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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 08.10.2025
 Judgment pronounced on: 17.01.2026

+ **EL.PET. 7/2025 & I.A. 8078/2025, I.A. 15470/2025**

SOMNATH BHARTI

.....Petitioner

Through: Mr. Somnath Bharti-in-Person with
Mr. Anand Prakash Gautam, Adv.

versus

SHRI SATISH UPADHYAY

.....Respondent

Through: Mr. Rajiv Nayar, and Mr. Jayant
Mehta, Sr. Advs. with Mr. Saurabh
Seth, Mr. Sumer Dev Seth, Ms.
Neelampreet Kaur, Mr. Abhiroop
Rathore, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

JUDGM E NT

1. The present election petition is filed under sections 80, 80A and 81 of the Representation of the People Act, 1951¹ seeking to set aside and declare the election of the respondent i.e. Mr. Satish Upadhyay, from Malviya Nagar Constituency of the Legislative Assembly of AC-43 pertaining to election which was held on 05.02.2025 and the result of

¹Hereinafter referred to as "ROPA".



which was declared on 08.02.2025, as null and void.

FACTUAL MATRIX

2. The petitioner, a three-time Member of Legislative Assembly² from the Malviya Nagar Assembly Constituency (AC-43) and former Law Minister in the Delhi Government, contested the 2025 Legislative Assembly election as the official candidate of the Aam Aadmi Party³ for the fourth time. The respondent also contested from the same constituency as the official candidate of the Bharatiya Janata Party.⁴
3. The election process was notified under section 15 of the ROPA as under:-
 - Date of issue of Gazette Notification: 10th January, 2025.
 - Last date for nominations: 17th January, 2025.
 - Scrutiny: 18th January, 2025.
 - Withdrawal: 20th January, 2025.
 - Poll: 5th February, 2025.
 - Counting and result: 8th February, 2025.
4. After the elections were held, the Returning Officer counted the votes, and the petitioner secured 37,433 votes, while the respondent secured 39,564 votes thereby winning by a margin of 2,131 votes.
5. The petitioner in the present petition, amongst other grounds, alleges that the election of the respondent is vitiated by corrupt practices within the meaning of section 123, 127A and 130 of the ROPA, and

²Hereinafter referred to as "MLA".

³Hereinafter referred to as "AAP".

⁴Hereinafter referred to as "BJP".



therefore liable to be declared null and void under section 100(1)(b) and (d) of the ROPA.

6. It is alleged that the respondent had deployed his agents to bring people to the polling booths in cars to vote for him. For booths 10,11 and 12, Mrs. Deepti Verma, witnessed firsthand one Sri T. C. Goyal using the car and driver of Sri Dinesh Goyal and Sri Ravi Dev Gupta to bring people to the polling booths and vote for the respondent which is a corrupt practice under section 123(5) of the ROPA.
7. It is further alleged by the petitioner that Sri Jitender Kumar Kochar's, the Indian National Congress⁵ candidate, entire election campaign was directed exclusively against the petitioner and not against the respondent. The Congress candidate's posters, speeches, and pamphlets did not contain a single word of criticism against the BJP or the respondent, but were entirely targeted to defame and diminish the reputation of the petitioner. Such actions were part of a deliberate and coordinated strategy by the respondent and his agents to create a false contest, intended to confuse and divide the secular vote and thereby secure an unfair electoral advantage.
8. Further, the petitioner alleges that the respondent with the Returning Officer manipulated the voters list to enhance his prospects in the election and the respondent also failed to disclose the election expenditure submitted to the Returning Officer/District Election Officer.
9. Hence, the present petition has been filed to declare the election of the respondent as null and void.

⁵Hereinafter referred to as "Congress".



