decision of this Court in *Krishnamoorthy.* [Paras 21, 22][295-C-F]

1.4 In so far as the Kerala Panchayat Raj Act is concerned, there is no necessity, after the amendment under Act 30 of 2005 to take a circuitous route. Non-disclosure and false disclosure can straight away be traced to Section 52(1A) and 102(1)(ca) of the Act. Coming back to Section 102(1)(ca), it enables a Court to declare the election of a returned candidate to be void, if the details furnished by him under Section 52(1A) are found to be "fake". Interestingly the Statute uses the expression "fake" and not expressions such as "false", "suppression" etc. The word "fake" is not defined in the Act. Black's Law Dictionary defines the word "fake" to mean "to make or construct". In P. Ramanatha Aiyar's Advanced Law Lexicon, (Volume 2, 5th Edition, 2017), the entry relating to the word "fake" simply directs the reader to the entry relating to the word "forgery". Therefore, one has to go to the entry relating to the word "forgery" to understand the meaning of the word "fake". The entry relating to the word "forgery" is quite long and it begins with a reference first to Section 463 of the IPC, 1860 which defines "forgery". [Paras 28-30][303-B-F]

1.5 A reading of the above entry in the Law Lexicon shows that the word "forgery" has its origin in French, signifying "the framing or fashioning of a thing as the smith doth his work upon the anvil." Essentially "forgery" appears to include the false making of any writing. Thus, it appears from the above that the elements of forgery are also identified as the ingredients of faking something. If the false making of an instrument is a common ingredient of "faking" and "forgery", the non-disclosure in Form No.2A of the conviction suffered by the appellant in the past, may certainly come within Section 102(1)(ca). The reason for this is that a person having criminal antecedents, poses himself to be one without any such antecedent, when he fails to make a true disclosure. In law, he passes off or comes out as a person without any criminal antecedent. Therefore, the failure to make a true disclosure in Form 2A, regarding the past conviction, will certainly

come within the meaning of the word 'fake', mentioned in clause (ca) of sub-section of Section 102. [Paras 31-33][306-C-F]

1.6 It may be true, as contended by the counsel for the appellant that Rule 6, in terms of which Form No.2A has been drafted, is a subordinate legislation, which cannot go beyond the scope of Section 52(1A). But unfortunately for the appellant, Rule 6 is not under challenge on the ground that it is ultra vires the Act. Therefore, the appellant cannot now be heard to contend that Rule 6 cannot travel beyond or enlarge the scope of Section 52(1A). If not for Rule 6 and Form No.2A, it is possible to accept the argument that the requirement under Section 52(1A) is limited to "the disclosure of involvement in a criminal case at the time of filing of the nomination". At the time of filing of the nomination, the appellant was not involved in any criminal case. We do not agree with the argument of the learned senior counsel for respondent No.1 that the phrase "involvement in a criminal case" would include past conviction also, especially when Section 52(1A) uses the rider "at the time of filing of the nomination". [Paras 34-36][306-G-H; 307-A-B]

1.7 The words "involvement in a criminal case at the time of filing of the nomination" would only mean (i) cases where a criminal complaint is pending investigation/trial; (ii) cases where the conviction and/or sentence is current at the time of filing of the nomination; and (iii) cases where the conviction is the subject matter of any appeal or revision pending at the time of the nomination. Therefore, in the absence of Rule 6 and Form No.2A we could have easily concluded that the case of the appellant will not be covered by Section 52(1A) as he was not involved in any criminal case on the date of the nomination. But Rule 6 and Form No.2A taken together with what the law means to be "fake", makes things difficult for the appellant. Column No.1 in Form 2A requires the details not only of the criminal cases pending trial before the Court but also the criminal cases in which the contestant was convicted. The contestant is required to furnish in Form No.2A, details regarding the cases in which he is punished, the case number, the Court, the offences for which punishment was awarded, the nature of the punishment and the

details regarding appeal or revision etc. Therefore, Form No.2A goes far beyond the requirement of Section 52(1A). The appellant admittedly failed to furnish details of his past conviction in Form No.2A. Therefore, the ground on which his election was sought to be declared void, falls squarely within Section 102(1)(ca) of the Act. But that is not all. The offences for which the appellant was eventually convicted, were under Section 38 read with Section 52 of the Kerala Police Act, 1960 (Act 5 of 1961). [Paras 37-40][307-C-H]

1.8 It could be seen from both the above provisions that the conviction of the appellant was actually for the disobedience of the directions issued by a police officer. This was admittedly in connection with a dharna which the appellant staged in front of the Panchayat office, along with a group of his supporters. Therefore, the question that we are obliged to consider is as to whether the non-disclosure of the conviction for such offences would also come within the purview of Section 102(1)(ca) of the Act. While offences under the Indian Penal Code or under special enactments such as Prevention of Corruption Act, Arms Act and so on and so forth are substantive offences, the commission of which may make a person a criminal, an offence under certain enactments such as Kerala Police Act are not substantive offences. Just as strike is a weapon in the hands of the workmen and lock-out is a weapon in the hands of the employer under Labour Welfare legislations, protest is a tool in the hands of the civil society and police action is a tool in the hands of the Establishment. All State enactments such as Kerala Police Act, Madras Police Act etc., are aimed at better regulation of the police force and they do not create substantive offences. This is why these Acts themselves empower the police to issue necessary directions for the maintenance of law and order and the violation of any of those directions is made a punishable offence under these Acts. Once the object behind the provisions of the Kerala Police Act are understood, it would be clear that neither Section 52(1A) read with Rule 6 and Form 2A nor Section 102(1)(ca) of the Act nor the decisions in Association for Democratic Reforms,

People's Union for Civil Liberties (PUCL) or Krishnamoorthy can be stretched to such an extent that the failure of the appellant to disclose his conviction for an offence under the Kerala Police Act for holding a dharna in front of the Panchayat office, is taken as a ground for declaring an election void. [Paras 43, 45 and 46][308-D-F; 309-F-H; 310-A-C]

