HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JULY, 2025

BEFORE

THE HON'BLE MR. JUSTICE M.I.ARUN

ELECTION PETITION NO.3 OF 2024

BETWEEN:

1. MR. SUBAN KHAN
S/O H. UMMAR KHAN
AGED ABOUT 58 YEARS
R/AT NO.1025, 3RD MAIN
2ND CROSS, KTJ NAGAR
DAVANAGERE - 577 002.

...PETITIONER

(BY SRI. VENKATESH P. DALWAI, ADVOCATE FOR
SRI SHIVARAJ B., ADVOCATE)

Digitally signed by GEETHA P G
Location: HIGH COURT OF KARNATAKA

AND:

1. SMT. PRABHA MALLIKARJUN
W/O S.S. MALLIKARJUN
AGED ABOUT 48 YEARS
R/AT NO.2636/1, "SHIVAPARVATHI"
MCC 'B' BLOCK
DAVANAGERE - 577 004.

...RESPONDENT

(BY SRI. PRASHANT F. GOUDAR, ADVOCATE FOR
SRI GOUTAM S. BHARADWAJ, ADVOCATE)

THIS ELECTION PETITION IS FILED UNDER SECTION 80, 81, 100 READ WITH SECTION 123 OF THE REPRESENTATION OF PEOPLE ACT, 1951, PRAYING TO DECLARE THAT THE ELECTION HELD IN RESPECT OF 13, DAVANAGERE PARLIAMENT CONSTITUENCY, DAVANAGERE ON 07.04.2024 IS ILLEGAL AND VOID, ETC.

THIS PETITION, COMING ON FOR ORDERS, THROUGH PHYSICAL HEARING/VIDEO CONFERENCING THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE M.I.ARUN

ORAL ORDER

1. The election petition is filed challenging the election of respondent No.1 to Davanagere Lokasabha constituency in the general elections held in May 2024. Her election is sought to be set aside on the ground that she and her agents indulged in corrupt practices as per Section 123(1)(A)(b) of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act').

2. Section 123(1)(A) of the Act reads as under:

"123. 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(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or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;"

3. The specific instances of bribery alleged against respondent No.1 and her agents in the election petition are that:

(1) Issuance of **'Congress Guarantee Card'** by the Indian National Congress Party.

(2) Distribution of money and goods to the voters on 06.04.2024.

4. In the course of the arguments, the petitioner has submitted that in the light of the decision of this Court passed in E.P.No.7/2024, he does not intend to argue that issuance of **'Congress Guarantee Card'** amounts to a corrupt practice as per Section 123 of the Act as it has already been negatived by this Court in its earlier ruling. He submits that he would confine his arguments to the specific instance of corrupt practices alleged in paragraphs 12 and 12A of the election petition.

5. Paragraphs 12 and 12A of the election petition read as under:

> "12. The Petitioner submits that on 06-04-2024 the Respondent no.1 has further made corrupt practice by distributing money of Rs.1 Crore to the voters at KTJ Nagar Booth through the Corporator namely Abdul Latheef, Zakir, Chaman Saab, Pandit and a sum of Rs.1

Crore at Bashanagar Booth through A.B.Rahim and a sum of Rs.1 Crore at Vinobanagar Booth through Corporator Nagaraj and a sum of Rs.1 Crore at Ahamed Nagar Booth through Hur Banu and a sum of Rs.1 Crore at Basavarajpet Booth through Syed Charlie and a sum of Rs.1 Crore at Chamarajapete Booth through Chaman Sab and a sum of Rs.1 Crore at Siddarameshwara Badawane Booth through A.B.Rahim and a sum of Rs.1 Crore at Basha Nagar Booth through Ahemed Kabir Khan. The Respondent No.1 has distributed a sum of Rs.2 thousand to Rs.3 thousand per vote. The Respondent No.1 has also issued guarantee card to the voters of the constituency only to see that the votes are casted in her favour. In the said act of issuing guarantee card amounts to corrupt practice. The said guarantee card along with hand bill is hereby furnished and marked as Annexure K.

Amended para; VOD:- 29-4-2025

Para 12A) It is submitted that Husband of the Respondent No 1 i.e Sri SS Mallikarjuna and father in law of Respondent No 1 Sri Shamnur Shivashankarappa with the consent of Respondent herein distributed the pressure cookers to the voters in order to vote for Respondent after the code of conduct has been declared. Further Rs 2000 was distributed to each of the voter in the area of KTJ Nagar booth by the congress corporaters already named in previous para in order to secure the votes for Respondent, the distribution of money was done at the behest of Respondent and with her consent herein thereby Respondent has committed corrupt practice which

has materially effected the election in favour of Respondent herein."

6. The election petition, as filed originally, did not contain the allegations made in paragraph No.12A and it was inserted subsequent to an amendment and at the time of making the amendment application, the counsel for the petitioner has categorically stated that the said corrupt practice also took place on 06.04.2024 and does not pertain to a date subsequent to it.