SUBMISSIONS

On Behalf of the Respondent

- 10.** Mr. Rajiv Nayar and Mr. Jayant Mehta, learned senior counsels for the respondent vociferously object to the maintainability of the petition and states that the petitioner, in the present petition, has levelled allegations of corrupt practices against Mr. Jitendra Kumar Kochhar, the Congress candidate, alleging that the respondent paid large sums of money to Mr. Kochhar to influence voters and to campaign against the petitioner. Therefore, it was incumbent upon the petitioner to implead Mr. Kochhar as a respondent in the present petition against whom allegations of corrupt practice have been made. This fatal defect renders the present petition liable to be dismissed under section 86(1) of ROPA as section 82(b) of ROPA has not been complied with.
- 11.** It was further contended that the use of the word “shall” in section 86(1) of the ROPA leaves no discretion with the Court. If the petitioner fails to join all necessary parties as per section 82 of the ROPA, the election petition must be dismissed at the threshold.
- 12.** It was further pointed out that, in an attempt to rectify this fatal defect, the petitioner subsequently filed I.A. No. 15470/2025 seeking either to implead Mr. Kochhar as a respondent or, in the alternative, to amend the petition by deleting the allegations of corrupt practices against him made in paragraph 14 of the petition. The petitioner, therefore, has effectively admitted that the present election petition, in its current form, is liable to be rejected due to non-joinder of a necessary party.
- 13.** In these circumstances, both the petition and the accompanying application deserve to be dismissed, as it is well-settled law that non-



joinder of a necessary party as per section 82(b) of the ROPA is a fatal defect, attracting mandatory dismissal under section 86(1) of the ROPA, even before issuance of summons/notice.

14. It was further submitted that the petitioner cannot cure such a defect by subsequently impleading the omitted candidate or by withdrawing the allegations against such a candidate after the limitation period has expired. In support of this submission, reliance is placed on:-
 - A. *Mohan Raj v. Surendra Kumar Taparia, 1968 SCC OnLine SC 282, Para 2-4, 8, 10-11.*
 - B. *Natau Ram Indra Singh v. Trikamal Jamandas Patel, MANU/SC/0514/1968, Para 1, 4, 5 & 6.*
 - C. *K.V. Rao v. B.N. Reddi, 1968 SCC OnLine SC 285, Para 1-2, 10-12, 16-17.*
15. Learned senior counsels emphasised that if a necessary party is not arrayed within the prescribed limitation period of 45 days, the defect becomes incurable. The statutory time limit of 45 days under section 81 of the ROPA and the obligation to join all necessary parties within that period are both mandatory and cannot be extended by invoking the provisions of the Limitation Act, 1963 or any inherent powers of the Court. In this regard, reliance is placed on *K.V. Rao (supra)*.
16. Lastly, it was contended that as regards the alleged pending criminal case in Bhopal, Madhya Pradesh is concerned, despite being granted an opportunity, the petitioner has failed to file any affidavit substantiating the existence or status of such a case, and has not been able to even *prima facie* establish that any such complaint exists.

On Behalf of the Petitioner



17. Refuting the above submissions, Mr. Bharti, the petitioner-in-person argued the matter and states that the acts and omissions of the respondent amount to corrupt practices, as they were intended to influence the free and fair exercise of electoral choice by the voters. It is urged that the respondent's deliberate financial support and coordination with the Congress candidate were designed to defeat the petitioner by unfair means.
18. He argues that the Malviya Nagar Assembly constituency voted heavily in favour of the petitioner herein over BJP candidate in 2013, 2015 and 2020, each time with a bigger margin than the previous election and in 2025, by unconstitutional design and by corrupt practices, including manipulation of votes, adopted by the respondent-BJP Candidate directly as well as in collusion with officials of the Election Commission and Delhi Police, the petitioner was made to lose the election by a margin of meagre 2131 votes. The allegations of corrupt practice in para 14 of the present petition are only against the respondent and not against the Congress candidate, Mr. Kochhar. Hence it is stated that the arguments of the respondent are flimsy and hyper technical.
19. He further states that whether Mr. Kochhar has indulged in corrupt practice is not the question before this Court to decide. The petitioner has not sought any relief against Mr. Kochhar and hence there was no requirement to implead him as a party.
20. A perusal of paragraph 14 does not show any corrupt practice being alleged against Mr. Kochhar. In support, he urges that giving money is a corrupt practice but accepting the money is not a corrupt practice.



