

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

MC(EI.Pet.) No. 140 of 2022

Ref:- EI.Pet. No. 26 of 2022

SS. Olish, aged about 44 years, D/o SS. Mohring,
resident of Mantri Pantha Village, Tehsil-Chandel, P.O. &
P.S. Chandel, Chandel District – 795127.

(BJP Candidate).

.... Applicant/Respondent No. 1

-Versus-

1. Mr. Lunkhopao Haokip, aged about 55 years, S/o (L)
Paokhohang Haokip of M.G. Avenue, Thangal Bazar,
P.O. & P.S. Imphal, District Imphal West, Manipur
(NPP Candidate).

...O.P./Petitioner

2. Mr. Langhu Paulhring Anal, aged about 47 years, S/o
(L) Langhu Benjamin Anal of Chandel Christian
Village, P.O. & P.S. Chandel, District Chandel,
Manipur- 795127 **(NPF Candidate).**

...O.P./Proforma Respondent

BEFORE
HON'BLE THE ACTING CHIEF JUSTICE M.V. MURALIDARAN

For the Applicant :: Mr. Lenin Hijam, Sr. Adv.
Mr. I. Amri, Adv.

For the Respondents :: Mr. HS Paonam, Sr. Adv.
Mr. S. Gunabanta, Adv.

Date of Hearing and
reserving Judgment & Order :: 29.08.2023

Date of Judgment & Order :: **17.10.2023**

JUDGMENT AND ORDER
(CAV)

This petition has been filed by the petitioner under Order 7, Rule 11(a) and Order 6, Rule 16 of the Code of Civil Procedure, 1908 read with Section 86 of the Representation of People Act, 1951 to reject the election petition, as it has failed to disclose triable cause of action and for non-compliance of the mandatory provision of Section 81 of the Representation of People Act, 1951 (for short, "*the RP Act*").

2. The petitioner is the first respondent/returned candidate in the election petition.

3. The election petitioner has filed the election petition to quash the election of the first respondent as returned candidate from 41-Chandel (ST) Assembly Constituency to the 12th Manipur Legislative Assembly Election, 2022 as null and void. Pending election petition, the first respondent has filed the present petition to reject the election petition on the ground that the election petitioner has failed to disclose the material facts and also the actual cause of action and for non-compliance of the provision of Section 81 of the RP Act.

4. Opposing the petition, the election petitioner has filed affidavit-in-opposition, *inter alia*, stating that there is enough

material facts and material particulars pleaded in the election petition. The election in respect of 41-Chandel (ST) Assembly Constituency in the manner and circumstances as narrated in the election petition can be declared as null and void in terms of the RP Act. The cause of action for maintaining the election petition has been clearly stated in the election petition.

5. Mr. Lenin Hijam, learned senior counsel for the first respondent submitted that the election petitioner has failed to mention material facts and material particulars which would constitute the cause of action for filing the election petition. He would submit that Section 100 of the RP Act has not provided the grounds which are taken by the election petitioner in his election petition for challenging the election of the first respondent and, as such, the election petitioner has no right to challenge the election of the first respondent.

6. The learned senior counsel for the first respondent further submitted that no allegations have been made against the first respondent. As such, the election petition has been filed without any allegation against the first respondent. The returning officer, exercising the power conferred by Section 36(2) read with Section 9A of the RP Act, has rightly rejected the nomination paper of the election petitioner under order dated 15.2.2022.

Aggrieved by the said order dated 15.2.2022, the election petitioner has filed W.P.(C) No.147 of 2022 before this Court. The election petitioner has no right to challenge the election of the first respondent. Moreover, the election petition is barred by doctrine of waiver.

7. The learned senior counsel for the first respondent urged that the election petitioner has failed to plead the concise statement of material facts against the first respondent. Finding that the nomination paper of the election petitioner is barred by Section 9A of the Act, the returning officer has rightly rejected the same.

8. The learned senior counsel next submitted that the grounds taken by the election petitioner that the issue of rejection of his nomination paper by the returning officer due to subsistence of the Government contract with him during the time of filing his nomination and on the date of scrutiny are be considered at the trial of the election petition, but as per the decision of the Hon'ble Apex Court in Civil Appeal No.4129 of 2009, dated 13.4.2011, a candidate having subsisting contract with the Government is disqualified under Section 9A of the RP Act from filing nomination paper and contesting the election.

9. The learned senior counsel for the first respondent then submitted that due to the subsisting Government contracts, the election petitioner was disqualified by the returning officer, as he is barred from filing the nomination paper. Such an issue involved in the election petition cannot be a ground for challenging the election of the first respondent. There is no cause of action for filing the election petition. The averments in the election petition are vague and lacks material particulars and is in clear violation of Sections 81 and 83 of the RP Act. The election petitioner has not complied with Sections 83(1)(a) and (b) of the RP Act and, therefore, the same deserves to be dismissed under Order 7, Rule 11 CPC. To fortify his submissions, the learned counsel for the first respondent placed reliance upon the following decisions:

- (i) *P.H. Paul Manoj Pandian v. P.Veldurai*, (2011) 5 SCC 214
- (ii) *Sewaram v. Sobaran Singh*, 1993 Supp (2) SCC 46
- (iii) *Konappa Rudrappa Nagouda v. Vishwanath Reddy and another*, AIR 1969 SC 447
- (iv) *Rajeshkar Basavaraj Patil v. Subash Kallur and others*, (2002) 8 SCC 467

- (v) *Election Commission of India v. Bajrang Bahadur Singh and others*, (2015) 12 SCC 570
- (vi) *Jaipal Singh v. Sumitra Mahajan and others*, (2004) 4 SCC 522

10. Per contra, Mr. HS Paonam, the learned senior counsel for the election petitioner submitted that there is enough material facts and material particulars pleaded in the election petition, which would materially affect the sanctity of the electoral process to conduct a free and fair election and the voters right to choose their representative, which is the basic structure of the Constitution in respect of 41-Chandel (ST) Assembly Constituency. As such, the election of the first respondent in the manner and circumstances stated in the election petition can be declared as null and void in terms of the provisions of the RP Act.

11. The learned senior counsel further submitted that the election petitioner has clearly stated the cause of action arisen for filing the election petition. The returning officer does not have the machinery and authority to enquire into the correctness or incorrectness of Form-26 affidavit.

12. The learned senior counsel then submitted that Section 9 of the RP Act demands the passing of an order by a competent civil court under the Indian Contract Act, 1872 so far

as the decision as to whether the contract executed by the person is still subsisting on the date of consideration of the disqualification. As such, the disqualification of the election petitioner under Section 9 of the RP Act is against the provision of law which is in complete derogatory to all settled principle of rule of law and, if the trial is conducted, there is every possibility of this Court to declare the election of the first respondent as void.

13. Adding further, the learned senior counsel submitted that the first respondent could not understand that the grounds which are all relevant with the case of the election petitioner which are already raised in W.P.(C) No.147 of 2022 could not warrant restrictions for the said grounds to be raised in the present election petition and the aforesaid two petitions are altogether different petitions and the election of the first respondent can only be challenged in an election petition and not in a writ petition. In fact, W.P.(C) No.147 of 2022 has been filed for deciding the important question pertaining to the power of the returning officer to disqualify a candidate from contesting the election.

14. The learned senior counsel for the election petitioner urged that the disqualification of the election petitioner under Section 9 of the RP Act is against the provision of law.

The improper rejection, without following the due process of law, of the nomination paper of the election petitioner is purely non-application of mind of the returning officer, which results the violation of the sanctity of the electoral process of 41-Chandel (ST) Assembly Constituency.