7. I.A.No.2/2024 has been filed by respondent No.1 under Order VII Rule 11(a) of CPC read with Section 86(1) of the Representation of the People Act, 1951, which reads as under:

"HEREIN, the application on behalf of Respondent No.1 is as under:

For the reasons sworn in the accompanying affidavit, it is respectfully prayed that, the present Election Petition filed by the Petitioner be kindly rejected with cost for failure to disclose cause of action in the interest of justice and equity."

8. The aforementioned I.A. is filed on the ground that **'Congress Guarantee Card'** is a policy decision adopted

by the Indian National Congress party. It is a policy promise made by the Indian National Congress party and it does not amount to a corrupt practice by respondent No.1 and also on the ground that the specific allegation of corrupt practice alleged in the election petition pertains to a date prior to filing of the nomination by respondent No.1 which is on 12.04.2024 and her nomination was accepted and she was declared as a candidate from the Indian National Congress party on 22.04.2024, and thus, any actions done by herself or her agents prior to she filing her nomination cannot be termed as a corrupt practice for the purposes of Section 123 of the Act.

9. As already mentioned above, the petitioner does not press on the issuance of **'Congress Guarantee Card'** amounting to a corrupt practice. However, in respect of the specific instance of corrupt practice alleged in paras 12 and 12A of the election petition, it is submitted that respondent No.1 was declared and nominated as a candidate for Davanagere Lokasabha constituency by the

Indian National Congress Party on 23.03.2024 and any corrupt practice indulged by herself and her agents attracts the provisions of Section 123 of the Act and on the said ground, it is prayed that the application be dismissed and a trial be conducted regarding the allegations made against respondent No.1.

10. The question that arises for consideration is what is the relevant date when a person becomes a candidate for the purposes of Section 123 of the Act?

11. Section 79(b) of the Act reads as follows:

> "79. Definitions.—In this Part and in [Part VII] unless the context otherwise requires,—
>
> (a) xxxxxxxxxxxxxx
>
> (b) "candidate" means a person who has been or claims to have been duly nominated as a candidate at any election."

12. Thus, a person becomes a candidate after he has been duly nominated as a candidate any at election. The Hon'ble Apex Court has answered the same in ***Subhash***

Desai vs. Sharad J.Rao and Others [1994 Supp (2) SCC 446]. In paragraph 18 of the said judgment, it has been held as under:

> "18. On behalf of the appellant, it was then pointed out that in election petition, while alleging corrupt practices, reference has been made in respect of the speeches and publications, of period prior to 31-1-1990, which was the date when nomination papers were filed. The publications and speeches alleged to have been made prior to 31-1-1990 have to be ignored because the framers of the Act, required the High Court to judge the conduct of the candidate, his agent or persons with the consent of the candidate or his election agent, only after a person becomes a candidate for the particular election. A person becomes a candidate for the election in question only after filing the nomination paper. In this connection, reference may be made to Section 79*(b)* of the Act which defines 'candidate' to mean a person, who has been or claims to have been duly nominated as a candidate at any election. Section 34 of the Act says that a candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited the amounts prescribed in the said section. When a person becomes a candidate, was examined by this Court in the well-known case of *Indira Nehru Gandhi v. Raj Narain* and it was held: (SCC p. 64, para 146)

> "The 1951 Act uses the expression "candidate" in relation to several offences for the purpose of affixing liability with reference to a person being a candidate. If no time be fixed with regard to a person being a candidate it can be said that from the moment a person is elected he can be said to hold himself out as a candidate for the next election."
>
> Recently, this Court in the case of *Mohan Rawale v. Damodar Tatyaba* [(1994)2 SCC 392] has said:
>
> > "We hold that all the averments in paragraphs 1 to 20 of the memorandum of election petition insofar as they refer to a period prior to 23-4-1991 cannot amount to allegations of corrupt practice."
>
> This cut-off date 23-4-1991 was fixed with reference to the date when nomination papers were filed by the appellant concerned, because since that date the appellant will be deemed to have legally acquired the status of a candidate. According to us, any allegation of corrupt practice against the appellant, made by the respondent in respect of the period prior to the filing of nomination by the appellant on 31-1-1990, cannot be taken into consideration for judging the legality or validity of his election."

13. Thus, a person becomes a candidate as per Section 79(b) of the Act for the purposes of Section 123 of the Act

only upon filing of nomination and not earlier to it. In the instant case, respondent No.1 has become a candidate only after 12.04.2024 (the date on which she has filed her nomination) and not earlier to it. Thus, any act done by respondent No.1 prior to 12.04.2024, does not become a corrupt practice for the purposes of Section 123 of the Act.

14. Admittedly, all the specific allegations of corrupt practice alleged against respondent No.1 is said to have been made on 06.04.2024, much earlier to respondent No.1 becoming a candidate.

15. Thus, even if all the allegations made against respondent No.1 in the election petition are held to be true, the petitioner cannot succeed in the election petition and under the circumstances, it has to be construed that the election petition has been filed without a valid cause of action.

16. For the aforementioned reasons, I.A.No.2/2024 is hereby allowed and the election petition is hereby rejected.

Pending IAs., if any, stand disposed of.

Sd/-
(M.I.ARUN)
JUDGE

hkh.
List No.: 1 Sl No.: 80