1.9 It may be of interest to note that the Kerala Police Act, 1960 repealed (i) the Travancore-Cochin Police Act, 1951; and (ii) the Madras District Police Act, 1859 as applied to the Malabar District referred to in Section 5(2) of the States Reorganisation Act, 1956. It also repealed the provisions of (i) the Police Act, 1861; and (ii) the Madras City Police Act, 1888, which were earlier extended to the Malabar District. Thus Kerala Police Act, 1960 is actually the successor legislation of certain police enactments of the colonial era, whose object was to scuttle the democratic aspirations of the indigenous population. This aspect should be kept in mind before applying blindfold, the principle 'what is sauce for the goose is sauce for the gander'. The District Court and the High Court were wrong in declaring the election of the appellant to be void on the ground that the failure of the appellant to disclose in Form 2A, his conviction under the Kerala Police Act amounted to 'undue influence on the free exercise of the electoral right' and also a violation of Section 52(1A) read with Section 102(1)(ca) of the Kerala Panchayat Raj Act. Hence, the appeals are allowed, the impugned orders are set aside and the Election Petition filed by respondent No.1 is dismissed. No costs. [Paras 47, 48][310-C-F]

Union of India vs. Association for Democratic Reforms and Anr **(2002) 5 SCC 294: [2002] 3 SCR 696;** *People's Union for Civil Liberties (PUCL) and Anr. vs. Union of India and Anr* **(2003) 4 SCC 399: [2003] 2 SCR 1136;** *Krishnamoorthy vs.Sivakumar & Ors* **(2015) 3 SCC 467 : [2015] 4 SCR 987;** *Resurgence India vs. Election Commission of India and Anr* **(2014) 14 SCC 189: [2013] 9 SCR 360 – referred to.**

A **Case Law Reference**

[2002] 3 SCR 696	**referred to**	**Para 10**
[2003] 2 SCR 1136	**referred to**	**Para 10**
[2015] 4 SCR 987	**referred to**	**Para 11**
B **[2013] 9 SCR 360**	**referred to**	**Para 12**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8261-8262 of 2022.

From the Judgment and Order dated 30.10.2018 of the High Court
C of Kerela at Ernakulam in C.R.P. No.513 of 2018 and Order dated 19.11.2018 in R.P. No.932 of 2018 in C.R.P. No.513 of 2018.

Ragenth Basant, Krishna Dev Jagarlamudi, Roopali Lakhotia, Ajay Krishna, Advs. for the Appellant.

P. V. Surendranath, Sr. Adv., Subhash Chandran K. R., Sawan
D Kumar Shukla, Ms. Krishna L. R., Ms. Resmitha R. Chandran, Advs. for the Respondents.

The Judgment of the Court was delivered by

V. RAMASUBRAMANIAN, J.

E Leave granted.

2. Aggrieved by the Judgment passed by the High Court of Kerala, confirming an order passed by the Additional District Judge setting aside his election as Councilor of Ward No.5 of Annamanada Gram Panchayath, in the elections held in November-2015, the elected candidate has come
F up with the above appeals.

3. We have heard the learned counsel for the respective parties.

4. The brief facts essential for the disposal of the above appeals are as follows:-

G (i) On 5-11-2015, elections to the Annamanada Gram Panchayath were held. Apart from others, the appellant and respondent No.1 contested from Ward No.5.

(ii) On 7.11.2015, the appellant was declared as having been elected from Ward No.5.

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(iii) Respondent No.1 filed an Election Petition on the file of the District Munsif Court, on 4.12.2015 challenging the election of the appellant. A

(iv) By a Judgment dated 19.11.2016, the Election Petition was dismissed by the District Munsif Court, primarily on the ground that there was no prayer in the Election Petition to declare the election of the appellant as void, on the grounds stipulated in Section 102 of the Kerala Panchayat Raj Act. There was actually a prayer for cancelling the election held on 5.11.2015. B C

(v) Aggrieved by the dismissal of the Election Petition, respondent No.1 filed an appeal in the Court of the Additional District Judge. The appeal was allowed by a Judgment dated 18.06.2018 and the election of the appellant was declared as void on the ground that the appellant suppressed in his nomination form, his involvement in a criminal case and that therefore he had committed a corrupt practice. D

(vi) Aggrieved by the said judgment of the District Court, the appellant filed a revision petition before the High Court. The Revision Petition was dismissed by an Order dated 30.10.2018. The appellant filed a petition for review, but the same was also dismissed by the High Court. Therefore, challenging the order passed in the Revision Petition and the order passed in the Review Petition, the appellant has come up with two appeals. E F

5. The allegation that the appellant suppressed his involvement in a criminal case and thereby adopted a corrupt practice, arose under very peculiar circumstances, which are as follows:- G

(i) On the allegation that on 20.09.2006, a group of about 40 persons, which included the appellant herein, formed themselves into an unlawful assembly and committed criminal H

A trespass into the office compound of the Annamanada Gram Panchayath and put up a temporary shed for conducting a *dharna*, 22 persons were prosecuted before the Judicial First Class Magistrate Court, Chalakudy, for alleged offences under Sections 143, 283 and 447 read with Section 149 of the Indian Penal Code. The appellant herein was cited as accused No.1 and he was also prosecuted additionally for an offence under Section 38 read with Section 52 of the Kerala Police Act.

C (ii) By a Judgment dated 07.06.2010 passed in CC No.1606 of 2006, the trial Court convicted only A-1 and A-2. The appellant herein who was A-1, was convicted for the offence under Section 143 IPC and sentenced to simple imprisonment for a period of three months together with a fine of Rs.2000/-. He was also convicted for the offence under Section 283 and sentenced to pay a fine of Rs.200/-. For the offence under Section 447, the appellant was ordered to undergo simple imprisonment for a period of one month and also to pay a fine of Rs.500/-. Additionally, the appellant was convicted for the offence under Section 52 of the Kerala Police Act and sentenced to pay a fine of Rs.200/-.

F (iii) The appellant as well as A-2 filed a statutory appeal before the Sessions Court, Thrissur. By a Judgment dated 17.01.2012, the appeal was partly allowed and the conviction of the appellant for the offences under Sections 143, 447 and 283 read with Section 149 IPC was set aside. However, the conviction of the appellant herein for the offence under Section 38 read with Section 52 of the Kerala Police Act and the sentence of a fine of Rs.200/- imposed upon him, was upheld by the First Appellate Court.

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(iv) Since the appellant is involved in active electoral politics and his conviction by the criminal Court related to a *dharna* organized by him, the appellant did not pursue the matter further before the High Court against a mere conviction under Section 38 read with Section 52 of the Kerala Police Act.

(v) However, while filing his nomination in the elections to the Panchayat held in November-2015, the appellant failed to disclose, in Form No.2A, under Rule 6 of the relevant Rules, his conviction under Section 38 read with Section 52 of the Kerala Police Act, 1961. Therefore, his election was challenged by respondent No.1 and the matter has now landed up before this Court.