15. The learned senior counsel finally submitted that it could be understood that the ill-conceived intention of the first respondent for filing the present petition is nothing but for wasting the valuable time of this Court. The election petitioner never got a choice to contest in the election as the nomination paper of the election petitioner was improperly rejected by the returning officer. Therefore, there is every possibility of this Court to declare the election of the first respondent as void and the election petitioner clearly stated the cause of action in the election petition and that the trial of the election petition needs to be conducted. In support of his submissions, the learned senior counsel placed reliance upon the following decisions:

- (i) *D.Ramachandran v. R.V.Janakiraman and others*, (1999) 3 SCC 267
- (ii) *P.V. Guru Raj Reddy v. P.Neeradha Reddy*, (2015) 8 SCC 331
- (iii) *Srihari Numandas Totala v. Hemant Vithal Kamat*, (2021) 9 SCC 99

(iv) *R.K.Imo Singh v. Dr. Khwairakpam Loken Singh, 2017 SCC OnLine Mani 127*

(v) *Order dated 4.1.2018 passed in MC (EP) No.6 of 2017 (Th. Shyamkumar v. Dr.Nimaichand Luwang).*

(vi) *Order dated 23.5.2023 passed in MC (EP) No.25 of 2022 (Lorho S. Pfoze and Houlim Shokhopao Mate @ Benjamin)*

16. This Court considered the rival submissions and also perused the materials available on record.

17. The first respondent seeks to reject the election petition on the grounds - (i) no cause of action; (ii) no valid ground taken in the election petition for challenging the election of the first respondent; (iii) no allegations have been made against the first respondent; exercising power conferred under Section 36(2) read with Section 9A of the RP Act, the returning officer rejected the nomination papers of the election petitioner vide order dated 15.2.2022; (iv) Section 100(1)(c) of the RP Act is not applicable to the case of the election petitioner; (v) due to subsisting Government contracts, the election petitioner was disqualified by the returning officer, as he is barred from filing the nomination paper as per the settled law of the Hon'ble Supreme Court.

18. On the other hand, the election petitioner contends that the election petitioner never got a chance to contest in the

election as his nomination was improperly rejected by the returning officer. There are enough facts and material particulars pleaded in the election petitioner which would materially affected the sanctity of the electoral process to conduct a free and fair election.

19. The election petitioner filed election petition mainly on the ground that his nomination paper has been improperly rejected by the returning officer and that the election of the first respondent materially affected on the ground of improper rejection of the nomination paper as set out in Section 100(1)(c)(d)(iv) of the RP Act. In the election petition, the petitioner stated that consequent to the declaration of the first respondent as null and void, appropriate orders may be passed for process of conducting by-election in 41-Chandel (ST) Assembly Constituency. The election petitioner stated in paragraph 28 of the election petition that the cause of action for filing the present election petition arose on 15.2.2022 when the election petitioner's nomination paper was improperly rejected by the returning officer and further on 10.3.2022 when the result of the election was declared by the returning officer.

20. Per contra, the first respondent pleaded that the returning officer has given reasonable opportunity to the election

petitioner and the candidature of the election petitioner was not rejected instantly and he was given date to prove his case, however, he has failed to prove his case and, hence, his candidature was rejected.

21. The election petitioner is the candidate set up by National People's Party (NPP) and the first respondent is the candidate set up by the Bharathia Janata Party (BJP).

22. According to the election petitioner, the returning officer without any authority and without following the due process of law disqualified the election petitioner under Section 9A of the RP Act and has rejected the nomination papers improperly and also in violation of the provisions of the RP Act.

23. Under press note dated 8.1.2022, the schedule for 12th General Elections to the Manipur Legislative Assembly was notified as under:

Sl. No.	Poll Event	First Phase	Second Phase
1	Issue of Notification	01.02.2022 (Tuesday)	04.02.2022 (Friday)
2	Last date of making Nominations	08.02.2022 (Tuesday)	11.02.2022 (Friday)
3	Scrutiny of Nominations	09.02.2022 (Wednesday)	14.02.2022 (Monday)

4	Last date for of withdrawal Candidature	11.02.2022 (Friday)	16.02.2022 (Wednesday)
5	Date of Poll	27.02.2022 (Sunday)	03.03.2022 (Thursday)
6	Counting of Votes	10.03.2022 (Thursday)	
7	Date before which the election process shall be completed	12.03.2022 (Saturday)	

24. The 41-Chandel (ST) Assembly Constituency is included in the second phase. Under press note dated 10.02.2022, the Election Commission of India, changed the poll date for the first phase as 28.02.2022 (Monday) and the second phase as 05.03.2022 (Saturday). The election petitioner submitted his nomination papers along with Form 26 affidavit on 09.02.2022. The first respondent filed his nomination papers along with Form-26 affidavit on 09.02.2022.

25. On the date of scrutiny i.e. on 14.02.2022, the election agent of the first respondent has submitted an objection dated 14.02.2022 against the nomination filed by the election petitioner, *inter alia*, on the ground that Form-26 affidavit filed by the election petitioner is defective. One of the objections raised by the first respondent is that the election petitioner has given

details of subsisting contracts with the Government which would render him disqualified under Section 9A of the RP Act. The objection of the first respondent was forwarded to the election petitioner on the same day calling upon him to respond to the objection by 9.30 a.m. of 15.2.2022.

26. The contention of the election petitioner is that the date fixed for scrutiny i.e. 15.2.2022 is a general holiday in the State of Manipur on the occasion of Lui-Ngai-Ni. Despite clear provision in the guidelines for taking up scrutiny on a working day and in spite of the request made by the election petitioner for taking up on the next working day, the returning officer for reasons best known to him has insisted to complete the scrutiny on the holiday i.e. on 15.2.2022. As an aspiring candidate, the election petitioner has submitted his reply on 15.2.2022 to the objection raised by the first respondent through his agent. In the reply dated 15.2.2022, the election petitioner stated as under:

- (i) Once the nomination papers are substantially complied, the nomination papers cannot be rejected.*
- (ii) Defects of disclosure/non-disclosure in Form-26 affidavit is not a matter which is required to be enquired into by the returning officer at the time of scrutiny as the returning officer do not have the*

machinery and authority to enquire into the correctness of Form-26 affidavit of a candidate.

- (iii) Once the prescribed affidavit has been filed, but are found or considered to be defecting or containing false information, the nomination should not be rejected on this ground.*
- (iv) Any allegation or violation of Section 8(A) or 9(A) of the RP Act must be decided in an election petition filed by the aggrieved party.*
- (v) The returning officer has no jurisdiction and authority to decide whether a candidate is liable to be disqualified under the RP Act.*

27. The returning officer, by the order dated 15.2.2022, rejected the nomination papers of the election petitioner LunkhopaiHaokip @ Apao as per Section 36(2) read with Section 9A of the RP Act and as per para 6.10 of the Handbook of the Returning Officer. The rejection order dated 15.2.2022 of the returning officer of 41-Chandel (ST) Assembly reads thus:

*NO.RO/41/8/SCRU/SAE-2022
GOVERNMENT OF MANIPUR
OFFICE OF THE RETURNING OFFICER,
41-CHANDEL (ST) ASSEMBLY
CONSTITUENCY, CHANDEL*

ORDERS

Chandel, the 15th February, 2022

Whereas, in connection with the 12th Manipur Legislative Assembly Elections, 2022, the Scrutiny of 12 (twelve) nomination papers of 4 (four) Nominated Candidates filed for 41-Chandel (ST) Assembly Constituency were taken up at 11.00 am. on 14th February 2022;

2. Whereas, 8 (eight) nomination papers of 3 (three) Nominated Candidates were accepted/rejected in the scrutiny on 14th February 2022 as below:

3. Whereas, 4 (four) nomination papers of Shri Lunkhopao Haokip @ Apao (nominated NPP Candidate) were objected upon and also a written complaint was filed by the complainant Shri Ts. John Molarshing, Election Agent of SS. Olish, Nominated Candidate of 41- Chandel (ST) AC. Out of the various points highlighted in the written complaint, Point No.12 pertains to a complaint for rejection of nomination papers on grounds of disqualification under Section 9A of the Representation of People Act, 1951.

4. Whereas, as per the information provided by the complainant and when asked to the concerned Candidate as to whether he is subsisting any contract(s) with the State Government, the Candidate replied in affirmative. Therefore, the complaint has a prima facie satisfaction of the Returning Officer.

