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HIGH COURT OF CHHATTISGARH, BILASPUR

EP No. 8 of 2014

Judgment reserved on 29.09.2016

Judgment delivered on 24.10.2016

- Prakash Rao S/o D. Polya Aged About 56 Years R/o House No. 292/D, Post & P.S. Kondagaon, Tah. & District Kondagaon C.G. --- Petitioner

Versus

1. Mohanlal Markam S/o Bhikhrai Markam Aged About 46 Years R/o Bhelwanpadar-Para, Post & P.S. Kondagaon, Tah. Distt. Kondagaon C.G.

2. Returning Officer Legislative Assembly Area No. 83, Kondagaon, Post And P.S. Kondagaon, Distt. Kondagaon C.G. --- Respondents

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For the applicant : Mr. Prafull Bharat, Advocate with Mr. Jitendra Pali, Advocate.

For the Respondent No.1 : Mr. B.P. Gupta, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

C.A.V. JUDGMENT

1. This election petition is concerned with the election held in respect of Legislative Assembly Area No.83 of Kondagaon constituency wherein the voting took place on 11.11.2013 and the result of the election was declared on 08.12.2013 and the respondent Mohanlal Markam was declared as returned candidate. The following is the position of votes secured by the

candidates :

Name of candidate	Party	no. of votes secured
Mohanlal Markam (R-1)	Indian National Congress	54290
Lata Usendi	Bhartiya Janta Party	49155
Amalsai Sori	Communist Party of India	5229
Shankar Sodhi	Independent	3711
Rajkumar Markam	Bahujan Samaj Party	3347
Mohan Markam	Independent	3060

2. The instant petition is filed by a voter Prakash Rao though he has not contested the election. The petitioner mainly claimed relief to declare the election of respondent Mohanlal Markam from Constituency Segment No.83 Kondagaon, for the Chhattisgarh Legislative Assembly Election 2013 as illegal and void as per section 98(b) of the Representation of the People's Act, 1951. It is further prayed to hold that the returned candidate has committed corrupt practice at the election by exerting undue influence on the electors as prescribed u/s 123(2) of the Representation of the People Act, 1951 by way of filing false affidavit with his nomination form as per Section 99 of the Representation of the People's Act, 1951.

3. (i) Learned counsel for the petitioner Shri Prafull Bharat would submit that as per Section 100(d)(1) of the Representation of the People Act, 1951, the nomination paper of respondent No.1 was improperly accepted thereby it would give right to the petitioner to challenge the election u/s 123(a)(ii) as respondent No.1 has not

disclosed the true facts in his affidavit that he has married twice despite the first wife was alive. Therefore, such non-disclosure has caused interference with free exercise of electoral right of the petitioner as a voter if those facts were made known to people, many of people may not have voted to elect the respondent as winning candidate. It is further contended that respondent no.1 was holding the office of profit when the nomination was filed by him, thereby respondent No.1 has given the false affidavit.

(ii) Learned counsel would further submit that respondent no.1 has concealed the material information regarding his second marriage in all 5 affidavits and concealed the facts. Referring to Ex.D-3 it is stated that the document shows the date to be 24.10.2013 and in the column, with respect to his description for livelihood, it is written as Senior Agency Manager, S.B.I., Life (retired) whereas in the same document at clause 9(a) about the source of income, it is stated that the salary is from SBI Life Insurance Company Ltd. Further referring to the column of document, it is stated that the wife is shown as Lalita and Maina Markam is shown as dependent though Maina Markam is the wife, thereby respondent No.1 has not disclosed that he has two wives. Referring to the statement of P.W.4 Vijay Kumar Dhurve it is stated that one nomination form was deposited on 22.10.2013 and the rest of 3 nomination-forms were deposited on 23.10.2013 whereas Ex.D-3 is shown to be submitted on 24.10.2013, therefore, it was

contended that the same document is fabricated.