6. In the Kerala Panchayat Raj Act, 1994 (hereinafter referred to as "*the Act*"), an amendment was made in the year 2005, by Act 30 of 2005 with effect from 22.08.2005. One of the amendments introduced by the said Act, was the insertion of sub-section (1A) in Section 52. Section 52 (1A) reads as follows:-

> **"52. Presentation of nomination paper and requirements for a valid nomination.-**
>
> (1A) Every candidate submitting nomination under sub-section (1) shall not be deemed to be qualified to be elected to fill that post unless he submits, along with such nomination, **the details regarding his educational qualification, criminal cases in which he is involved at the time of submission of nomination,** property owned by him and other members of his family, liabilities including arrears due from him to any Public Sector Undertaking or Government or Local Self Government Institutions and whether disqualifies for defection under the Kerala Local Authorities (Prohibition of Defection) Act, 1999 in the form and manner as may be prescribed."

7. Though the language employed in sub-section (1A) of Section 52 mandated only the disclosure of the details regarding "***the criminal cases in which he is involved at the time of submission of nomination***", the High Court invoked Rule 6 of the Kerala Panchayat Raj (Conduct of Election) Rules, 1995 to hold that the suppression of any information relating to past conviction may also amount to suppression of "***involvement in a criminal case***".

8. Rule 6 of the Kerala Panchayat Raj (Conduct of Election) Rules, 1995 reads as follows:-

> **"6. Nomination of candidates.-** (1) A candidate shall be nominated by means of a nomination paper in Form No.2 and on an application in that behalf of an elector in the electoral roll of any constituency of concerned Panchayat, the Returning Officer shall provide him Form NO. 2 free of cost.
>
> (2) Every candidate shall make and subscribe an oath or affirmation before the Returning Officer or the person authorized by the State Election Commission in the Form specified in the First Schedule of the Act.
>
> (2a) Every candidate shall submit before the Returning officer, the details in form No. 2A along with the nomination paper.
>
> (3) The Returning Officer shall, immediately on receipt of the nomination paper, number them serially in the order of their presentation and shall note the date and time of its presentation in each nomination paper and shall issue a receipt attached to Form No. 2."

9. The relevant column of Form No. 2A referred to in Rule 6 reads as follows:

> "1. The following criminal cases are pending against me for trial before the court/I have been convicted by the court in criminal cases.
>
> a. XXXX
>
> (b) Those in which punished
>
> (i) Case number

(ii)	Name and place of court	A
(iii)	Description of the offence for which punishment was awarded	
(iv)	Sections of the concerned Act under which punishment was awarded	B
(v)	Punishment awarded (period of imprisonment/quantum of fine imposed) etc.	
(vi)	Date of sentence	C
(vii)	Details regarding appeal, revision etc. filed against the sentence."	

10. The reasoning of the High Court was that any failure to disclose the correct information regarding the past conviction by a criminal court, would tantamount to suppression of information relating to "***involvement in a criminal case***". The High Court reasoned ***(i)*** that insofar as elections to the State Assemblies and Parliament are concerned, Section 33A of the Representation of the People Act, 1951 requires the disclosure of only those convictions where a sentence of imprisonment for one year and more had been imposed; and ***(ii)*** but that the rules framed in Kerala relating to the elections to Panchayats are more stringent, as they require the disclosure of any involvement in any criminal case. The High Court opined that the Court was obliged to keep in mind the object of such requirement, in the light of the principles laid down by this Court in ***Union of India* vs. *Association for Democratic Reforms and Anr.***[1] and ***People's Union for Civil Liberties (PUCL) and Anr.* vs. *Union of India and Anr.***[2]**.** D E F

11. Assailing the Judgment of the High Court, it was argued by Shri Ragenth Basant, learned counsel appearing for the appellant that the non-disclosure of the conviction for a petty offence and that too relating to the holding of a *dharna* on a political issue, cannot be termed as "*undue influence*" within the meaning of Section 120(2) of the Act and that, therefore, the election of the appellant ought not to have been declared void on the ground that it was vitiated by corrupt practice under G

[1] (2002) 5 SCC 294
[2] (2003) 4 SCC 399 H

A Section 102(1)(b) of the Act. It was also contended by the learned counsel that the reliance placed by the First Appellate Court on the decision of this Court in ***Krishnamoorthy vs. Sivakumar & Ors***.[3] was misplaced. According to the learned counsel, the non-disclosure of criminal antecedents pertaining to heinous or serious offences involving corruption or moral turpitude alone would tantamount to corrupt practice. It is also B further contended by the learned counsel for the appellant that the requirement of a disclosure in terms of Section 52(1A) relates only to the involvement in a criminal case at the time of submission of the nomination and that therefore, the requirement under Rule 6 cannot be read as enlarging the scope of Section 52(1A). According to the learned C counsel for the appellant, even the ground under Section 102(1)(ca) of the Act cannot be invoked as the same is concerned with a situation where the details furnished by the elected candidate were shown to be fake. Therefore, the learned counsel contended that the First Appellate Court and the High Court were completely in error in declaring the election of the appellant to be void.

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12. Supporting the judgment of the High Court it was contended by Shri P.V. Surendranath, learned senior counsel for respondent No.1 (Election Petitioner) that the deliberate suppression by the appellant, in the nomination form filed in Form 2A, of his conviction for a criminal offence, squarely fell within the definition of the expression "*undue* E *influence*" under Section 120(2) of the Act. According to the learned senior counsel for respondent No.1, the Court is obliged to keep in mind the fact that Section 33B of the Representation of the People Act, 1951, was brought in by the Parliament to nullify the effect of the decision in ***Association for Democratic Reforms and Anr*** (supra). But Section F 33B was declared unconstitutional in ***People's Union for Civil Liberties*** (supra). Relying upon the decision in ***Resurgence India vs. Election Commission of India and Anr.***[4], it was contended by the learned senior counsel for respondent No.1 that the filing of an affidavit with blank particulars has also been held to be a ground to reject the nomination papers.

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13. We have carefully considered the rival contentions. Before we proceed to consider the rival contentions, we must point out that the case on hand relates to an election to the *Panchayat* held in November-

[3] (2015) 3 SCC 467

H [4] (2014) 14 SCC 189

2015. The term of office of the appellant is already over. But if the Judgment of the High Court is found to be correct, the appellant might have incurred a disqualification. Therefore, a decision on merits in this case is not a mere academic exercise and hence we have to deal with the rival contentions.