5. Whereas, to give opportunity to rebut the claims, vide Order No.RO/41/8/SCRU/SAE-2022 dated 14th February, 2022 issued by the undersigned in pursuance of Returning Officer Handbook Chapter 6.11.1, the Scrutiny of nomination papers of Shri Lunkhopao Haokip @ Apao (nominated NPP Candidate) was adjourned till 9:30 am. on 15th February, 2022. Accordingly, vide letter No.RO/41/8/SCRU/SAE-2022 dated 14th

February, 2022, the undersigned informed Shri Lunkhopao Haokip @ Apao (nominated NPP Candidate)/His Election Agent to reply the said objections latest by 9:30 a. of 15th February, 2022.

6. Whereas, based on the merit of the complaint and as decided by the Returning Officer to ascertain the veracity of the subsistence of contract by the Candidate with the State Government, there needs a confirmation on the following points;

- a. Whether a contract be entered into by the Candidate or in the course of his trade or business with the State Government.
- b. Whether the contract subsists.
- c. Whether the contract relate to the works undertaking by the State Government.
- d. Whether the contract should be for execution of such works.

7. Whereas, the contract pertains to 11 (eleven) works of 3 (three) Departments of State Government and to take a judicious and right decision, the departments concerned were officially intimated to give status of the 11 (election) works on the above points.

8. Whereas, Shri Lunkhopao Haokip @ Apao (nominated NPP Candidate) has submitted a written reply to the undersigned at 9:20 am of 15th February, 2022, and at 9:30 am of 15th February, 2022, the adjourned scrutiny was resumed.

9. Whereas, all the objections/replies/documents received by the Returning Officer are thoroughly examined and taking into account of all the points at para No.6 mentioned above, it is confirmed that the Candidate is having subsisting contract with the State Government and as per Section 3692) read with Section 9A of the Representation of the People Act, 1951, it has been decided that all the nomination papers

of Shri Lunkhopao Haokip @ Apao (nominated NPP Candidate) be rejected.

10. Now, therefore, I, Shri Mayanglambam Rajkumar, Returning Officer of 41- Chandel (ST) Assembly Constituency hereby rejects all the nomination papers of Shri Lunkhopao Haokip @ Apao (nominated NPP Candidate) as per Section 36(2) read with Section 9A of the Representation of People Act, 1951 and as per Handbook of Returning Officer (February 2019, Document 23-Edition1)'s Para No.6.10.

Place :Chandel

Date : 15th February, 2022

*(Mayanglambam Rajkumar)
Returning Officer
41-Chandel (ST) Assembly
Constituency"*

28. On a perusal of the reply of the election petitioner to the objection filed by the first respondent, the election petitioner has not raised the plea that the scrutiny should be taken on working day and the returning officer ought not to have conducted the scrutiny on 15.2.2022 being a general holiday in the State of Manipur. In the absence of any plea in the reply to the objection filed by the first respondent and having participated in the scrutiny of nomination, the election petitioner is estopped from raising the plea that the scrutiny ought not to have taken place on 15.2.2022.

29. According to the election petitioner, a deed of retirement dated 10.2.2022 filed along with the election petition

would indicate that no contract is subsisting with the election petitioner on the date of the scrutiny and despite submitting the said deed of retirement before the returning officer, the same has not been considered by the returning officer.

30. On a perusal of the reply dated 15.2.2022 to the objection filed by the election petitioner, it is seen that there is no whisper about the deed of retirement dated 10.2.2022. Having not disclosed the deed of retirement dated 10.2.2022 in the reply, there is doubt about the execution of deed of retirement dated 10.2.2022 between the partners in good faith. Assuming that the deed of retirement was executed on 10.2.2022, on the date of filing nomination dated 9.2.2022, the election petitioner was a partner of M/s.Lunkhopao Haokip Construction.

31. Upon receipt of the complaint, on 14.2.2022, the returning officer addressed a letter to the Chief Engineer, PWD, Manipur; the Chief Engineer, Rural Engineering Department, Manipur and the Managing Director, Manipur Police Housing Corporation, Manipur for furnishing status of contracts on or before 5.00 pm on 14.2.2022. The respective Departments have furnished the subsisting works as under:

(i) RURAL ENGINEERING DEPARTMENT

Construction of road from L033 – Lamjang to Takvom under Churachandpur Block

Construction of road from L032 0 Ngaronchingjin to Salampatong under Saikul Block

Construction of road from L027 – Laikoiching to South Lonsing under Saikul Block

Construction of road from CbassadKamjong to Molvailup-II/Kuluk under Kamjong Block.

Construction of road from Singngat to Tonglon T under Singhat Block.

Construction of road from new Keithelmanbi to S. Bongjam under Saikul Block

Construction of road from NH-39 (Moreh) to Maipi under Tegnoupal Block

(ii) PUBLIC WORKS DEPARTMENT

Improvement of road from Joupi to Sehao.

Improvement of road: Black topping with line drain in and around Sugnu Town covering Zouveng, Hospital Road, Khumjang, Kotsopai, Greenland Hospital.

(iii) MANIPUR POLICE HOUSING CORPORATION

Construction of Ima Market at Khamnu Bazar, Moirang, Bishnupur District under Special Assistance to States for capital expenditure 2020-21 (Work Order No.EE-II/05/2020-21/MPHC/BPR/05).

Construction of Ima Market at Khamnu Bazar, Moirang, Bishnupur District under Special to States for capital expenditure 2020-21 (Work Order No.ED/12/2044-05/MPHC(W)/107)

32. Thus, it is clear that on the date of filing of the nomination papers and contest in the election, the election petitioner was having subsisting contract works with the Government. The returning officer rejected the nomination papers of the election petitioner under Section 36(2) read with Section 9A of the RP Act. It would be appropriate to quote the said provisions for ready reference.

33. Section 36(2) of the RP Act provides:

“Section 36. Scrutiny of nomination. –

(1) ...

(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:-

(a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that

- maybe applicable,
namely:- Articles 84, 102,
173 and 191 Part II of this
Act and sections 4 and 14
of the Government of
Union Territories Act,
1963 (20 of 1963); or
- (b) that there has been a
failure to comply with any
of the provisions of
section 33 or section 34;
or
- (c) that the signature of the
candidate or the proposer
on the nominate paper is
not genuine.”

34. Section 9A of the RP Act provides:

“9A. Disqualification for Government
contracts, etc.-

A person shall be disqualified if, and for
so long as, there subsists a contract
entered into by him in the course of his
trade or business with the appropriate
Government for the supply of goods to,
or for the execution of any works
undertaken by, that Government.

Explanation.- For the purposes of this
section, where a contract has been
fully performed by the person by whom
it has been entered into with the
appropriate Government, the contract
shall be deemed not to subsist by
reason only of the fact that the

Government has not performed its part of the contract either wholly or in part.”

35. At this juncture, Mr. HS Paonam, the learned senior counsel for the election petitioner submitted that Section 9A of the RP Act demands passing of an order by a competent civil court under the Indian Contract Act, 1872 so far as the decision as to whether the contract executed by the person is still subsisting on the date of consideration of the disqualification under Section 9A of the RP Act. Thus, the specific argument of the learned counsel for the election petitioner is that the returning officer without any authority of law and without following the due process of law has assumed that the election petitioner is disqualified under Section 9A of the RP Act and accordingly the returning officer has rejected the nomination paper of the election petitioner improperly and also in violation of the provisions of the RP Act.

36. Drawing the attention of this Court to Section 100 of the RP Act, Mr. Lenin Hijam, the learned senior counsel for the first respondent argued that Section 100 of the RP Act has not provide the aforesaid two grounds, namely (i) the returning officer without any authority of law and without following the due process of law has assumed that the election petitioner is disqualified

under Section 9A of the RP Act and (ii) the returning officer has rejected the nomination paper of the election petitioner improperly and also in violation of the provisions of the RP Act, for challenging the election of the first respondent, and, as such, the election petitioner has no right to challenge the election of the first respondent.

37. Section 100 of the RP Act provides:

“100. Grounds for declaring election to be void.—

(1) Subject to the provisions of sub-section (2) if the High 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 the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); 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

(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 or 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 the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.
”

38. Admittedly, Section 100 of the RP Act has not provided the aforesaid two grounds that have been raised by the election petitioner. In fact, no allegation has been made by the election petitioner against the first respondent. Without any allegation against the first respondent, no election petition would lie against the first respondent.