(iii) It is further stated that according to such statement of Election Officer at para 14 the only date of nomination is shown as 23.10.2013. Referring to the document Ex.D-3, it is submitted that though such nominations were shown to be submitted on 24.10.2013 but actually no submission was made. Therefore, learned counsel for the petitioner submits that the returned candidate has given the wrong information which frustrates the principles laid down in ***(2002) 5 SCC 294 – Union of India Vs. Association for Democratic Reforms*** and ***(2003) 4 SCC 399 People's Union for Civil Liberties (PUCL) Vs. Union of India*** and stated that the candidate is required to furnish correct details pertaining to his information.

(iv) He further submitted that it is a settled law that the respondent was required to follow the guidelines or directions issued pertaining to collection, which he has failed to do so. With respect to facts of second marriage, it is submitted that the petitioner has made averments at Para 15 of the petition and referring to the statement of D.W.1 the returned candidate it is submitted that the returned candidate admitted the fact that he had performed two marriages one with Lalita Markam and the second with Maina Markam. It is further submitted that had this fact been disclosed to the public, the voters mind would have swayed as in Indian Society second marriage is not being seen with all grace and

honour, consequently, the petitioner as voter was induced on wrong facts.

(v) By making reference to Section 123(2) sub-section (a)(ii) of the Act 1950 it is further contended that the petitioner was induced by respondent No.1 as correct facts were not disclosed by him and the picture was portrayed by the returned candidate as that of a good man. Had it been given in true perspective, the people may not have voted for him, therefore, the election of the returned candidate would fall under the corrupt practice so as to brand the election invalid.

(vi) Learned counsel further submitted that at the time of election the respondent was holding the office of profit. He also submit that though it is stated that prior to filing of nomination, the respondent has resigned but Ex.D-4 resignation letter would show that the resignation was accepted on 07.11.2013 and on the date of filing of nomination i.e., from 22nd October to 24th October, 2013, he was holding the office of profit. Therefore, the non-disclosure of facts has been made of holding of office of profit by the respondent. It was, therefore, contended that the election of the respondent be declared as illegal and void and accordingly the same may be set-aside.

4. Per contra, Shri B.P. Gupta, learned counsel appearing for respondent no. 1 refuted the entire averments. He would submit that the respondent/returned candidate cannot be said to have hold the office of profit on the date of filing of nomination and the facts would show

that it will not be covered under Article 191 of the Constitution of India as neither the returned candidate was appointed by the Government nor his service conditions were controlled by the Central or State Government. It is stated that the applicant was an agent of State Bank of India Life Insurance Company Ltd., which is an organization established by a Public Sector Bank, therefore, the office held by him cannot be said to be the office of profit. In the alternative it is submitted that even if it is held that the respondent returned candidate was holding the office of profit, in such case the respondent has resigned and relieved from the job of the Agent on 05.10.2013. So when the nomination was filed, the returned candidate already stood relieved. It is further submitted that such objection was never raised before the scrutiny of nominations and without proper pleading and averments, bald allegations have been leveled which cannot be sustained. Counsel referred to document Annexure D-4 and would submit that from perusal of Ex.D-4 it would be clear that the respondent returned candidate has resigned before filing of the nomination papers.

5. It is further contended that in respect of corrupt practice, the petitioner had made general allegations in the affidavit and on what basis the pleading of corrupt practice is made, it is completely silent. It is further submitted that though the reference has been made to various paragraphs of the petition and the affidavit is filed in support of the corrupt practice but reading of

those paragraphs in petition do not disclose any corrupt practice. He placed reliance on ***AIR 2015 SC 180 and AIR 1999 SC 2284*** and would submit that the petitioner has grossly failed in his duty to plead and prove the corrupt practice and undue influence adopted by the returned candidate and only in order to blackmail the respondent, the instant petition has been filed. It is further submitted that even for the sake of argument it is admitted that the petitioner had two wives it would not fall under disqualification which is contained as a ground for section 100 of the R.P. Act, 1951. Further it is also contended that neither it is pleaded nor is proved by the petitioner as to how the nomination has been wrongly accepted and only the averments have been made during the argument, therefore, such submission do not have any force to entertain this petition.