14. To test the correctness of the decision of the High Court, we may have to begin our discussion from Section 102 of the Act. Section 102 of the Act reads as follows:-

> "**102. Grounds for declaring election to be void**. - (1) Subject to the provisions of sub-section (2) if the Court is of opinion –
>
> (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under this Act; or
>
> (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
>
> (c) that any nomination has been improperly rejected; or
>
> (ca) that the details furnished by the elected candidate under sub-section (1A) of section 52 were fake; or
>
> (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected –
>
> (i) by the improper acceptance of any nomination, or
>
> (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent; or
>
> (iii) by the improper reception, refusal or rejection of any vote or

A the reception of any vote which is void; or

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

(2) If in the opinion of the Court a returned candidate has been guilty by an agent, other than his election agent,
C of any corrupt practice but the Court is satisfied. –

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

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

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

Explanation.- In this section the term "agent" has the same meaning as in section 120."

15. As seen from sub-section (1) of Section 102, the election of a candidate can be declared void, under five different contingencies. They
G are: ***(i)*** that the returned candidate was not qualified or was disqualified on the date of his election; ***(ii)*** that any corrupt practice has been committed by the returned candidate or his election agent or by any other person with the consent of the returned candidate or his agent; ***(iii)*** that any nomination had been improperly rejected; ***(iv)*** that the details furnished by the elected candidate under sub-section (1A) of Section 52
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were fake; and ***(v)*** that the result of the election, insofar it concerns the returned candidate, has been materially affected either by the improper acceptance of any nomination or by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with the provisions of this Act or of any Rules or orders made thereunder.

16. Interestingly, sub-section (1) of Section 102 places the first four contingencies listed in the preceding paragraph, {*which are relatable to clauses (a), (b), (c) and (ca) of sub-section (1)*} on a different footing than the fifth contingency {*relatable to clause (d)*}. The difference between clauses (a), (b), (c) and (ca) on the one hand and clause (d) of sub-section (1) of Section 102 on the other hand is this. For setting aside an election under any one or more of the contingencies mentioned in clauses (a), (b), (c) and (ca), it is not necessary for the Court to find if the result of the election, insofar as it concerns the returned candidate, has been materially affected or not.

17. In contrast, for holding an election to be void on the ground of improper acceptance of any nomination or the commission of a corrupt practice by any other agent, but in the interest of the returned candidate or the improper reception, refusal or rejection of any vote or the reception of any vote which is void or non-compliance with the provisions of the Act, the Rules or orders, the Court must be satisfied that the result of the election has been materially affected.

18. In other words sub-section (1) of Section 102 places, ***(i)*** non-qualification/disqualification of the returned candidate; ***(ii)*** commission of any corrupt practice by the returned candidate or his election agent or any other person with the consent of the returned candidate or his election agent; ***(iii)*** the improper rejection of any nomination; and ***(iv)*** the furnishing of details under Section 52(1A) which are fake, on a much higher pedestal. If a challenge is made to the election of a candidate on any one of these four grounds, it is not necessary to show that the result of the election has been materially affected.

19. Sub-section (1) of Section 102 places, ***(i)*** improper acceptance of any nomination; ***(ii)*** commission of any corrupt practice in the interest of the returned candidate, but by any agent other than his own election agent; ***(iii)*** the improper reception, refusal or rejection of any vote or the

reception of any vote which is void; and ***(iv)*** the non-compliance with the provisions of the Act or any Rules or orders made thereunder, in one group or class, where the Court is obliged to look into an additional factor namely whether the result of the election was materially affected due to any of these factors.

20. The expression "*corrupt practice*" is defined in Section 120 of the Act which reads as follows:

> "**120**. **Corrupt practices**.- The following shall be deemed to be corrupt practices for the purposes of this Act –
>
> (1) "Bribery", that is to say, -
>
> (A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing –
>
> (a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or
>
> (b) an elector to vote or refrain from voting at an election, or as a reward to –
>
> (i) a person for having so stood, or not stood, or for having withdrawn or not having withdrawn his candidature; or
>
> (ii) an elector for having voted or refrained from voting;
>
> (B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward –
>
> (a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or
>
> (b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote

or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.

Explanation.- For the purposes of this clause the term 'gratification' is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses *bona fide* incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in Section 85.

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

Provided that –

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

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

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

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

A (3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to national symbols such as the national flag or the national emblem for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:

C Provided that no symbol allotted under any rules made under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.

D (4) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

E (5) The publication by a candidate or his agent or by other person, with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate being a statement reasonably calculated to prejudice the prospects of that candidate's election.

F (6) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his

G

H

family or his agent) to or from any polling station provided under section 45:

Provided that the hiring of a vehicle or vessel by an elector or by several electors as their joint cost for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport, vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation.–In this clause, expression 'vehicle' means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(7) The incurring or authorising of expenditure in contravention of section 85.

(8) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of a Panchayat or of Government, and belonging to any of the following classes, namely: -

(a) gazetted officers;

(b) members of police forces;

(c) excise officers;

(d) revenue officers; and

(e) such other class of persons in the service of the Government as may be prescribed;

Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his election agent or any other person acting with the consent of the candidate or his election agent, (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidates election.

(9) Booth capturing by a candidate or his agent or other person acting with the consent of the candidate or his election agent.

Explanation 1.– In this section the any expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

Explanation 2.– For the purposes of clause (8), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent of that candidate.

Explanation 3.– For the purposes of clause (8), notwithstanding anything contained in any other law, the publication in the Gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Government or of a Panchayat shall be conclusive proof –

(i) of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, and

(ii) where the date of taking effect of such appointment, resignation, termination of service, dismissal or removal from service as the case may be, is stated in such publication; also of the fact that such person was appointed with effect from the said date, or in the case of resignation, termination of service, dismissal or removal from service, such person ceased to be in such service with effect from the said date.

Explanation 4.– For the purposes of clause (9), "booth capturing" shall have the same meaning as in section 137."