39. It is pertinent to note that the election petitioner himself admitted the existence of 11 subsisting Government contract works being executed by him at Para 7 of Part IIIA of Form 2B and also at Para 9B of Form-26 affidavit. Thus, the

case of the election petitioner is barred by the settled law of the Hon'ble Supreme Court.

40. In *Ph. Paul Manoj Pandian*, supra, the Hon'ble Supreme Court held as under:

“58. The next result of the above discussion is that on the date of submission of nomination papers by the respondent as well as on the date of scrutiny of the nomination papers, the contracts entered into by the respondent with the Government were subsisting and, therefore, the respondent was disqualified from filing the nomination papers and contesting the election. The respondent having incurred disqualified under the provisions of Section 9-A of the Act, his election will have to be declared to be illegal. Accordingly, it is declared that the respondent had incurred disqualification under Section 9-A of the Act, and, therefore, his election from the constituency in question is declared to be illegal, null and void.”

(emphasis supplied)

41. In *Sewaram*, supra, the Hon'ble Supreme Court held thus:

"15. We have given our thoughtful consideration to the arguments advanced by learned counsel for both the parties and also the case-law cited at the Bar. The question of subsistence of a contract with the appropriate Government making it a disqualification under Section 9-A of the Act is a question of fact depending on the facts and circumstances of each case. In Abdul Rahiman Khan v. Sadasiva Tripathi [(1969) 1 SCR 351 : AIR 1969 SC 302 : 39 ELR 92] the respondent was declared elected to the Legislative Assembly of Orissa from the Nowrangpur General Constituency. The appellant filed an election petition before the High Court of Orissa for an order setting aside the election of the respondent, on the ground that the appellant's nomination paper was improperly rejected and he was illegally deprived of his right to contest the election. It was a common ground that the appellant was carrying on the business of a building contractor and that in pursuance of a notification issued by the Government of Orissa he had submitted tenders for construction of buildings of the Rental Housing Scheme at the rates specified therein. The tenders were accepted and the appellant had carried out a part of the construction work, but had thereafter stopped the work because he suffered serious injuries

which necessitated his detention in a public hospital. The appellant claimed that at his request the contract was cancelled, and on that account at the date of filing of his nomination there was, between him and the State of Orissa no subsisting contract for execution of works undertaken by him, and that in any event there was in law no contract between him and the State relating to the execution of works which disqualified him from standing for the election as a candidate for a seat in the State Legislative Assembly.

16. *In the facts and circumstances of the above case, it was held that the appellant had commenced execution of the work, but had not completed it. Payment for the work done was not made to the appellant. The contract was not determined by mutual agreement nor was it abandoned.*

17. *In Konappa Rudrappa Nadgouda v. Vishwanath Reddy [(1969) 1 SCR 395 : AIR 1969 SC 447 : 39 ELR 182] the appellant and the first respondent were candidates for election in February 1967 from the Yadagiri constituency which was won by the first respondent. The appellant challenged his election by a petition on the ground that he was a partner in a firm which had two contracts with the State Government, one for*

the construction of a road and the other for the construction of a dispensary building, which were subsisting on the day when nominations were filed; he was therefore disqualified from being a candidate under Section 9-A of the Representation of the People Act, 1951 and his election was void. The High Court dismissed the election petition. This Court allowed the appeal and held that the High Court was in error in holding that the contracts had been fully performed and Section 9-A did not apply. It was held that the law requires that a candidate should not have any interest in any contract with Government and therefore even a partner in a firm has an interest sufficient to attract the provisions of Section 9-A. The first respondent could not by a private dissolution of the partnership escape his liability under the contract to the Government, and there was here no novation, because notice of the dissolution was not given to Government and the Government had not accepted the person to whom the business was transferred in place of the respondent's firm.

.....

21. *Now we shall consider the main plank of the contention on which the entire edifice has been built by Sewaram that he had submitted a letter dated January 30, 1990 whereby he*

had severed all his connections with the contract in question and after this date there was no subsisting contract so as to incur any disqualification under Section 9-A of the Act. Admittedly, this letter dated January 30, 1990 is addressed to the Executive Engineer, but in fact, it was delivered not in the office of Executive Engineer Mr Mandloi, but had been delivered in the office of the Sub-Divisional Officer Mr Srivastava. It is important to note that all correspondence in respect of the contract in question has been done by Sewaram with the office of the Executive Engineer except the letter dated January 30, 1990 in question which alone according to the appellant had been submitted to Shri V.P. Srivastava, the Sub-Divisional Officer sitting in a different office and far away from the office of the Executive Engineer. According to Sewaram, one Rajesh Verma accompanied him while delivering this letter to Srivastava, but according to Srivastava, Patiram had accompanied Sewaram and not Rajesh Verma. It cannot be believed that when all correspondence relating to the contract was dealt with by the office of the Executive Engineer, why such an important letter dated January 30, 1990 was not submitted in the office of the Executive Engineer and is alleged to have been submitted to a lower authority of the rank of Assistant Engineer.

We see force in the submission of the learned counsel for the respondent in this regard that Shri Mandloi, the Executive Engineer was not willing to oblige the appellant by taking a false stand and as such the appellant took a false plea that he had given such letter dated January 30, 1990 to Mr Srivastava. It is important to note that Mr Mandloi in his statement has clearly stated that he never saw nor had any knowledge of the letter dated January 30, 1990 prior to July 23, 1990. Even if, for arguments sake it may be considered that the appellant had submitted the letter dated January 30, 1990 bonafidely for some reasons on the same day in the office of the Assistant Engineer Mr Srivastava, it was incumbent upon the appellant to see that the letter should have reached immediately in the office of the Executive Engineer who alone was competent to deal with such important matter. Admittedly, the letter was addressed to the Executive Engineer and it came to his notice on July 23, 1990 after the service of the notice of the election petition on the appellant. The contract can come to an end by any of the following modes:

- (1) By performance;*
- (2) By express agreement;*
- (3) Under the doctrine of frustration; and*
- (4) By breach.”*

42. In *Konappa Rudrappa Nadgouda*, supra, the Hon'ble Supreme Court held:

*"12. In both the contracts, there was a condition that for a period of three months in one and for a period of one year in the other, the contractor would make due repairs to all the defective parts in the execution of the contract. The question is whether the contract can be said to be subsisting in view of this clause. Both sides referred us to Hudson's Building and Engineering Contracts. In one passage, Hudson regarded such a clause as in the nature of a "repair clause". But Hudson was not dealing with the law of election when he was discussing a clause such as we have in this case. We have to interpret this clause in the context of election law. Now the contract must be said to subsist if a portion of it is required to be performed at any time, because so long as the contract has not been discharged, by full performance, it must be taken to subsist. Mr Narasaraaju contends that the phrase "contract for the execution of the work" shows that it is the execution of the original work which is contemplated and not any condition of guarantee for repair. In our opinion, this argument, however, ingenious, is not acceptable because a similar point arose in the case to which we referred earlier. In *Chatturbhuj Vithaldas Jasani* case [(1954)*

SCR 817] Bose, J. dealt with a similar point in the following words:

“It was argued that assuming that to be the case, then there were no longer any contracts for the ‘supply of goods’ in existence but only an obligation arising under ‘the guarantee clause’. We are unable to accept such a narrow construction. This term of the contract, whatever the parties may have chosen to call it, was a term in a contract for the supply of goods. When a contract consists of a number of terms and conditions each condition does not form a separate contract but is an item in the one contract of which it is a part. The consideration for each condition in a case like this is the consideration for the contract taken as a whole. It is not split up into several considerations apportioned between each term separately. But quite apart from that, the obligation, even under this term, was to supply fresh stocks for these three depots in exchange for the stocks which were returned and so even when regarded from that narrow angle it would be a contract for the supply of goods. It is true they are replacements but a contract to replace goods is still one for the supply of the goods which are sent as replacements.”