Reliance is placed on ***S.B. Adityan v. S. Kandaswami, 1958 SCC OnLine SC 94***. The allegation in paragraph 14 against the respondent is of giving money and against Mr. Kochar is accepting money “only”.

21. Mr. Bharti further states that the allegation against Mr. Kochar does not fall under any of the provisions of section 123(1)(A) or section 123(1)(B) of ROPA. Hence, non-joinder of Mr. Kochar as a respondent as per section 82(b) of ROPA, cannot attract the consequences of dismissal. Additionally, the allegations made in paragraph 14 do not constitute undue influence define under section 123(2) of ROPA. The act of the respondent funding Mr. Kochar’s election campaign and Mr. Kochar’s right to appeal to voters to defeat the petitioner do not constitute undue influence.
22. Lastly, there are other grounds for setting aside of the election of respondent. Rather than being tried in a judicial manner, the respondent is trying to hide behind Mr. Kochar and escape the responsibility of having committed corrupt practices in Delhi Assembly Election 2025. Hence, this Hon’ble Court is humbly prayed to set aside flimsy objections of the respondent and make him face the trial of this election petition in the interest of justice and democracy. The endeavour of the Court should be to deal with the merits of the dispute rather than deciding the case on technicalities.

ANALYSIS AND FINDINGS

23. Submissions heard and record perused.
24. India is the largest democracy in the world, founded on the foundational principle that sovereignty vests in the people. In a



democratic republic, the electorate exercises its sovereign will by choosing its representatives through the election process. The ROPA permits judicial interdiction of the people's mandate only in exceptional circumstances and strictly in accordance with the statutory framework governing elections. An election petition, therefore, is not an ordinary lis but a special proceeding, the consequences of which directly impinge upon the popular mandate. For this reason, the provisions of ROPA must receive a strict and narrow construction.⁶ The statutory scheme mandates rigorous adherence to its requirements, keeping in view the sanctity of the democratic process and the primacy of the people's choice.

25. It is essential to reiterate that election petitions are special proceedings governed strictly by the provisions of the ROPA. The statute itself prescribes specific procedural mandates that must be complied with before an election petition can be entertained. At this juncture, it is necessary to extract sections 81, 82 and 86(1) of the ROPA which are relevant for deciding this election petition:-

“81. Presentation of petitions.—(1) An election petition calling in question any election may be presented on one or more of the grounds specified in [sub-section (1)] of section 100 and section 101 to the [High Court] by any candidate at such election or any elector [within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate

⁶See: Para No.17 of *Dharmin Bai Kashyap v. BabliSahu*, (2023) 10 SCC 461; Para No. 13 of *Laxmi Singh v. Rekha Singh*, (2020) 6 SCC 812.



at the election and the dates of their election are different, the later of those two dates].

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82. Parties to the petition. - A petitioner shall join as respondents to his petition—

(a) where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b) any other candidate against whom allegations of any corrupt practice are made in the petition.

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86. Trial of election petitions.—(1) The High Court shall dismiss an election petition which does not comply with the provisions of section 81 or section 82 or section 117.

(Emphasis added)

26. Sections 81, 82 and 86 of ROPA, when read conjointly, forms a closed procedural code. Section 81 of ROPA prescribes the time frame for filing the petition being 45 days from the date of declaration of results. Section 82 of ROPA talks about the parties to an election petition and the sub clause (b) states that any candidate against whom allegation/s of any “corrupt practice” is made then the petitioner “shall” implead them to the election petition as a respondent. Section



86 of ROPA mandates the HC to dismiss the petition being non-compliant of sections 81, 82 or 117 of ROPA. The use of the word “shall” leaves no discretion with the Court. Therefore, compliance with section 82 of ROPA is a condition precedent for the maintainability of the election petition.