6. With respect to allegation of suppression of material facts, it is contended that in the return at paras 10 & 11, the respondent has categorically stated of both of his marriages and the source of livelihood i.e., the income earned as an Agent of S.B.I. Life Insurance Co. It is contended that everything was shown in the nomination paper and both the names of his two wives i.e., Lalita Markam and Maina Marka have been shown and since the column do not provide for any description of second marriage, the second wife was shown as dependent. The counsel therefore, submits that no suppression has been made by the respondent returned candidate and the petition is completely frivolous and misconceived,

therefore, is liable to be rejected.

7. On the basis of pleadings of parties, this Court had framed the following issues on 11.09.2014 :

S.No.	Issues	Findings
01.	Whether, on the date of acceptance of nomination paper, respondent No.1/returned candidate was holding an office of profit under the Government of India or State Govt., and was disqualified to contest the election under Article 191 (1)(A) of the Constitution of India ?	“Not proved”
02.	Whether, on the basis of pleading and materials, the case of corrupt practice as alleged by the petitioner would be made out and if yes, what would be the effect ?	“Not proved”
03.	Whether, on the basis of pleadings and documents produced by the petitioner and grounds raised in the petition, the election of the returned candidate can be set-aside ?	“No”
04.	Whether, on the basis of pleadings and documents filed by the petitioner, the case of suppression of material information with regard to second marriage and assets and liabilities is made out and if yes, whether on this ground, the nomination was liable to be rejected ?	“No”

8. With respect to issue no.1 whether the respondent returned candidate was holding office of profit, the law laid down by different dictaums of Supreme Court would be relevant with reference to the pleading and evidence. In a decision rendered in case of **Maulana Abdul Shakur v. Rikhab Chand AIR 1958 SC 52 : 1958 SCR 387** the Supreme Court has laid down that the facts which are held to be decisive to decide the office of profit would be (a) the power of the Government to appoint a person to an office of profit or to continue him

in that office or revoke his appointment at their discretion, and (b) payment from out of Government revenues, though it was pointed out that payment from a source other than Government revenue was not always a decisive factor." The aforesaid principles were further followed in the case of **D. R. Gurushantappa Vs. Abdul khuddus Anwar & others Abdul AIR 1969 SC 744 : 1969(1) SCC 466** and applying the aforesaid principle it was held that even the Government undertaking is taken-over by the Company, the employee as a result of transfer of an undertaking shall continue to be the employee of the Company as the Company would have a separate entity. The same principle was adopted by the Supreme Court in case of **Akalu Ram Mahto Vs. Rajendra Mahto 1999 AIR SCW 942 : AIR 1999 SC 1259** wherein it followed the decision rendered in **Gurugobinda Basu v. Sankari Prasad Ghoshal AIR 1964 SC 254.**

9. Therefore, certain parameters were laid down by the Supreme Court on the issue of office of profit. To hold that person is holding an office of profit under the Government, the following factors should be satisfied that whether (1) the Government is the appointing authority; (2) the Govt. and the authority is vested with power to terminate the appointment; (3) Govt. authority determines the remuneration; (4) the source from which the remuneration is paid and (5) the authority vested with power to control the manner in which the duties of office are to be discharged. It was further held that all

the factors need not be present but in a given case, if some of the elements are present it will depend on facts of each case. The Court further held that the Constitution itself makes a distinction between “the holder of an office of profit under the Government” and “the holder of a post or service under the Government”. The Constitution has also made a distinction between “the holder of an office of profit under the Government and the holder of an office of profit under a local or other authority subject to the control of the Government. In *Akalu Ram Mahto (Supra)* the Supreme Court has further held that the test was determined in case of **D.R. Gurushanthappa v. Abdul Khuddus Anwar AIR 1969 SC 744** and the principles given in Gurugobinda Basu's case (AIR 1964 SC 254 (supra) were relied upon.