Applying these observations in the context of construction of buildings and roads, it is obvious that if some part is found defective and has to be done again, the contract of execution as such is still to be fully performed. It is possible to describe the action taken as one to repair the defect, but in essence, it is a part of the contract of execution, because no execution can be said to be proper or complete till it is properly executed. Taking the fact that some portion of the original contracts remained to be performed with the fact that under the contracts the contractor was required not only to complete the original work but to repair defects or redo something which he had not properly done, we think this matter must fall within Section 9-A of the Representation of the People Act. This is not a case like the supply of a refrigerator which after giving service for some time goes out of order and something has to be done to replace a part which is defective. The analogy is not quite apposite. Here the building was completed very recently and the flooring had to be redone and various other things were left unfinished and these had to be completed by the contractor. Similarly in relation to the road, although the surface was prepared and the road was in actual use, under the contract, mile and hectometer stones had to be fixed and certain other stones fixed at

curves and boundaries. This was not done. The two contracts therefore were not fully performed and under clause 20 of the agreement, it was incumbent upon the contractor to complete this part of his obligation. In our opinion, the High Court was in error in holding that the contracts had been fully performed and therefore Section 9-A did not apply.

13. Mr Narasaraju raises three legal points. The first is that under Article 299, the contract had to be signed by the Secretary to the Government whereas the contract was signed by the Executive Engineer. This point was also considered in Jasani case and it was held that it did not go to save the bar of the election law to the candidature. Next it is argued that the section is applicable to a person whereas the contract was with a firm and therefore the first respondent was not barred from standing for the election. In our opinion, the High Court has taken the right view of the matter. The law requires that a candidate should not have any interest in any contract with Government and even a partner has an interest sufficient to attract the provisions of Section 9-A. Lastly it is argued that the partnership itself had been dissolved. That would have no effect upon the relations between the first respondent and the

Government. The first respondent could not by a private dissolution of the partnership escape his liability under the contract to the Government, and there was here no novation, because notice of the dissolution was not given to Government and the Government had not accepted Hampanna to whom the business was transferred in place of the firm. We view the transfer of the entire contracts to Hampanna with some suspicion. It appears that on the eve of the election, the first respondent who wished to contest the seat from Yadagiri, hurried through his contracts, managed to get a completion certificate which was not quite accurate, dissolved the partnership with a view to clear himself from all connections with the contracts so that he could stand for the election. In this effort, he has distinctly failed.”

43. In *Rajeshkar Basavaraj Patil*, supra, the Hon’ble Supreme Court observed as under:

"40. Thus, we find that there is neither unilateral nor mutual termination of subsisting contract by Respondent 1. In the affidavit dated 13-8-1999, it was stated that his application or request for termination of contract was “under consideration” of the Department. Unless there was acceptance of the said request by the Department, it could

not be said that the contract stood terminated by mutual consent. The Department accepted the request made by the respondent only in September 2000. To support the case of unilateral termination of the contract, as advanced by the learned counsel on behalf of the returned candidate before us, there is nothing on record except the pleas developed step by step which varied from the stage of filing written statement to oral evidence and thereafter at this appellate stage.”

44. In *Bajrang Bahadur Singh*, *supra*, the Hon’ble Supreme Court held as under:

"35. We have already noticed that there are two classes of disqualification contemplated under Article 191, (i) disqualifications which last only for a limited period, that is, during the currency of certain events specified under Article 191, (ii) statutory disqualifications prescribed under Sections 8, 8-A, 9 and 10-A which render a person ineligible for a period specified under each of the abovementioned provisions. The disqualifications under Sections 9-A and 10 of the Act are akin to the disqualifications contemplated under clauses (a) to (d) of Article 191(1) where the period of disqualification is coterminous with the currency of the event which renders a person

ineligible both for being chosen as or for being a Member of the legislature. Nonetheless, on the acquisition of the disqualification by a legislator, he ceases to be a legislator forthwith by operation of law. However, the cessation of the disqualifying factor cannot put such a person back in the legislature without his being elected once again, of course such person is entitled to contest any election under the RP Act, the moment the disqualifying factor ceases to exist as the disqualification is coterminous with the disqualifying EVENT.

.....

40. The language of Section 9-A which declares that a person shall be disqualified “if and for so long as there subsists a contract”, must be understood in the background of the scheme of Chapter III of the RP Act. All other provisions except Sections 9-A and 10 of the Chapter prescribe a fixed tenure of disqualification. That tenure has nothing to do with the duration of the currency of the event which brings about the legal consequence of disqualification. Only Section 9-A and Section 10 limit the tenure of disqualification and make it coterminous with the currency of the EVENT which creates a disqualification. Therefore, the clause “if and for so long as” in our view, in these two provisions must be

understood only to convey (in the context of a legislator who incurs a disqualification) that he is not debarred from contesting any election under the Act including a by-election arising as a direct consequence of his vacating the seat in the legislature if the EVENT (the subsistence of which brought about the consequence of disqualification) ceases to subsist by the relevant date. The interpretation such as the one sought to be placed by the petitioner would amount to Parliament nullifying the constitutional declaration contained in Article 190(3) read with Article 191.

....

47. To test the soundness of the submission, we must examine the rationale behind Section 9-A. This Court in Konappa Rudrappa Nadgouda v. Vishwanath Reddy [Konappa Rudrappa Nadgouda v. Vishwanath Reddy, AIR 1969 SC 447] dealt with the rationale behind the disqualification prescribed under Section 9-A of the RP Act and observed as follows: (AIR p. 451, para 11)

“11. ... But if the contract subsists in such manner that it cannot be said to have been substantially completed, the law must take its own course. It is of the essence of the

law of elections that candidates must be free to perform their duties without any personal motives being attributed to them. A contractor who is still holding a contract with government is considered disqualified, because he is in a position after successful election to get concession for himself in the performance of his contract. That he may not do so is not relevant. The possibility being there, the law regards it necessary to keep him out of the elections altogether.”

45. The aforesaid judgments relied are squarely applicable to the case of the first respondent, wherein the language of Section 9A of the RP Act, which declares that a person shall be disqualified “*if and for so long as there subsists a contract*” must be understood in the background of the scheme of Chapter III of the RP Act. The Hon'ble Supreme Court also held that the law requires that a candidate should not have any interest in any contract with Government and, therefore, even a partner in a firm has an interest sufficient to attract the provisions of Section 9A of the RP Act. Having considered all these aspects in proper perspective, the returning officer has rightly rejected the nomination papers of the election petitioner. As against the order of rejection dated 15.2.2022, the election petitioner has filed W.P.(C) No.147 of 2022 and the said writ petition is stated to be

pending till date. Admittedly, in the said writ petition, the election petitioner has raised an issue pertaining to the power of the returning officer to disqualify a candidate from contesting the election. The fact remains that the election petitioner has not challenged the rejection of the nomination dated 15.02.2022.

46. As stated supra, the two grounds raised by the election petitioner cannot be the grounds provided under Section 100 of the RP Act for challenging the election of the first respondent by praying for declaration of the election of the first respondent as null and void. Moreover, the returning officer, after properly considering the documentary evidence produced by the election petitioner and the first respondent and after affording reasonable opportunity to the parties, more particularly, the election petitioner, rejected the nomination of the election petitioner. In other words, the rejection of the nomination paper of the election petitioner was made after it was found that he has many subsisting Government contracts, which is completely prohibited under Section 9A of the RP Act. In this regard, the statement of the second respondent is that as per the RP Act, due opportunity was afforded to the election petitioner by the returning officer and after examination of the objection of the election petitioner, the returning officer vide order dated 15.2.2022 rejected the nomination of the election petitioner by

giving reasons. In view of the above, as rightly argued by the learned counsel for the first respondent, the allegation made in the election petition is quite baseless and irrelevant. Since the election petitioner himself admitted the existence of 11 Government contracts at Para 7 of Part IIIA of Form 2B as also at Para 9B of Form-26 affidavit, there is no question of trial to prove the subsisting Government contracts, as these subsisting contracts were already on record before the returning officer and in this regard, the returning officers has already called for records from the concerned Departments during the scrutiny of nomination papers on 15.2.2022 and decided the matter.