21. The argument of respondent No.1 is that the case would fall squarely under Section 102(1)(ca), which deals with the furnishing of details under Section 52(1A), but which are fake. Alternatively, it is suggested that the case would fall under Section 102(1)(b) which deals with the commission of any corrupt practice by the returned candidate. Since the expression "*corrupt practice*" is defined in Section 120(2) to include '*undue influence with the free exercise of any electoral right*', it is argued by the respondent No.1 that the case may fall under Section 102(1)(b) also, in view of the law laid down in ***Krishnamoorthy*** (supra)

22. We have our own doubts about the second limb of the argument of the learned senior counsel for respondent No.1. The second limb of his argument is that the failure to disclose correct information in Form 2A would tantamount to '*undue influence on the free exercise of the electoral right*', which comes within the definition of the expression "*corrupt practice"* under section 120 of the Act. Inspiration for this argument arises from the decision of this Court in ***Krishnamoorthy*** (supra).

23. Interestingly, the decision of this Court in ***Krishnamoorthy*** arose out of a judgment of the Madras High Court, authored by one of us (VRS,J.)[5]. It was a case where the elected candidate failed to disclose in the affidavit and declaration form accompanying the nomination, details regarding the criminal cases pending against him. Such details were required to be furnished in terms of the Notification issued by the State Election Commission in exercise of the powers conferred by Articles 243-K and 243-ZA of the Constitution, read with the relevant provisions

[5] The judgment of the Madras High Court dated 15-6-2009 was affirmed by this court.

of the various Tamilnadu State enactments dealing with local bodies. The election of the returned candidate was challenged in that case under the provisions of Section 259 read with Section 260 of the Tamil Nadu Panchayats Act, 1994. While section 259 of the Tamil Nadu Act dealt with the grounds on which an election can be declared as void, Section 260 of the Act defined what are corrupt practices. Section 259 of the Tamil Nadu Act is similar, though not in *pari materia* to Section 102 of the Kerala Act and Section 260 of the Tamil Nadu Act is similar to Section 120 of the Kerala Act. Section 259(1) of the Tamil Nadu Act and Section 102(1) of the Kerala Act are presented in a tabular column so that the difference between them can be appreciated:

Section 259 of Tamil Nadu Act	Section 102 of Kerala Act
259. Grounds for declaring elections to be void (1) Subject to the provisions of sub-section (2), if the District Judge is of opinion – (a) that on the date of his election a returned candidate was not qualified or was disqualified, to be chosen as a member under this Act, or, (b) that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent, or (c) that any nomination paper has been improperly rejected, or (d) that the result of the election insofar as it concerns a returned candidate has been materially affected - (i) by the improper acceptance of any nomination, or (ii) by any corrupt practice committed in the interests of the returned candidate by a person other than that candidate or his agent or a person acting with the consent of such candidate or agent, or (iii) by the improper acceptance or refusal of any vote or reception of any vote which is void; or (iv) by the non-compliance with the provisions of this Act or of any rules or orders made thereunder, the Court shall declare the election of the returned candidate to be void.	**102. Grounds for declaring election to be void**. – (1) Subject to the provisions of sub-section (2) if the Court is of opinion – (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under this Act; or (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or (c) that any nomination has been improperly rejected; or ***(ca) that the details furnished by the elected candidate under sub-section (1A) of section 52 were fake;*** or (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected – (i) by the improper acceptance of any nomination, or (ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent; or (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void; or (iv) by any non-compliance with the provisions of this Act or of any rules or orders made thereunder, the Court shall declare that the election of the returned candidate to be void.

24. The crucial difference between the Tamil Nadu Act and the Kerala Act, is the insertion of clause (ca) in sub-section (1) of Section 102. Sub-section (1A) of Section 52 and clause (ca) of sub-section (1) of Section 102 were inserted by Kerala Panchayat Raj (Amendment) Act, 30 of 2005. The decision in ***Krishnamoorthy*** arose at a time, place and circumstance ***(i)*** when the disclosure regarding criminal antecedents was made mandatory only under the Notifications of the State Election Commission; and ***(ii)*** the non-disclosure was not yet made a ground in the Statute, for declaring the election as void. Therefore, the Court found (pro-actively), a provision already available in the Statute at that time, namely '*undue influence in the free exercise of electoral right*' and held that the non-disclosure had an undue influence on the free exercise of choice of the voter.

25. The decision of the Madras High Court in ***Krishnamoorthy,*** traces the historical perspective of the election law relating to disclosure of criminal antecedents, as follows:

(i) In the year 1999, the Association for Democratic Reforms filed a Writ Petition on the file of the Delhi High Court, seeking a direction to the Union of India to implement the recommendations made by the Law Commission in its 170th Report and to make necessary changes under Rule 4 of Conduct of Election Rules, 1961. One of the recommendations made by the Law Commission was for debarring a candidate from contesting an election, if charges have been framed against him by a Court in respect of certain offences and the necessity for the candidates to furnish details of the criminal cases pending against them. Apart from the recommendations of the Law Commission, the Association for Democratic Reforms (hereinafter referred to as "ADR" for the sake of brevity) also relied upon the Report of the Vohra Committee of the Government of India, Ministry of Home Affairs, which pointed out the nexus between politicians and those accused of criminal offences. In the light of the Reports of the Law Commission and the Vohra Committee, ADR sought, in the writ petition filed before the Delhi High Court, a direction to the Election Commission, to make it mandatory for every candidate to provide information, by amending Forms 2-A to 2-E prescribed under the Conduct of Election Rules, 1961.

(ii) Though the Delhi High Court held, by its judgment dated 02.11.2000, that it is the function of the Parliament and not that of the Court, to make necessary amendments in the Representation of the

People Act, 1951, the Delhi High Court nevertheless issued a direction to the Election Commission to secure to the voters, the following information, from the contesting candidates:-

> "(a) Whether the candidate is accused of any offence punishable with imprisonment and if so, the details;
>
> (b) The assets possessed by a candidate, his or her spouse and dependent relations;
>
> (c) Facts giving insight into the candidate's competence, capacity and suitability for acting as an elected member, including details of the educational qualifications;
>
> (d) Information considered necessary by the Election Commission for judging the capacity and capability of the political party fielding the candidate for election."

(iii) The above directions issued by the Delhi High Court was on the basis that a citizen of the country, whether an elector or not, has a fundamental right to receive information regarding the criminal activities of a candidate. The High Court took the view that for making a right choice, it is essential not to keep the antecedents of the candidate in the dark, as it will not be in the interest of democracy and the well being of the country.

(iv) The judgment of the Delhi High Court was taken on appeal to this Court by the Union of India and it was taken up along with a Writ Petition filed by the People's Union of Civil Liberties (referred to as "PUCL" in short), under Article 32 seeking certain similar directions.