10. The Supreme Court in subsequent cases on the same issue has reiterated its earlier principle and held that an indirect control by the Government over the Company, the office of profit cannot be assumed as contemplated under Article 191. In case of *Gurushanthappa (supra)* a Government undertaking was transferred to a company registered under Companies Act. The shares of the Company were held by the Government. The candidate was working as a Superintendent in the Company. The power to appoint and dismiss an employee working as Superintendent did not vest in the Government. The power to control and give directions as to the manner in which duties of office were to be performed by that work-man also did not vest in the Government. Even the

power to determine the question of remuneration payable to the workman was not vested in the Government. In these circumstances, it was held that the indirect control exercisable by the Government because of its power to appoint Directors and to give general directions to the Company could not make the post as an office of profit under the Government. Therefore, the true test of determination of the said question depends upon the degree of control the Government has over it, the extent of control exercised by several other bodies or committees over it and their composition, the degree of its dependence on Government for its financial needs and its functional aspect, namely, whether the body is discharging any important governmental function or just some function which is merely optional for the Government.

11. Further in case of ***Pradyut Bordoloi Vs. Swapan Roy (2001) 2 SCC 19 : AIR 2001 SC 296*** the Supreme Court has held thus in Paras 6, 7 & 8.

> "6. The phrase "office of profit" is not defined in the Constitution. By a series of decisions (see Abdul Shakur v. Rikhab Chand AIR 1958 SC 52; M. Ramappa v. Sangappa AIR 1958 SC 937; Guru Gobinda Basu v. Sankari Prasad Ghosal AIR 1964 SC 254 and Shivamurthy Swami Inamdar v. Agadi Sanganna Andanappa (1971) 1 SCC 70, the Court has laid down the tests for finding out whether the office in question is an office of profit under a Government. These tests are (1) whether the Government makes the appointment; (2) Whether the Government has the right to remove or dismiss the holder; (3) Whether the Government pays the

remuneration; (4) What are the functions of the holder ? Does he perform them for the Government; and (5) Does the Government exercise any control over the performance of those functions ?.

7. In *Guru Gobinda Basu v. Sankari Prasad Ghosal AIR 1964 SC 254*, the Constitution Bench of Supreme Court emphasized the distinction between the holder of an office of profit under the Government and the holder of a post or service under the Government and held that for holding an office of profit under the Government, one need not be in the service of Government and there need be no relationship of master and servant between them. Several factors entering into the determination of question are : (I) the appointing authority, (ii) the authority vested with power to terminate the appointment, (iii) the authority which determines the remuneration, (iv) the source from which the remuneration is paid, and (v) the authority vested with power to control the manner in which the duties of the office are discharged and to give directions in that behalf. But all these factors need not coexist. Mere absence of one of the factors may not negate the overall test. The decisive test for determining whether a person holds any office of profit under the Government, the Constitution Bench holds, is the test of appointment; stress on other tests will depend on facts of each case. The source from which the remuneration is paid is not by itself decisive or material.

8. The available case-law was reviewed by this Court in Madhukar G.E. Pankakar v. Jaswant Chobbildas Rajani (1977) 1 SCC 70. The Court described certain aspects as elementary: (i) for holding an office of profit under Government one need not be in the service of

Government and there need be no relationship of master and servant; (ii) we have to look at the substance and not the form; and (iii) all the several factors stressed by the Court (in Guru Gobinda case) as determinative of the holding of an "office" under Government, need not be conjointly present. The critical circumstances, not the total factors, prove decisive. A practical view, not pedantic basket of tests, should act as guide.

12. On the basis of above discussion, the principles are settled that in order to decide whether a person holds an office under the Government the first and foremost question to be decided is whether the Government has power to appoint and remove the person on and from the office. If the answer is in negative, no further enquiry is called for, the basic determinative test having failed. If the answer is in positive one, further probe has to go on to search out that how many of the factors existed as laid down by the Supreme Court earlier.