47. The learned senior counsel for the first respondent argued that the averments made in the election petition are completely vague and lacks material particulars and in clear violation of Sections 81 and 83 of the RP Act and, thus, no trial or enquiry is permissible on the basis of such vague, indefinite and imprecise averments. The learned counsel also submitted that the election petition does not contain a concise statement of material fact on which the election petitioner relied and does not disclose a triable issue or cause of action. That apart, the allegations contained in the election petition do not meet out the basic requirement, which could constitute cause of action as required by law. In support, the learned senior counsel for the

first respondent placed reliance upon the decision of the Hon'ble Supreme Court in the case of *Jaipal Singh*, supra.

48. In *Jaipal Singh*, supra, the Hon'ble Supreme Court held:

"2. The appellant was a member of the Indian Administrative Service having 40 years' service to his credit and who was 59 1/2 years old. By letter dated 13-3-2002, he sought voluntary retirement under Rule 16(2) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 (hereinafter referred to as "the 1958 Rules") with immediate effect. The appellant was registered as an elector at 535, Halqa No. 62, Mujeggar Plot No. 9-A, Sector 6, Faridabad in the State of Haryana and eligible to contest election to the Rajya Sabha, in which two vacancies had occurred which were to be filled from the State of Haryana. A notification was issued to fill up the two vacancies under which the last date of filing the nomination papers was 14-3-2002, the date of scrutiny was 15-3-2002, last date of withdrawal was 18-3-2002 and the date of polling was 27-3-2002. The appellant sought voluntary retirement from service as he wanted to contest the election to the Rajya Sabha. On 15-3-2002, the Returning Officer rejected the nomination papers of the

appellant on the ground that Rule 16 of the 1958 Rules warranted giving three months' previous notice to the appointing authority and since the said period had not elapsed on the date of scrutiny the appellant was holding the office of profit on that day and, therefore, stood disqualified under Article 102(1)(c) of the Constitution. On 18-3-2002, election results were announced, since there was no contest after rejection of the nomination papers submitted by the appellant. Aggrieved, the appellant filed Election Petition No. 27 of 2002 in the High Court on the ground that his nomination papers had been wrongly rejected by the Returning Officer. In the election petition, he stated that on completion of 40 years of service and on attaining the age of 59 1/2 years, he was eligible to seek voluntary retirement under the 1958 Rules; that he had applied for the same through proper channel on 13-3-2002; that he had also made a request to the appointing authority to waive notice period of three months for seeking voluntary retirement; that he had relinquished the charge on 13-3-2002; and consequently, he was not holding office of profit with the Government on that day and, therefore, he was eligible to seek election to the Rajya Sabha. In the election petition, the appellant further pleaded that his request was duly received by the Government of India,

Ministry of Personnel, appointing authority and also by the Government of Haryana at Chandigarh. He further averred that he sought voluntary retirement on account of illness of his wife and after resigning voluntarily from his post, he had filed nomination papers. He further averred that on the date of the scrutiny, he was present when he brought to the notice of the Returning Officer the factum of his voluntary retirement but the Returning Officer disregarded the provisions of the 1958 Rules as also the provisions of the All India Services (Conditions of Service — Residuary Matters) Rules, 1960 (hereinafter referred to as “the 1960 Rules”) as also the Fundamental Rules, 1922. In the election petition, the appellant had alleged that the action of the Returning Officer in rejecting his nomination papers was not justified as the appointing authority has the power under the 1960 Rules to relax the condition and to waive the notice period of three months in the case of an employee who seeks voluntary retirement. He further stated that since his nomination papers were rejected, there was no contest and results were declared on 18-3-2002 when the respondents were declared as members of the Rajya Sabha from the State of Haryana. In the light of the above allegations, the appellant challenged the elections of the

respondents on the ground of improper rejection of his nomination papers. The election petition was scrutinized by the Registry of the High Court, which was found to have been filed within the period of limitation, and accordingly it was numbered and notices were issued to the respondents who appeared before the High Court on 31-7-2002 through their counsel. A joint written statement was filed by the respondents controverting the averments made by the appellant. A preliminary objection was raised to the effect that the averments contained in the election petition were vague and lacked material facts and particulars, as such, the said petition was liable to be dismissed. In the written statement, the respondent submitted that the petition was liable to be dismissed as the appellant had not disclosed a material fact as to on which date he had received communication regarding acceptance of his application for voluntary retirement. On merits also, the respondents denied various averments made by the appellant.

3. *On the above pleadings, a preliminary issue was framed by the High Court — as to whether the petition lacked in material facts and did not disclose cause of action. By the impugned judgment, the High Court held that Section 83(1)(a) of the said Act mandates that*

an election petition shall contain a concise statement of material facts on which the petitioner relies; that in the present case, the appellant had failed to aver and plead two material facts viz. that his application for voluntary retirement was accepted by the appointing authority before the date of scrutiny and that his request for waiver of the notice period of three months was actually accepted. In the absence of disclosure of the above facts, the High Court dismissed the election petition.

....

7. Section 83 deals with contents of petition. It states that an election petition shall contain a concise statement of material facts, on which the petitioner relies and shall state full particulars of any corrupt practices which the petitioner alleges and which shall be signed by him and verified in the manner laid down in the Code of Civil Procedure. In the case of Sopan Sukhdeo Sable v. Asstt. Charity Commr. [(2004) 3 SCC 137 : (2004) 2 Scale 82] it has been held that Order 6 Rule 2(1) CPC deals with basic rule of pleadings and declares that the pleading has to state material facts and not the evidence; that there is a distinction between “material facts” and “particulars” and the words “material facts” show that the facts necessary to formulate a

complete cause of action must be stated. Omission of single material fact leads to an incomplete cause of action and consequently, the plaint becomes bad. The distinction between “material facts” and “particulars” was brought by Scott, L.J. in Bruce v. Odhams Press Ltd. [(1936) 1 KB 697 : (1936) 1 All ER 287 (CA)] in the following passage: (All ER p. 294)

“The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word ‘material’ means necessary for the purpose of formulating a complete cause of action; and if any one ‘material’ statement is omitted, the statement of claim is bad; it is ‘demurrable’ in the old phraseology and in the new is liable to be ‘struck out’ under RSC Order 25 Rule 4 (see Philipps v. Philipps [(1878) 4 QBD 127 : 48 LJQB 135 : 39 LT 556 (CA)]); or ‘a further and better statement of claim’ may be ordered under Rule 7.

The function of ‘particulars’ under Rule 6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim — gaps which ought to have been filled by appropriate statements of the various material facts which together constitute

the plaintiff's cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiff's cause of action with information sufficiently detailed to put the defendant on his guard as to the case he had to meet and to enable him to prepare for trial."

.....

9. *As to what is the material fact has to be decided in the present case, in the context of the election petition under the said Act. An election petition is a matter of statutory right. In the petition, the key issue was whether the appellant held an office of profit on the date of scrutiny. For that purpose, the appellant ought to have stated that on 13-3-2002 he had requested for waiver of the notice period; that the appointing authority had received the notice on the specified date and that his request for waiver stood granted on the date of scrutiny and he ceased to be a government servant. These were the material facts which the appellant should have pleaded so that the returned candidates would not be taken by surprise. They were material facts within his knowledge and ought to have been pleaded in the election petition. Lastly, even the letter*

of the appellant seeking the waiver of the notice period did not form part of the election petition. Hence, the High Court was right in dismissing the election petition for want of material facts.”

49. By relying upon the decision in the case of *Dr.Ramachandran*, supra, the learned senior counsel for the election petitioner submitted that the election petition cannot be rejected without trial. In *D.Ramachandran*, supra, the Hon’ble Supreme Court held:

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

.....