(v) After hearing elaborate arguments, this Court framed two questions, as arising for consideration in the matter and they are as follows:-

> "(a) Whether the Election Commission is empowered to issue directions, as ordered by the High Court?
>
> (b) Whether a voter-a citizen of the country has a right to get relevant information, such as the assets, qualifications and involvement in offences, of candidates, for being educated and informed for judging the suitability of a candidate contesting the election as MP or MLA?"

(vi) After referring to various decisions, this Court summed up the legal position in paragraph-46 of its decision. The contents of paragraph-46 of the decision can be summarised in brief as follows:-

> "(a) The jurisdiction of the Election Commission is wide enough to include all powers necessary for the smooth conduct of the elections, including the entire process of election consisting of several stages and embracing many steps;
>
> (b) The limitation on the plenary character of power is when Parliament or State Legislature has made a valid law. In case the law is silent, Article 324 is a reservoir of power. It is a residuary power and the phrase "superintendence, direction and control" appearing in Article 324 (1) should be construed liberally empowering the Election Commission to issue orders;
>
> (c) Fair election contemplates disclosure by the candidate of his past, so as to give a proper choice to the candidate according to his thinking and opinion. Even if this stipulation is not very much effective for breaking a vicious circle, it will be a step-in-aid for the voters not to elect law breakers as law makers;
>
> (d) To maintain the purity of elections and to bring about transparency, the Commission can ask details of the expenditure incurred by political parties;
>
> (e) The right to get information in democracy is recognised throughout as a natural right flowing from the concept of democracy;
>
> (f) If the field meant for Legislature and Executive is left unoccupied, detrimental to public interest, the Supreme Court would have ample jurisdiction under Article 32 read with 141 and 142 of the Constitution;
>
> (g) Voters' right to know the antecedents including the criminal past of the candidate contesting in the election, is much more fundamental and basic for the survival of democracy."

A ***(vii)*** After summarising the law in paragraph-46, this Court issued certain directions in paragraph-48, which read as follows:-

> "48. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the
B Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:
>
C (1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past if any, whether he is punished with imprisonment or fine.
>
> (2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any
D offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the Court of law. If so, the details thereof.
>
> (3) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of
E dependants.
>
> (4) Liabilities, if any, particularly whether there are any over dues of any public financial institution or government dues.
>
> (5) The educational qualifications of the candidate."

F ***(viii)*** Following the above decision, the Election Commission of India decided to amend Forms 2-A to 2-E appended to the Conduct of Election Rules, 1961 and approached the Government of India seeking suitable Amendments. But the ECI was informed by the Government that steps were being taken in consultation with all political parties.
G Therefore, finding that the time limit fixed by the Supreme Court in the above case was running out, the ECI issued an order bearing No.3/ER/2002/JS-II/Vol-III dated 28.6.2002 under Article 324 of the Constitution.

(ix) However, almost simultaneously with the issue of the above order of the ECI, the President of India promulgated an Ordinance known
H as "Representation of the People (Amendment) Ordinance 2002". The

validity of the Ordinance was challenged by the People's Union of Civil Liberties and a few others under Article 32. During the pendency of the proceedings, the Ordinance was repealed and the Representation of the People (Third Amendment) Act, 2002 was notified with retrospective effect. By the Amendment, Sections 33-A and 33-B were inserted to the Act and they read as follows:-

> "33-A. Right to information. — (1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of Section 33, also furnish the information as to whether —
>
> (i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the Court of competent jurisdiction;
>
> (ii) he has been convicted of an offence other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of Section 8 and sentenced to imprisonment for one year or more.
>
> (2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the Returning Officer the nomination paper under sub-section (1) of Section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).
>
> (3) The Returning Officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his Office for the information of the electors relating to a constituency for which the nomination paper is delivered.
>
> 33-B. Candidate to furnish information only under the Act and the rules .— Notwithstanding anything contained in any judgment, decree or order of any Court or any direction,order or any other instruction issued by the

A Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made thereunder."

Since the ordnance under challenge was replaced by
B the Act,during the pendency of the proceedings, the pleadings and the prayer in the writ petitions were amended so as to confine the challenge to Section 33-B."

(x) Ultimately, a three Member Bench of this Court, in ***Peoples***
C ***Union of Civil Liberties,*** held Section 33-B of the Representation of the People Act, 1951, brought forth by the Third Amendment Act, 2002, to be unconstitutional.

(xi) After this court declared Section 33-B to be unconstitutional, the Election Commission of India issued revised orders dated 27.03.2003
D requiring every candidate, at the time of filing his nomination paper for any election to the Council of States, House of the People, Legislative Assembly of a State or the Legislative Council of a State having such a Council, to furnish full and complete information in regard to the matters specified by this Court, in an affidavit, the format whereof was annexed as Annexure-I to the order.

E

26. Despite the judgment of this Court in ***PUCL***, Section 100 of the Representation of the People Act,1951 was not amended so as the make the non-disclosure or false disclosure, as one of the grounds for declaring an election as void. Section 100 (1) continues to contain only four grounds for declaring an election void. These four grounds are
F comparable to clauses (a), (b), (c) and (d) of Section 102 of the Kerala Panchayat Raj Act, 1994. The special feature of the Kerala Act is the insertion of clause (1-A) in Section 52 and the insertion of clause (ca) in sub-section (1) of Section 102.

27. In the Representation of the People Act, 1951 as well as the
G Tamil Nadu Panchayats Act (out of which the decision in ***Krishnamoorthy*** arose) the candidate challenging an election had to rely upon subordinate legislation to seek a declaration that the election was void. Non-disclosure/false disclosure was not made available in those Statutes themselves as one of the grounds for declaring an election
H void. Therefore, the Court had to fall back upon the Rules and the Orders

of the Election Commission and bring those violations within the scope of "*undue influence*" leading to "*corrupt practice*" which is available as one of the grounds.

28. In so far as the Kerala Panchayat Raj Act is concerned, there is no necessity, after the amendment under Act 30 of 2005 to take a circuitous route. Non-disclosure and false disclosure can straight away be traced to Section 52(1A) and 102(1)(ca) of the Act.