13. Now the pleading and evidence are being examined with reference to the the aforesaid principles. The petitioner has pleaded that the respondent returned candidate was drawing his salary from SBI Life Insurance Company. Except such averment, nothing has been placed on record to show that there was direct relation of master and servant existed between the respondent and Government. The respondent was said to be working in the SBI Life Insurance Company. In nomination form Clause 9 of Ex.D-3 the source of income has been shown as salary from SBI Life Insurance Company. So if the direct principle is applied that whether the Government

had power to appoint and remove the person from the office, nothing is on record to show that the Government has control over S.B.I. Life Insurance Co. The State Bank Life Insurance is an organization and the Government may have say in the policy decision and might have share in the Company, but the inference cannot be drawn in favour of the petitioner in absence of any evidence that the Government had full control over the appointment and removal of the employees. Consequently when the test of control of power of appointment and removal is applied in the given facts of this case, the answer comes out as negative. In the result, in the facts and circumstances of this case, it is held that by mere pleading and bald statement that the respondent was holding an office of profit the same cannot be accepted. Consequently, it cannot be said that respondent returned candidate had held the office of profit which disqualified him under Article 191(1)(a) of the Constitution of India.

14. Apart from the aforesaid fact, it can be looked into from other angle. The respondent in reply at para 12 has stated that he has resigned from SBI Life Insurance Co.Ltd., which was accepted on 15.10.2013 i.e., prior to the acceptance of nomination paper dated 23.10.2013. The documents Ex.D-2 & Ex.D-4 would be relevant which are proved by the Plaintiff Witness (P.W.4) namely Vijay Kumar Dhurve who was working as Returning Officer at Kondagaon at the relevant time. At para 16 of the deposition, the witness (P.W.4) has admitted the fact

that the nomination form of Mohanlal Markam returned candidate along-with his resignation letter was submitted by him which was marked as Ex.D-2. The petitioner also failed to make any positive statement against this and ambiguous averments have been made. At para 11 of the statement of petitioner (P.W.1) he stated that he has not enquired about the fact that whether Mohanlal Markam was working in the Bank at the relevant time or not. It is stated that before one month of election he had enquired from the respondent wherein he stated that he was working in the office. However, he did not meet any officer of the Bank.

15. The witness P.W.2 Shankar Sodhi who was also one of the contesting candidate has stated that he had not raised any objection with respect to the fact that Mohanlal Markam was working in the Bank. The document Ex.D-4, which is relieving letter dated 07.11.2013 purports that it is a communication and records that with reference to resignation letter dated 11.09.2013, the respondent returned candidate was communicated to have been relieved from service with effect from 15.10.2013. The document Ex.D-2 also speaks about the resignation letter of the respondent dated 11.09.2013. It was communicated that the respondent would stand relieved from service with effect from 15.10.2013 by virtue of Ex.D-2 which is dated 21.10.2013. Therefore, on examination of nomination form which was deposited on 24.10.2013 vide Ex.D-3 it appears that before that date 24.10.2013 the

respondent was relieved from service. Consequently, the *inter-se* relation as employer and employee, if any, also stood terminated on the date of submission of nomination form. In the result, in any case, the respondent returned candidate cannot be said to have held the office of profit and was disqualified to contest the election on the date of filing of the nomination form.

16. With respect to issue nos.2, 3 & 4, they are interlinked as such are being dealt together. The petitioner has also raised the grounds of corrupt practice. In the affidavit filed in support of corrupt practice the petitioner has averred that the statement made in the petition at paras 12, 16, 17, 22, 23, 25, 26, 27, 28, 31, 32, 39 & 41 about the corrupt practice and undue influence are correct. The reading of the petition would disclose that the general wild averments have been made and what is the nature of corrupt practice and what corrupt practice has been made along-with the source of its information has not been pleaded.

17. The Supreme Court in case of ***Jeet Mohinder Singh vs. Harminder Singh Jassi (1999) 9 SCC 386 in para 40*** held that “the success of a candidate who has won at an election should not be lightly interfered with. Any petition seeking such interference must strictly conform to the requirements of the law. The Court further held that setting aside of an election involves serious consequences not only for the returned candidate and the constituency, but also for the public at large inasmuch as re-election involves an enormous load

on the public funds and administration.