10. *On the other hand, Rule 11 of Order 7 enjoins the court to reject the plaint where it does not disclose a cause of action. There is no question of striking out any portion of the pleading under this Rule. The application filed by the first respondent in OA No. 36 of 1997 is on the footing that the averments in the election petition did not contain the material facts giving rise to a triable issue or disclosing a cause of action. Laying stress upon the provisions of Order 7 Rule 11(a), learned Senior Counsel for the first respondent took us through the entire election petition and submitted that the averments therein do not disclose a cause of action. On a reading of the petition, we do not find it possible to agree with him. The election petition as such does disclose a cause of action which if unrebutted could void the election and the provisions of Order 7 Rule 11(a) CPC cannot therefore be invoked in this case. There is no merit in the contention that some of the allegations are bereft of material facts and as such do not disclose a cause of action. It is elementary that under Order 7 Rule 11(a) CPC, the court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action. Under the Rule, there cannot be a partial rejection of the plaint or petition. See Roop Lal Sathi v. Nachhattar*

Singh Gill [(1982) 3 SCC 487]. We are satisfied that the election petition in this case could not have been rejected in limine without a trial.”

50. Further, by relying upon the decision in the case of *P.V.Guru Raj Reddy*, supra, Mr. HS Paonam, the learned senior counsel for the election petitioner contends that election petition cannot be rejected if it discloses a cause of action. In *P.V.Guru Raj Reddy*, supra, the Hon’ble Supreme Court held:

"5. Rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under

any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.

6. In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings ex facie disclose that the suit is barred by limitation or is barred under any other provision of law. The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application under Order 7 Rule 11 the stand of the defendants in the written statement would be altogether irrelevant.”

51. Placing reliance upon the decision in the case of *Srihari Numandas Totala*, supra, the learned senior counsel for the election petitioner submits that application under Order 7, Rule 11 CPC must be considered within the four corners of the plaint. In *Srihari Numandas Totala*, the Hon’ble Supreme Court held:

"19. At this stage, it would be necessary to refer to the decisions that particularly deal with the question whether res judicata can be the basis or ground for rejection of the plaint.

In Kamala v. K.T.EshwaraSa [Kamala v. K.T. Eshwara Sa, (2008) 12 SCC 661] , the trial Judge had allowed an application for rejection of the plaint in a suit for partition and this was affirmed by the High Court. S.B. Sinha, J. speaking for the two-Judge Bench examined the ambit of Order 7 Rule 11(d) CPC and observed : (SCC 668-69, paras 21-22)

“21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.”

(emphasis supplied)

20. The Court further held : (Kamala case [Kamala v. K.T. Eshwara Sa, (2008) 12 SCC 661] , SCC p. 669, paras 23-25)

“23. The principles of res judicata, when attracted, would bar another suit in view of Section 12 of the Code. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.

24. It is one thing to say that the averments made in the plaint on their face discloses no cause of action, but it is another thing to say that although the same discloses a cause of action, the same is barred by a law.

25. The decisions rendered by this Court as also by various High Courts are not uniform in this behalf. But, then the broad principle which can be culled out therefrom is that the court at that stage would not consider any evidence or enter into a disputed question of fact or law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject-matter thereof, the application for rejection of plaint should be entertained.”

(emphasis supplied)

21. The above view has been consistently followed in a line of decisions of this Court. In Church of Christ Charitable Trust & Educational Charitable Society v. Ponniyamman Educational Trust [Church of Christ Charitable Trust & Educational Charitable Society v. Ponniyamman Educational Trust, (2012) 8 SCC 706 : (2012) 4 SCC (Civ) 612], P. Sathasivam, J. (as the learned Chief Justice then was), speaking for a two-Judge Bench, observed that : (SCC pp. 713-14, paras 10-11)

“10. ... It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is

undervalued and not corrected within the time allowed by the court, insufficiently stamped and not rectified within the time fixed by the court, barred by any law, failed to enclose the required copies and the plaintiff fails to comply with the provisions of Rule 9, the court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order 7 Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial.

11. This position was explained by this Court in Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557] , in which, while considering Order 7 Rule 11 of the Code, it was held as under : (SCC p. 560, para 9)

‘9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit — before registering the plaint

or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.”

It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the court to scrutinise the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles

have been reiterated in Raptakos Brett & Co. Ltd. v. Ganesh Property [Raptakos Brett & Co. Ltd. v. Ganesh Property, (1998) 7 SCC 184] and Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express [Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express, (2006) 3 SCC 100].”

22. Similarly, *in Soumitra Kumar Sen [Soumitra Kumar Sen v. Shyamal Kumar Sen, (2018) 5 SCC 644 : (2018) 3 SCC (Civ) 329] , an application was moved under Order 7 Rule 11 CPC claiming rejection of the plaint on the ground that the suit was barred by res judicata. The trial Judge dismissed the application and the judgment of the trial court was affirmed in revision by the High Court. A.K. Sikri, J., while affirming the judgment of the High Court held : (Soumitra Kumar Sen case [Soumitra Kumar Sen v. Shyamal Kumar Sen, (2018) 5 SCC 644 : (2018) 3 SCC (Civ) 329] , SCC p. 649, para 9)*

“9. In the first instance, it can be seen that insofar as relief of permanent and mandatory injunction is concerned that is based on a different cause of action. At the same time that kind of relief can be considered by the trial court only if the plaintiff is able to establish his locus standi to bring such a suit. If the

averments made by the appellant in their written statement are correct, such a suit may not be maintainable inasmuch as, as per the appellant it has already been decided in the previous two suits that Respondent 1-plaintiff retired from the partnership firm much earlier, after taking his share and it is the appellant (or appellant and Respondent 2) who are entitled to manage the affairs of M/s Sen Industries. However, at this stage, as rightly pointed out by the High Court, the defence in the written statement cannot be gone into. One has to only look into the plaint for the purpose of deciding application under Order 7 Rule 11 CPC. It is possible that in a cleverly drafted plaint, the plaintiff has not given the details about Suit No. 268 of 2008 which has been decided against him. He has totally omitted to mention about Suit No. 103 of 1995, the judgment wherein has attained finality. In that sense, the plaintiff-Respondent 1 may be guilty of suppression and concealment, if the averments made by the appellant are ultimately found to be correct. However, as per the established principles of law, such a defence

projected in the written statement cannot be looked into while deciding application under Order 7 Rule 11 CPC.”

(emphasis supplied)

23. Referring to Kamala [Kamala v. K.T. Eshwara Sa, (2008) 12 SCC 661], the Court further observed that : (Soumitra Kumar Sen case [Soumitra Kumar Sen v. Shyamal Kumar Sen, (2018) 5 SCC 644 : (2018) 3 SCC (Civ) 329], SCC p. 650, para 12)

“12. ... The appellant has mentioned about the earlier two cases which were filed by Respondent 1 and wherein he failed. These are judicial records. The appellant can easily demonstrate the correctness of his averments by filing certified copies of the pleadings in the earlier two suits as well as copies of the judgments passed by the courts in those proceedings. In fact, copies of the orders passed in judgment and decree dated 31-3-1997 passed by the Civil Judge (Junior Division), copy of the judgment dated 31-3-1998 passed by the Civil Judge (Senior Division) upholding the decree passed by the Civil Judge (Junior Division) as well as copy of the judgment and decree dated 31-7-2014 passed by the Civil Judge,

Junior Division in Suit No. 268 of 2008 are placed on record by the appellant. While deciding the first suit, the trial court gave a categorical finding that as per MoU signed between the parties, Respondent 1 had accepted a sum of Rs 2,00,000 and, therefore, the said suit was barred by principles of estoppel, waiver and acquiescence. In a case like this, though recourse to Order 7 Rule 11 CPC by the appellant was not appropriate, at the same time, the trial court may, after framing the issues, take up the issues which pertain to the maintainability of the suit and decide the same in the first instance. In this manner the appellant, or for that matter the parties, can be absolved of unnecessary agony of prolonged proceedings, in case the appellant is ultimately found to be correct in his submissions.”

(emphasis supplied)

While holding that “recourse to Order 7 Rule 11” by the appellant was not appropriate, this Court observed that the trial court may, after framing the issues, take up the issues which pertain to the maintainability of the suit and decide them in the first instance. The Court held that this course of action would help the appellant avoid lengthy proceedings.