29. Coming back to Section 102(1)(ca), it enables a Court to declare the election of a returned candidate to be void, if the details furnished by him under Section 52(1A) are found to be "*fake*". Interestingly the Statute uses the expression "*fake*" and not expressions such as "*false*", *"suppression*" etc. The word "*fake*" is not defined in the Act. Black's Law Dictionary defines the word "*fake*" to mean "*to make or construct*". The Oxford Dictionary defines "*fake*" as follows:

> "**fake** – º%adj. not genuine, º%n. a person or thing this is not genuine, º% *v.* **1.** forge or counterfeit (something). - %pretend to feel or suffer from (an emotion or illness).
>
> **2.**(**fake someone out**) N. Amer, informal trick or deceive someone.
>
> -DERIVATIVES **faker** n. **fakery** n."

30. In P. Ramanatha Aiyar's *Advanced Law Lexicon*, (Volume 2, 5th Edition, 2017), the entry relating to the word "*fake*" simply directs the reader to the entry relating to the word "*forgery*". Therefore, one has to go to the entry relating to the word "*forgery*" to understand the meaning of the word "*fake*". The entry relating to the word "*forgery"* is quite long and it begins with a reference first to Section 463 of the IPC, 1860 which defines "*forgery*". The entire Entry reads as follows:-

> "**Forgery**. "Forgery" whoever makes any false document or false electronic record, or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed commits forgery. [IPC (45 of 1860), S. 463]

A "A man's signature of his own name may amount to forgery." [IPC (45 of 1860), S. 464, *Expln*. 1]

"While it is true that there is a distinction between fraud and forgery, and forgery contains some elements that are not included in fraud, forgeries are a species of
B fraud. In essence, the crime of forgery involves the making, altering, or completing of an instrument by someone other than the ostensible maker or drawer or an agent of the ostensible maker or drawer." 37 CJS *Forgery* S. 2, at 66 (1997).

C The fraudulent making or altering of an instrument that apparently creates or alters a legal liability of another.

The offence of making a false instrument so that it can be accepted as genuine.

The fraudulent imitation of a document or the writing or
D signature of a signatory in order to pass it off as written by another.

The fraudulent making or alteration of any record, deed, writing, instrument, register, Stamp, *etc*. to the prejudice of another man's right. (4 Comm. 247.) A false making
E of any written instrument for the purpose of fraud or deceit; including every alteration of or addition to a true instrument. (2 East's P.Cc. 19, C. 1. 49. *Tomlin*)

Forgery has its origin in the French word 'forger' which signifies:

F "….to frame or fashion a thing as the smith doth his work upon the anvil. And it is used in our law for the fradulent making and publishing of false writings to the prejudice of another man's right. (*Termes de la Ley*).

G In WEBSTER'S Comprehensive Dictionary, International Edn., 'forgery' is defined as :

"The act of falsely making or materially altering, with intent to defraud; any writing which, if genuine, might be of legal efficacy or the foundation of a legal
H liability."

This definition as adopted in *Rembert v. State*, 25 AM Rep. 639. In another case, namely *State v. Phelps*, 34 AM Dec 672, it was laid down that forgery is the false making of any written instrument, for the purpose of fraud or deceit. This decision appears to be based on the meaning of forgery as set out in Tomlin's. *Indian Bank v. Satyam Fibres (India) (P) Ltd*., AIR 1996 SC 2592.

Forgery is the false making or materially altering with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy, or the foundation of a legal liability. (2 Bishop Cr. L. sect. 523; *Rembert v. State*, 25 Am. Rep. 639).

OTHER DEFINITIONS. "The false making of any written, instrument, for the purpose of fraud or deceit." (*State v. Phelps*, 34 Am. Dec. 672.) "The fraudulent making or alteration of a written instrument to the prejudice of the rights of another." "The fraudulent making of a false writing, which, genuine, would apparently be of some legal efficacy."

FORGERY, UTTERING FORGED INSTRUMENT, FALSE PRETENCES DISTINGUISHED. Where the false pretence made use of to obtain money or property is a written instrument, the resulting crime is sometimes forgery or the uttering of a forged instrument, and sometimes obtaining property by false pretence. If the instrument used is false in itself and is one which if genuine would create some right or liability, obtaining property on the faith of it is forgery or the uttering of a forged instrument as the case may be. [*People v. Peacock*, 6 Con. (NY) 72]

Forgery constitutes fraud, and no legal title passes to the transferee. [*Thorappa Devanappa v. Umedmalji*, AIR 1924 Bom 205, 87 IC 226, 25 Bom LR 604; *Brij Basi v. Moti Ram*, AIR 1982 All 323; *Banku Behari Sikdar v. Secretary of State for India in Council*, (1909) ILR 36 Cal 239; *Karachi Bank v. Kodumal Kalumal*, AIR 1923 Sind 54; *Firm Kalka Pd Ram*

A *Charan v. L Kunwar Lal Thapper*, AIR 1957 All 104; *Kodumal Kalumal v. Karachi Bank Ltd*., AIR 1921 Sind 172; *Mahabir Prasad Bubna v. Union Bank of India*, AIR 1992 Cal 270]

Bankers are specially protected under special conditions
B against claims based on forged documents [See the Negotiable Instruments Act, 1881, S. 85]

Since forging prejudices the person whose signature has been forged, no action is maintainable on the promissory note even against the real executant of
C the note. [*Satya Narayan Tewari v. Sital Missir*, AIR 1934 Rang 345, 153 IC 631]"

31. A reading of the above entry in the Law Lexicon shows that the word "*forgery*" has its origin in French, signifying "***the framing or fashioning of a thing as the smith doth his work upon the anvil.***"
D Essentially "*forgery*" appears to include the false making of any writing.

32. Thus, it appears from the above that the elements of forgery are also identified as the ingredients of faking something.

33. If the false making of an instrument is a common ingredient of "*faking*" and "*forgery*", the non-disclosure in Form No.2A of the
E conviction suffered by the appellant in the past, may certainly come within Section 102(1)(ca). The reason for this is that a person having criminal antecedents, poses himself to be one without any such antecedent, when he fails to make a true disclosure. In law, he passes off or comes out as a person without any criminal antecedent. Therefore,
F the failure to make a true disclosure in Form 2A, regarding the past conviction, will certainly come within the meaning of the word '*fake'*, mentioned in clause (ca) of sub-section (1) of Section 102.

34. It may be true, as contended by Shri Ragenth Basant, learned counsel for the appellant that Rule 6, in terms of which Form No.2A has
G been drafted, is a subordinate legislation, which cannot go beyond the scope of Section 52(1A). But unfortunately for the appellant, Rule 6 is not under challenge on the ground that it is *ultra vires* the Act. Therefore, the appellant cannot now be heard to contend that Rule 6 cannot travel beyond or enlarge the scope of Section 52(1A).