18. It has been further held in *Jeet Mohinder Singh (supra)*, that the charge of corrupt practice is quasi criminal in character. If substantiated it leads not only to the setting aside of the election of the successful candidate, but also of his being disqualified to contest an election for a certain period. It may entail extinction of a person's public life and political career. It is further held that a trial of an election petition though within the realm of civil law is akin to trial on a criminal charge. Therefore, two consequences follow i.e., firstly, the allegations relating to commission of a corrupt practice should be sufficiently clear and stated precisely so as to afford the person charged a full opportunity of meeting the same and secondly, the charges when put to issue should be proved by clear, cogent and credible evidence. To prove charge of corrupt practice a mere preponderance of probabilities would not be enough. There would be a presumption of innocence available to the person charged. The charge shall have to be proved to the hilt, the standard of proof being the same as in a criminal trial (See Quamarul Islam v. S.K. Kanta AIR 1994 SC 1733, F.A. Sapa v. Singora (1991) 3 SCC 375, Manohar Joshi v. Damodar Tatyaba (1991) 2 SCC 342 and Ram Singh v. Col. Ram Singh AIR 1986 SC 3.

19. It has been further held in *Jeet Mohinder Singh (supra)* that section 83 of the Act requires every election petition to contain a concise statement of material facts on which the petitioner relies. If the election petition alleges

commission of corrupt practice at the election, the election petition shall set forth full particulars of any corrupt practice including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. Every election petition must be signed and verified by the appellant in the manner laid down for the verification of pleadings in CPC. An election petition alleging corrupt practice is required to be accompanied by an affidavit in Form 25 read with Rule 94-A of the Conduct of Election Rules, 1961. Form 25 contemplates the various particulars as to the corrupt practices mentioned in the election petition being verified by the appellant separately under two headings: (I) which of such statements including particulars are true to the appellant's own knowledge, and (ii) which of the statements including the particulars are true to information of the appellant. It has been held in *Gajanan Krishnaji Bapat case (supra)* that the election petitioner is also obliged to disclose his source of information in respect of the commission of the corrupt practice.

20. Further the Supreme Court in case of ***Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar (2009) 9 SCC 310*** held at paras 51 & 57 as under.

> "51. This Court in Samant N. Balkrishna v. George Fernandez (1969) 3 SCC 238 has expressed itself in no uncertain terms that the omission of a single material fact would lead to an incomplete cause of action and that an

election petition without the material facts relating to a corrupt practice is not an election petition at all. In Udhav Singh Vs. Madhav Rao Scindia (1977) 1 SCC 511 the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.

57. It is settled legal position that all “material facts” must be pleaded by the party in support of the case set up by him within the period of limitation. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact will ential dismissal of the election petition. The election petition must contain a concise statement of “material facts” on which the

petition relies”

21. Further in ***(2010) 1 SCC 466 – Kattinokkula Murali Krishna v. Veeramalla Koteswara Rao*** the Supreme Court has held that it is a settled principle of law that evidence beyond the pleadings can neither be permitted to be adduced nor can such evidence be taken into account. As such the standard of proof was emphasized in such case law. Similar view was adopted in ***(2000) 8 SCC 191 – Ravinder Singh Vs. Janmeja Singh*** wherein it was also held that “it is an the established proposition that no evidence can be led on a plea not raised in the pleadings and that no amount of evidence can cure defect in the pleadings.”

22. In the recent decision reported in **AIR 2015 SC 180 Anvar P.V. *Vs.* P.K. Basheer and others**, the Supreme Court held in para 39 as under.