24. In a more recent decision of this Court in *Shakti Bhog Food Industries Ltd. v. Central Bank of India* [*Shakti Bhog Food Industries Ltd. v. Central Bank of India*, (2020) 17 SCC 260] , a three-Judge Bench of this Court, speaking through A.M. Khanwilkar, J., was dealing with the rejection of a plaint under Order 7 Rule 11 by the trial court, on the ground that it was barred by limitation. The Court referred to the earlier decisions including *Saleem Bhai v. State of Maharashtra* [*Saleem Bhai v. State of Maharashtra*, (2003) 1 SCC 557] , *Church of Christ Charitable Trust & Educational Charitable Society v. Ponniyamman Educational Trust*, (2012) 8 SCC 706 : (2012) 4 SCC (Civ) 612] , and observed that : (*Church of Christ Charitable Trust case* [*Church of Christ Charitable Trust & Educational Charitable Society v. Ponniyamman Educational Trust*, (2012) 8 SCC 706 : (2012) 4 SCC (Civ) 612] , SCC p. 714, para 11)

“11. ... It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial

and it is the duty of the court to scrutinise the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averment. These principles have been reiterated in Raptakos Brett & Co. Ltd. v. Ganesh Property [Raptakos Brett & Co. Ltd. v. Ganesh Property, (1998) 7 SCC 184] and Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express [Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express, (2006) 3 SCC 100].”

25. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarised as follows:

25.1. To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to.

25.2. The defence made by the defendant in the suit must not be considered while deciding the merits of the application.

25.3. To determine whether a suit is barred by res judicata, it is necessary that (i) the “previous suit” is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit.

25.4. Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the “previous suit”, such a plea will be beyond the scope of Order 7 Rule 11(d), where only the statements in the plaint will have to be perused.

.....

27. Be that as it may, on a reading of the plaint, it is evident that the first respondent has not made an attempt to conceal the fact that a suit regarding the property was pending before the civil court at the time. It is also relevant to note that at the time of institution of the suit (OS No. 138 of 2008) by the first respondent, no decree had been passed by the civil court in OS No. 103 of 2007. Thus, the issues raised in OS No. 103 of 2007, at the time, had not been adjudicated upon.

Therefore, the plaint, on the face of it, does not disclose any fact that may lead us to the conclusion that it deserves to be rejected on the ground that it is barred by principles of res judicata. The High Court and the trial court were correct in their approach in holding, that to decide on the arguments raised by the appellant, the court would have to go beyond the averments in the plaint, and peruse the pleadings, and judgment and decree in OS No. 103 of 2007. An application under Order 7 Rule 11 must be decided within the four corners of the plaint. The trial court and the High Court were correct in rejecting the application under Order 7 Rule 11(d)."

52. There is no dispute that the application under Order 7, Rule 11 CPC must be considered within the four corners of the plaint.

53. In *Swami Atmananda v. Sri Ramakrishna Tapovanam*, (2005) 10 SCC 51, the Hon'ble Supreme Court held:

"24. A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a

right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.”

54. In *Hari Shankar Jain v. Sonia Gandhi*, (2001) 8 SCC 233, the Hon’ble Supreme Court held:

“23. Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression “cause of action” has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an

incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See Samant N. Balkrishna v. George Fernandez [(1969) 3 SCC 238 : (1969) 3 SCR 603], JitendraBahadur Singh v. Krishna Behari [(1969) 2 SCC 433] .) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In V.S. Achuthanandan v. P.J. Francis [(1999) 3 SCC 737] this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead “material facts” is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

24. *It is the duty of the court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a court*

to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings.

....

33. *Without further burdening this judgment by dealing with each and every other averment made in the two election petitions, it would suffice to say that we have carefully read each of the two election petitions and heard each of the two election petitioners (appellants) in very many details especially on the aspect of the election petitions suffering from the vice of not satisfying the mandatory requirement of pleading material facts as required by Section 82(1)(a) of RPA, 1951 and we are satisfied that the two election petitions do not satisfy the requirement statutorily enacted and judicially explained in umpteen number of decisions. The petitions are hopelessly vague and completely bald in the allegations made, most of which could not possibly be within the personal knowledge of the petitioners but still verified as “true” to their knowledge, without indicating the source. Such pleadings cannot amount to disclosing any cause of action and*

are required to be rejected/dismissed under Order 7 Rule 11 CPC.

34. *To sum up, we are of the opinion that a plea that a returned candidate is not a citizen of India and hence not qualified, or is disqualified for being a candidate in the election can be raised in an election petition before the High Court in spite of the returned candidate holding a certificate of citizenship by registration under Section 5(1)(c) of the Citizenship Act. A plea as to constitutional validity of any law can, in appropriate cases, as dealt with hereinabove, also be raised and heard in an election petition where it is necessary to decide the election dispute. The view of the law, stated by the learned designated Election Judge of the High Court of Allahabad cannot be sustained. To say the least, the proposition has been very widely stated in the impugned order of the High Court. However, in spite of answering these questions in favour of the appellants yet the election petitions filed by them cannot be directed to be heard and tried on merits as the bald and vague averments made in the election petitions do not satisfy the requirement of pleading material facts within the meaning of Section 82(1)(a) of RPA, 1951 read with the requirements of Order 7 Rule 11 CPC. The decision of the High Court*

dismissing the two election petitions at the preliminary stage, is sustained though for reasons somewhat different from those assigned by the High Court. The appeals are dismissed but without any order as to the costs.”

55. In *Anil Vasudev Salgaonkar v. Naresh Kushali Shigaonkar*, (2009) 9 SCC 310, the Hon'ble Supreme Court held:

“61. *The legal position has been crystallised by a series of the judgments of this Court that all those facts which are essential to clothe the election petitioner with a complete cause of action are “material facts” which must be pleaded, and the failure to place even a single material fact amounts to disobedience of the mandate of Section 83(1)(a) of the Act.*

62. *When we apply the aforementioned test to the election petition in this case, then the conclusion becomes irresistible that the election petition lacks the materials facts. The election petition read as a whole does not disclose any cause of action.*

63. *Considering the facts and circumstances of this case and principles applicable to the election petition, this appeal deserves to be allowed and we accordingly allow this appeal. Consequently, the election petition*

stands dismissed. In the facts and circumstances of this case, we direct the parties to bear their own costs.”

56. On overall reading of the election petition, this Court is of the view that the election petition lacks material fact constituting the cause of action required under the RP Act and does not fulfill the mandatory requirement of law. Further, the election petition does not contain a concise statement of material fact and also does not disclose a triable issue or cause of action. As held by the Hon'ble Supreme Court, a cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.

57. In the case on hand, admittedly, the election petitioner has not pleaded the concise statement of material facts and material particulars against the first respondent. More importantly, no allegations have been made against the first

respondent in the election petition. The election petition field without any allegation against the first respondent is unsustainable in law and it is not the case of the election petitioner that by playing a fraud, the first respondent won the election. The present election petition is filed without any material facts and material particulars. That apart, being aggrieved by the order dated 15.2.2022, the election petitioner has filed W.P.(C) No.147 of 2022 and, as such, he has no right to challenge the election of the first respondent by filing the present election petition. As rightly argued by Mr. Lenin Hijam, the learned senior counsel for the first respondent, the election petition is barred by the doctrine of waiver.

58. The materials produced before this Court would clearly indicate that due to the subsisting Government contracts, the election petitioner was rightly disqualified by the returning officer, as he is barred from filing the nomination papers. The averments made in the election petition are completely vague and lacks material facts constituting the cause of action required under the RP Act and, therefore, no trial is warranted on the basis of such vague and imprecise averments. Since the election petitioner has not complied with Sections 83(1)(a) and (b) of the RP Act, the election petition deserves to be dismissed by

invoking the provisions of Order 7, Rule 11 CPC on the ground of non-disclosure of cause of action.

59. In the result,

- (i) M.C. (El.P.) No.140 of 2022 in Election Petition No.26 of 2022 is allowed. Consequently, Election Petition No.26 of 2022 is dismissed.
- (ii) There will be no order as to costs.

ACTING CHIEF JUSTICE

FR/NFR

Sushil