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35. If not for Rule 6 and Form No.2A, it is possible to accept the argument that the requirement under Section 52(1A) is limited to "*the disclosure of involvement in a criminal case at the time of filing of the nomination*". At the time of filing of the nomination, the appellant was not involved in any criminal case.

36. We do not agree with the argument of Shri P.V. Surendranath, learned senior counsel for respondent No.1 that the phrase "*involvement in a criminal case*" would include past conviction also, especially when Section 52(1A) uses the rider "*at the time of filing of the nomination*".

37. In our considered view, the words "*involvement in a criminal case at the time of filing of the nomination*" would only mean ***(i)*** cases where a criminal complaint is pending investigation/trial; ***(ii)*** cases where the conviction and/or sentence is current at the time of filing of the nomination; and ***(iii)*** cases where the conviction is the subject matter of any appeal or revision pending at the time of the nomination.

38. Therefore, in the absence of Rule 6 and Form No.2A we could have easily concluded that the case of the appellant will not be covered by Section 52(1A) as he was not involved in any criminal case on the date of the nomination. But Rule 6 and Form No.2A taken together with what the law means to be "*fake*", makes things difficult for the appellant.

39. We have extracted in paragraph 9 above, the relevant portion of Form No.2A. Column No.1 in Form 2A requires the details not only of the criminal cases pending trial before the Court but also the criminal cases in which the contestant was convicted. The contestant is required to furnish in Form No.2A, details regarding the cases in which he is punished, the case number, the Court, the offences for which punishment was awarded, the nature of the punishment and the details regarding appeal or revision etc. Therefore, Form No.2A goes far beyond the requirement of Section 52(1A). The appellant admittedly failed to furnish details of his past conviction in Form No.2A. Therefore, the ground on which his election was sought to be declared void, falls squarely within Section 102(1)(ca) of the Act.

40. But that is not all. The offences for which the appellant was eventually convicted, were under Section 38 read with Section 52 of the Kerala Police Act, 1960 (Act 5 of 1961).

41. Section 38 of the Kerala Police Act, 1960 reads as follows:

> "**38. Persons bound to conform to reasonable directions of police**.— (1) All persons shall be bound to conform to the reasonable direction of a police officer given in fulfilment of any of the duties enjoined on, or in exercise of any of the powers vested in him under this Act.
>
> (2) A police officer may restrain or remove any person resisting or refusing or omitting to conform to any such direction as aforesaid."

42. Section 52 of the Kerala Police Act,1960 reads as follows:

> "**52. Penalty for failure to conform to lawful and reasonable directions of police officers**.— Every person who disobeys any direction given by a police officer under this Act or rules made thereunder shall on conviction be liable to fine not exceeding two hundred rupees."

43. It could be seen from both the above provisions that the conviction of the appellant was actually for the disobedience of the directions issued by a police officer. This was admittedly in connection with a *dharna* which the appellant staged in front of the Panchayat office, along with a group of his supporters. Therefore, the question that we are obliged to consider is as to whether the non-disclosure of the conviction for such offences would also come within the purview of Section 102(1)(ca) of the Act.

44. As we have seen from the way in which the law developed from the decision in ***Association for Democratic Reforms*** (supra), the primary object of compelling the disclosure of criminal antecedents of candidates contesting the elections, is to decriminalize politics and to make the voters aware of the choice that they have. This is why this Court was very careful in formulating the principles of law, in paragraph 94 of the decision in ***Krishnamoorthy*** (supra). Paragraph 94 of the decision in ***Krishnamoorthy*** (supra) may be usefully extracted as follows:-

> "**94.** In view of the above, we would like to sum up our conclusions:

94.1. Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative. A

94.2. When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right. B

94.3. Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate. C

94.4. As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(*b*) of the 1951 Act. D E

94.5. The question whether it materially affects the election or not will not arise in a case of this nature."

45. While offences under the Indian Penal Code or under special enactments such as Prevention of Corruption Act, Arms Act and so on and so forth are substantive offences, the commission of which may make a person a criminal, an offence under certain enactments such as Kerala Police Act are not substantive offences. Just as strike is a weapon in the hands of the workmen and lock-out is a weapon in the hands of the employer under Labour Welfare legislations, protest is a tool in the hands of the civil society and police action is a tool in the hands of the Establishment. All State enactments such as Kerala Police Act, Madras Police Act etc., are aimed at better regulation of the police force and they do not create substantive offences. This is why these Acts themselves empower the police to issue necessary directions for the maintenance F G H

of law and order and the violation of any of those directions is made a punishable offence under these Acts.

46. Once the object behind the provisions of the Kerala Police Act are understood, it would be clear that neither Section 52(1A) read with Rule 6 and Form 2A nor Section 102(1)(ca) of the Act nor the decisions in ***Association for Democratic Reforms***, ***People's Union for Civil Liberties (PUCL)*** or ***Krishnamoorthy*** can be stretched to such an extent that the failure of the appellant to disclose his conviction for an offence under the Kerala Police Act for holding a *dharna* in front of the Panchayat office, is taken as a ground for declaring an election void.

47. It may be of interest to note that the Kerala Police Act, 1960 repealed ***(i)*** the Travancore-Cochin Police Act, 1951; and ***(ii)*** the Madras District Police Act, 1859 as applied to the Malabar District referred to in Section 5(2) of the States Reorganisation Act, 1956. It also repealed the provisions of ***(i)*** the Police Act, 1861; and ***(ii)*** the Madras City Police Act, 1888, which were earlier extended to the Malabar District. Thus Kerala Police Act, 1960 is actually the successor legislation of certain police enactments of the colonial era, whose object was to scuttle the democratic aspirations of the indigenous population. This aspect should be kept in mind before applying blindfold, the principle '*what is sauce for the goose is sauce for the gander*'.

48. Therefore, we are of the considered view that the District Court and the High Court were wrong in declaring the election of the appellant to be void on the ground that the failure of the appellant to disclose in Form 2A, his conviction under the Kerala Police Act amounted to '*undue influence on the free exercise of the electoral right*' and also a violation of Section 52(1A) read with Section 102(1)(ca) of the Kerala Panchayat Raj Act. Hence, the appeals are allowed, the impugned orders are set aside and the Election Petition filed by respondent No.1 is dismissed. No costs.

Divya Pandey and Anurag Bhaskar
(Assisted by : Rahul Kumar, LCRA)

Appeals allowed.