> “39. It is now the settled law that a charge of corrupt practice is substantially akin to a criminal charge. A two-Judge Bench of this Court while dealing with the said issue in Razik Ram Vs. Jaswant Singh Chouhan and others (1975) 4 SCC 769 : AIR 1975 SC 667, held as follows.
>
> > “15. … The same evidence which may be sufficient to regard a fact as proved in a civil suit, may be considered insufficient for a conviction in a criminal action. While in the former, a mere preponderance of probability may constitute an adequate basis of decision, in the latter a far higher degree of assurance and judicial certitude is requisite for a conviction. The same is largely true about proof of a charge of corrupt practice, which cannot be established by mere balance of

> probabilities, and, if, after giving due consideration and effect to the totality of the evidence and circumstances of the case, the mind of the Court is left rocking with reasonable doubt—not being the doubt of a timid, fickle or vacillating mind – as to the veracity of the charge, it must hold the same as not proved."

The same view was followed by this Court in P.C. Thomas v. P.M. Ismail and others (2009) 10 SCC 239 : (AIR 2010 SC 905) wherein it was held as follows :

> "42. As regard the decision of this Court in Razik Ram and other decisions on the issue, relied upon on behalf of the appellant, there is no quarrel with the legal position that the charge of corrupt practice is to be equated with criminal charge and the proof required in support thereof would be as in a criminal charge and not preponderance of probabilities, as in a civil action but proof "beyond reasonable doubt". It is well settled that if after balancing the evidence adduced there still remains little doubt in proving the charge, its benefit must go to the returned candidate. However, it is equally well settled that while insisting upon the standard of proof beyond a reasonable doubt, the courts are not required to extend or stretch the doctrine to such an extreme extent as to make it well-nigh impossible to prove any allegation of corrupt practice. Such an approach would defeat and frustrate the very laudable and sacrosanct object of the Act in maintaining purity of the electoral process. (Please see S. Harcharan Singh v. S. Sajjan Singh)"

23. Applying the aforesaid principle to the present case, the pleading would show that it is completely vague as to

what corrupt practice has been adopted. Further no evidence is on record to show the fact of corrupt practice. The petitioner has alleged that respondent returned candidate has not disclosed that he had two wives. As against this, at para 10 of the return, the respondent has averred that he is a member of Scheduled Tribe and is not governed by Hindu Marriage Act. It is further stated that in their community two marriages are permitted as per the custom. In the affidavit, the respondent has also not denied about the second wife but had explained the fact that since no separate column was in the nomination form to show the second wife, as such, the second wife was shown as dependent and the particulars of both the wives have been disclosed. At para 11 of his (D.W.1) evidence, he had stated that he performed two marriages, the name of first wife is Lalita Markam and the name of second wife is Maina Markam. One marriage was performed according to their caste custom and another marriage was performed by priest (Pandit). The said evidence is completely unrebutted rather it is supported by Ex.D-3. At column 7 of the document, it would show that that wife has been shown as Lalita Markam whereas Maina Markam has been shown as dependent.

24. Therefore, close reading of the statement of respondent would show that the respondent has explained of the marriages and no suppression was made about the second wife. The argument advanced by learned counsel for the petitioner that the case would fall u/s 123(2)(a)(ii)

is completely misconceived in the given set of facts. Reading of the section would show that neither it is applicable nor is available to the petitioner. The petitioner on the contrary admitted the fact that they have never raised any objection. The witness P.W.4 the returning officer at Para 4 has stated that he made summary enquiry and thereafter has passed the order dated 26.10.2013 which is marked as Ex.P-2 and accepted the nomination form and further at para 11 he also stated that as per the form sent by the Election Commission, it do not contain any column for description of second wife and second column is meant for the wife and columns 3, 4 & 5 are of the dependents. Consequently, if such statements are read with the statement of respondent/returned candidate along-with the documents, it would reveal that no suppression of facts was made by respondent No.1 and the petitioner has further failed to prove corrupt practice by proper pleading and evidence.

25. In the result, the petitioner has miserably failed to prove any allegations against the respondent and only on presumption and assumption, the petition has been preferred. After the entire examination of facts and evidence, I am of the considered view that this election petition has no merit and is liable to be dismissed. Accordingly, it is hereby dismissed. No order as to costs.

Sd/-

GOUTAM BHADURI
JUDGE

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