27. The Hon’ble Supreme Court in *Mohan Raj (supra)* and more particularly in paragraphs 10 and 11, observed as under:-

“10. It is argued that the Civil Procedure Code applies and Order 6, Rule 17 and Order 1, Rule 10 enable the High Court respectively to order amendment of a petition and to strike out parties. It is submitted, therefore, that both these powers could be exercised in this case by ordering deletion of reference to Periwal. This argument cannot be accepted. No doubt the power of amendment is preserved to the court and Order 1 Rule 10 enables the court to strike out parties but the court cannot use Order 6 Rule 17 or Order 1 Rule 10 to avoid the consequences of non-joinder for which a special provision is to be found in the Act. The court can order an amendment and even strike out a party who is not necessary. But when the Act makes a person a necessary party and provides that the petition shall be dismissed if such a party is not joined, the power of amendment or to strike out parties cannot be used at all. The Civil Procedure Code applies subject to the provisions of the Representation of the People Act and any rules made thereunder (see Section 87). When the Act enjoins the penalty of dismissal of



the petition for non-joinder of a party the provisions of the Civil Procedure Code cannot be used as curative means to save the petition.

11. An attempt is made to distinguish the cases cited by us on the ground that now the provisions of Sections 4 to 25 of the Indian Limitation Act are applicable to election petitions and the amendment of the petition and joining of parties can take place at any time. It is subtitled that now the cases must be decided under the amended law. We need not go into this matter. It is doubtful whether these provisions of the Limitation Act apply at all. The petitioner has not asked to join Periwal. He only wants an amendment to delete allegations of corrupt practice against him. This cannot be permitted since it will defeat the provisions of Section 86(1). Every election petition can be saved by amendment in this way but that is not the policy of the law. The dismissal is peremptory and the law does not admit of any other approach. It is significant that in *Amin Lal v. Hunna Mal*, although the matter was not gone into from this angle it was said that the amendment for better particulars was not intended to enable the election petitioner to remove the defect in presentation or in the joinder of parties. *Sheopat Singh v. Ram Pratap* [(1965) 1 SCR 175] since the facts were assumed, cannot be said to record any decision.”

(Emphasis added)



28. On perusal, while the provisions of Code of Civil Procedure⁷ like Order VI Rule 17 and Order I Rule 10 generally apply but the same cannot override the specific provisions of the ROPA. If the ROPA itself mandates that non-joinder of a necessary party leads to dismissal of an election petition, the Court cannot use CPC provisions to cure that defect. Section 87 of ROPA makes it clear that provisions of CPC applies only, insofar as they are not inconsistent with, and are subject to, the provisions of the ROPA. Thus, the High Court has no power to cure defects to avoid dismissal. In addition, it was held that such procedural lapses cannot be corrected through amendment since the law intends finality and strict compliance with procedural requirements in election matters.

29. In **K.V. Rao (supra)**, the Hon'ble Supreme Court observed as under:-

11. Even though Section 87(1) of the Act lays down that the procedure applicable to the trial of an election petition shall be like that of the trial of a suit, the Act itself makes important provisions of the Code inapplicable to the trial of an election petition. Under Order 6 Rule 17 CPC a court of law trying the suit has very wide powers in the matter of allowing amendments of pleadings and all amendments which will aid the court in disposing of the matters in dispute between the parties are as a rule allowed subject to the law of limitation. But Section 86(5) of the Act provides for restrictions on the power of the High Court to allow amendments. The High Court is not to allow the amendment

⁷Hereinafter referred to as "CPC".



of a petition which will have the effect of introducing particulars of a corrupt practice not previously alleged in the petition. With regard to the addition of parties which is possible in the case of a suit under the provisions of Order 1 Rule 10 subject to the added party's right to contend that the suit as against him was barred by limitation when he was impleaded, no addition of parties is possible in the case of an election petition except under the provisions of subsection (4) of Section 86. Section 82 shows who are necessary parties to an election petition which must be filed within 45 days from the date of election as laid down in Section 81. Under Section 86(1) it is incumbent on the High Court to dismiss an election petition which does not comply with the provisions of Section 81 or Section 82. Again the High Court must dismiss an election petition if security for costs be not given in terms of Section 117 of the Act.

12. It is well settled that amendments to a petition in a civil proceeding and the addition of parties to such a proceeding are generally possible subject to the law of limitation. But an election petition stands on a different footing. The trial of such a petition and the powers of the court in respect thereof are all circumscribed by the Act. The Indian Limitation Act of 1963 is an Act to consolidate and amend the law of limitation of suits and other proceedings and for purposes connected therewith. The provisions of this Act will apply to all civil proceedings and some special criminal



proceedings which can be taken in a court of law unless the application thereof has been excluded by any enactment : the extent of such application is governed by Section 29(2) of the Limitation Act. In our opinion however the Limitation Act cannot apply to proceedings like an election petition inasmuch as the Representation of the People Act is a complete and self-contained code which does not admit of the introduction of the principles or the provisions of law contained in the Indian Limitation Act.

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16. No right is however given to the High Court to entertain an election petition which does not comply with the provisions of Section 81, Section 82 or Section 117.

17. It was argued that if a petition were to be thrown out merely because a necessary party had not been joined within the period of 45 days no enquiry into the corrupt practices alleged to have been committed at certain elections would be possible. This is however a matter which can be set right only by the Legislature. It is worthy of note that although the Act has been amended on several occasions, a provision like Section 86(1) as it now stands has always been on the statute book but whereas in the Act of 1951 the discretion was given to the Election Commission to entertain a petition beyond the period fixed if it was satisfied as to the cause for delay no such saving clause is to be found now. The legislature in its wisdom has made the



observance of certain formalities and provisions obligatory and failure in that respect can only be visited with a dismissal of the petition.

(Emphasis added)

30. On perusal, it is observed that the Limitation Act, 1963, does not apply to election petitions because the ROPA is a self-contained code governing elections, procedure, and timelines. Failure to join a necessary party within 45 days from election, results in dismissal of the petition.
31. In ***B. Sundara Rami Reddy v. Election Commission of India, 1991 Supp (2) SCC 624***, the Hon'ble Supreme Court held as under:-

“3. After hearing learned counsel for the petitioner we do not find any merit in the petition. Section 82 of the Representation of the People Act, 1951 specifies the persons who are required to be joined as respondents to an election petition. Under this provision the returned candidate is a necessary party as a respondent and where relief for a declaration is claimed that the election petitioner, or any other candidate be duly elected, all the contesting candidates are necessary to be impleaded as respondents to the petition. No other person or authority except as aforesaid is required to be impleaded as a respondent to an election petition under the Act. The Election Commission of India is therefore not a necessary party to an election petition.

4. Learned counsel for the petitioner urged that even if the



Election Commission may not be a necessary party, it was a proper party since its orders have been challenged in the election petition. He further urged that since Civil Procedure Code, 1908 is applicable to trial of an election petition the concept of proper party is applicable to the trial of election petition. We find no merit in the contention. Section 87 of the Act lays down that subject to the provisions of the Act and any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. Provisions of the Civil Procedure Code have thus been made applicable to the trial of an election petition to a limited extent as would appear from the expression “subject to the provisions of this Act”. Since Section 82 designates the persons who are to be joined as respondents to the petition, provisions of the Civil Procedure Code, 1908 relating to the joinder of parties stands excluded. Under the Code even if a party is not necessary party, he is required to be joined as a party to a suit or proceedings if such person is a proper party, but the Representation of the People Act, 1951 does not provide for joinder of a proper party to an election petition. The concept of joining a proper party to an election petition is ruled out by the provisions of the Act. The concept of joinder of a proper party to a suit or proceeding underlying Order I of the Civil Procedure Code



cannot be imported to the trial of election petition, in view of the express provisions of Sections 82 and 87 of the Act. The Act is a self-contained Code which does not contemplate joinder of a person or authority to an election petition on the ground of proper party. ”

(Emphasis added)

32. On perusal, the ROPA excludes even the concept of a “proper party.” Only those parties enumerated in section 82 can be respondents. Hence, neither the Election Commission nor any other person can be added as a respondent unless the ROPA so provides. The parties which have to be impleaded as respondents in an election petition are circumscribed by section 82 and section 82 alone. The word “shall” used in section 82 leaves no scope for any other parties (than mandated in section 82) to be added to the memo of parties. The judgment cited above clearly binds the High Court to dismiss an election petition being non-compliant of section 82 of ROPA.
33. Having discussed the settled law, it is now pertinent to contrast the aforesaid sections of the ROPA and the law laid down by the Hon’ble Supreme Court with the facts of the present case and more particularly with paragraph 14 of the present petition which reads as under:-

“14. That the respondent with the sole intention to cut into the votes of the petitioner had allegedly given large sums of money and also funded the election campaign of Sri Jitender Kumar Kochhar of Indian National Congress, another candidate in the election along with the respondent and the petitioner. The campaign of Sri Kochhar was only



against the petitioner, and he never said a word against the respondent herein during the entire duration of the campaign. He was appealing the voters to defeat the petitioner and not to make him win as per the alleged instructions of the respondent. This amounts to a corrupt practice as per section 123(1)(A)(a) of the act.”

(Emphasis added)

34. To my mind, the aforesaid paragraph attributes active participation of Mr. Kochar, the Congress candidate, in furtherance of the alleged corrupt practice under section 123 of the ROPA. The allegation against Mr. Kochar goes beyond mere reference as it asserts complicity and coordinated conduct with the respondent. Once a candidate is alleged to have participated in the corrupt practice whether by act, omission, or conspiracy, section 82(b) of the ROPA mandates that such candidate be impleaded as a respondent. Hence, Mr. Kochar was a candidate “against whom” allegations of corrupt practice are made, his inclusion is mandatory to the present election petition. The petitioner’s omission to implead Mr. Kochar is not a mere technical lapse but an incurable defect, which as per the provisions of ROPA and the law declared by the Hon’ble Supreme Court, strikes at the root of maintainability of the present election petition.
35. The argument of Mr. Bharti that the respondent is attempting to avoid the consequences of the alleged corrupt practices by hiding behind Mr. Kochar, and the objection of non-joinder is a mere technicality, is misplaced.



36. It must be emphasised that the Court is not concerned with the perceived harshness or technicality of the law. Law, however technical, rigid, or even inequitable as it may appear in a given case, is still the law. Once a legal position has been conclusively settled by the Hon'ble Supreme Court, it is binding on all Courts under Article 141 of the Constitution of India. The Courts, lower in hierarchy to the Hon'ble Supreme Court, cannot dilute or circumvent on considerations of sympathy, equity, or perceived injustice. Judicial discipline demands strict adherence to binding precedent, particularly in election matters where the integrity of the democratic process depends on certainty, finality, and strict compliance with the provisions of the ROPA.

37. The petitioner's contention that the allegation of "accepting money" does not constitute a corrupt practice under Section 123(1)(A) is legally untenable in the context of section 82(b) of ROPA.

38. The test under section 82(b) of the ROPA is not whether the allegation is ultimately proved or whether it will succeed at trial, rather, the test is whether the petition contains allegations of a corrupt practice "against" a candidate. Once such an allegation is made, impleadment of that candidate becomes mandatory. At the threshold stage, the Court cannot embark upon a mini-trial to ascertain the veracity of the allegations before determining whether section 82(b) of ROPA applies. The moment an election petition contains allegations of corrupt practice against any candidate, non-joinder of that candidate is fatal, irrespective of whether such allegations are ultimately proved or not.



39. Even otherwise, reliance placed on *S.B. Adityan (supra)* to say that giving of a bribe is a corrupt practice and not an acceptance of bribe, hence, the impleadment of Mr. Kochar is not necessary and also no relief is sought against Mr. Kochar, is wholly misconceived. Relevant paragraphs of the said judgment are extracted below:-

“8. Is an allegation then, that a candidate accepted money paid to him to induce him to drop out of the election contest and actually so dropped out, an allegation of corrupt practice against such a candidate? The High Court held that it was not and that only the giving of a bribe was a corrupt practice and not an acceptance of it. We are in agreement with this view.

9. The Act contemplates various kinds of corrupt practices and defines them in Section 123. We are concerned with the corrupt practice of bribery which is the corrupt practice alleged in the petition. Bribery again is of several varieties. We are concerned with a gift to a candidate for inducing him to abandon his candidature.

10. Is an acceptance of a bribe, by which word we mean a gift made with the intention specified, a corrupt practice within this definition? We do not think it is. What this definition makes the corrupt practice of bribery is a “gift, offer or promise by a candidate or his agent or by any other person, of any gratification” made with the object mentioned. The words “gift, offer or promise by a candidate or his agent or by any other person” clearly show that what



is contemplated is the making of a gift. These words are wholly inappropriate to describe the acceptance of a gift. The words “with the object, directly or indirectly, of inducing” also indicate that only the making of a gift is contemplated, for the object is of the person making the gift, and clearly not of the person accepting it. Mr Sastri who appeared for the appellant contended that the words “by a candidate or his agent or by any other person” are not to be read with the word “gift” but only with the words “offer or promise”. It seems to us that this is an impossible reading of the section as it is framed. Even on this reading, the section would still contemplate a gift “to any person” and therefore only the giving and not an acceptance, of it.”

(Emphasis added)

40. It is not disputed that after passing of the said judgment i.e. 20.05.1958, section 123 of the ROPA has been amended by the legislature on 30.12.1958. Hence, it would be pertinent to extract section 123 of ROPA as it was prior to the amendment came in 1958 and thereafter, the amended section 123 of ROPA as it stands today:-

“Section 123 of ROPA prior to the amendment:-

PART VII

[CORRUPT PRACTICES AND ELECTORAL OFFENCES]

[CHAPTER I

Corrupt Practices.

123. Corrupt practices.— The following shall be deemed to be corrupt



practices for the purposes of this Act:-

(1) Bribery, that is to say, any gift, offer or promise by a candidate or his agent or by any other person, 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 from being, a candidate, or to retire from contest, at an election;
(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 having withdrawn his candidature, or for having retired from contest; or

(ii) an elector for having voted or refrained from voting.

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 78.

(2).....

Section 123 of ROPA post amendment brought in 1958:-

“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;

(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 78.

(Emphasis added)

41. On comparison, it is evident that post amendment, the said section has undergone a change by which sub clause (B) has been added in section 123(1) of ROPA. A perusal of para 14 of the petition extracted above clearly shows that the allegation made by the petitioner against Mr. Kochar falls within section 123(1)(B)(b) of ROPA. Hence the contention and reliance on the said judgment is misplaced.
42. As regards the amendment is concerned, admittedly, the petitioner has not impleaded Mr. Kochar as a respondent within the limitation period of 45 days as prescribed under section 81 of the ROPA. The petitioner's subsequent application being I.A. No. 15470/2025 seeking to implead Mr. Kochar belatedly or to delete allegations against him cannot be entertained. The present election petition was filed on the 45th day i.e. 25.03.2025 and therefore any amendment beyond 45 days is absolutely barred.
43. As per the aforesaid judgments, once the 45 days limitation period expires, the Court does not have jurisdiction to allow such amendment. Allowing the same would amount to rewriting the statute and defeating the legislative intent of section 86(1) of the ROPA. The dismissal is not discretionary but imperative upon non-compliance. Thus, the Court cannot cure or condone the defect either by invoking inherent powers or by applying principles of equity.



CONCLUSION

- 44.** Applying the settled principles to the facts of the present case, I am of the view that the allegations in paragraph 14 squarely bring Mr. Kochar within the ambit of section 82(b) of ROPA. The petitioner's failure to implead him within the limitation period is an incurable defect attracting mandatory consequence under section 86(1) of ROPA.
- 45.** For the foregoing reasons, the present election petition is liable to be dismissed due to non-joinder of Mr. Kochar, the Congress Candidate, as a respondent and is accordingly dismissed along with I.A. No. 15470/2025.
- 46.** No order as to costs.
- 47.** Pending applications, if any, are disposed of.

JASMEET SINGH, J

17th JANUARY,2026/(MSQ)